

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

S. VICTOR WHITMILL,)	
)	
)	Plaintiff,
)	
v.)	Civil Action No. 4:11-cv-752
)	
WARNER BROS. ENTERTAINMENT, INC.,)	Judge Catherine D. Perry
)	
Defendant.)	

AGREED PROTECTIVE ORDER

The parties having jointly moved for the entry of this Agreed Protective Order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure IT IS HEREBY ORDERED:

1. Any party may designate as Confidential all or any part of any document, electronically stored information or tangible thing produced in this case, any answers to interrogatories or responses to requests for admission, any deposition transcripts or exhibits or any other material disclosed to any party or to this Court, the unrestricted use of which would be harmful to that party or which that party is obligated to maintain as confidential.

2. This Agreed Protective Order shall not apply to information that is otherwise publicly available or is a matter of public record on file with any court or governmental or regulatory body.

3. Any material designated as Confidential shall be marked "Confidential." Digital or electronically stored information may be designated as Confidential by the disclosing party informing the receiving party in writing of such designation at the time of such disclosure.

4. Appropriate portions of deposition testimony may be designated as Confidential either during a deposition or within thirty days after receipt of the transcript. The transcript of

such testimony shall be marked Confidential on the first page and on each successive page containing such information. Each party designating deposition testimony Confidential shall inform all other parties, who shall appropriately mark designated pages of their copies of deposition transcripts. Until the conclusion of the thirty day period following receipt of deposition transcripts, all transcripts shall be treated as Confidential.

5. With the exception of the Court, any person or entity receiving any material designated as Confidential shall, as a prior condition to the receipt of such material, agree to be bound by the terms of this Agreed Protective Order. Counsel for any party disclosing such material to a person or entity shall be responsible for informing such person or entity of the terms of this Agreed Protective Order.

6. No material designated as Confidential may be disclosed to any person or entity except: (a) this Court; (b) counsel for the parties and their legal assistants, secretaries and other employees who are engaged in assisting counsel in this case, but only to the extent necessary for their participation in this case; (c) experts or consultants retained by counsel for the parties, but only to the extent necessary for their participation in this case; (d) deponents, but only to the extent necessary for their participation in this case; and (e) the parties and the officers, directors and employees of the parties, but only to the extent necessary for their participation in this case.

7. If, in connection with this case, a party inadvertently discloses information subject to a claim of attorney-client privilege, attorney work product protection or any other privilege (“Inadvertently Disclosed Information”), the disclosure of the Inadvertently Disclosed Information shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection that the disclosing party would otherwise be entitled to assert with respect to the Inadvertently Disclosed Information and its subject matter.

8. If a claim of inadvertent disclosure is made by a party with respect to Inadvertently Disclosed Information or if a party believes that the other party may have provided Inadvertently Disclosed Information to it, the party that received the Inadvertently Disclosed Information shall not refer to, review, use or further disclose such Inadvertently Disclosed Information and shall, within five business days, return to the disclosing party or destroy all copies of the Inadvertently Disclosed Information and provide a certification of counsel confirming that all such Inadvertently Disclosed Information has been returned or destroyed and that from the time that the party that received the Inadvertently Disclosed Information became aware that it was in possession of the Inadvertently Disclosed Information it has not been used or disclosed in any way.

9. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information to the extent required by the applicable law or rules.

10. The receiving party may move the Court for an order compelling production of the Inadvertently Disclosed Information (“Privilege Motion”). The Privilege Motion shall be filed under seal and shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

11. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this paragraph shall limit the right of any party to petition the Court for an in camera review of the Inadvertently Disclosed Information.

12. Any material designated as Confidential or which discloses the contents of such material that is filed with this Court shall be filed under seal and shall not be disclosed to the public except upon further order of this Court.

13. This Agreed Protective Order shall be supplemented as hereafter agreed to by the parties or as ordered by this Court to permit the use at trial of information designated as Confidential that is necessary to the presentation of a party's case.

14. At the conclusion of all litigation between the parties, all material designated as Confidential or that discloses the contents of such material shall be destroyed by the party possessing such material, except that counsel for the parties may retain such material in accordance with their regular office practice solely for the purposes of record keeping. With respect to materials designated as Confidential that are in electronic form, the parties will not be required to remove such information from any back up or disaster recovery systems or from any other source that is not reasonably accessible because of undue burden or cost.

15. Nothing in this Agreed Protective Order shall affect or limit the right of any party designating material as Confidential to use such material for any purpose or to waive or modify any such designation.

16. This Agreed Protective Order is entered without prejudice to the right of any party, after having conferred in good faith in an effort to resolve any dispute, or an interested member of the public, to seek or obtain from the Court, on an appropriate showing, an order:

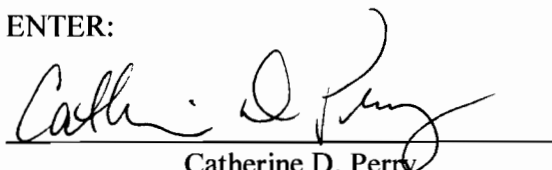
- (a) striking or modifying a party's designation as Confidential, provided that the confidential treatment of the information is maintained until the Court rules that such protection does not apply;

- (b) modifying this Agreed Protective Order; or
- (c) granting additional protection with respect to the confidentiality of information or documents.

17. In the event that an interested member of the public seeks to challenge the designation of any document or information filed under seal, that person shall submit a written motion to intervene for the purpose of challenging the designation and shall state for what purpose the document or information is sought and establish good cause as to why the document or information should become public.

18. Not less than 30 days after a final order or other disposition has been issued in a civil action in the District Court, or 30 days after the receipt of a mandate from the Court of Appeals in a case in which an appeal has been taken, the Clerk shall place in the public file all documents previously filed under seal, unless otherwise ordered by the Court. Prior to the expiration of the thirty-day period following the termination of a case, a party may move for an order of the Court either extending the seal for a specified additional time period or returning sealed documents to the filing party upon a showing of good cause.

ENTER:


Catherine D. Perry
United States District Judge