

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

Capitol Records, Inc., et al.,)	
Plaintiffs,)	
vs.)	Case No. Civ. 04-1569-W
)	
Debbie Foster and Amanda Foster,)	
Defendants.)	

ORDER

This matter comes before the Court on the Defendant Deborah D. Foster's Motion for the Court to Shorten Time for Plaintiffs' to Respond to Discovery (docket no. 206), and the Plaintiffs' Motion for Protective Order (docket no. 210, filed under seal). The matters have been fully briefed and the Court makes its determination as follows.

On March 22, 2007, in support of the plaintiffs' motion for a protective order holding confidential their billing records and related documents, the plaintiffs submitted the declaration of Kenneth L. Doroshow. Mr. Doroshow is the Senior Vice President of Legal Affairs for the Recording Industry Association of America ("RIAA"), a trade group that represents the United States' recording industry. Mr. Doroshow stated that, as part of his responsibilities, he supervised record company's lawsuits against individuals alleged to be involved in online file sharing.

On March 26, 2007, in response to Mr. Doroshow's disclosure regarding the RIAA, the defendant asked the plaintiffs to produce a copy of the representation agreement between the plaintiffs and the RIAA. The plaintiffs objected, and on March 30, 2007, the defendant submitted formal discovery requests. Those requests sought "all agreements for the provision of legal services and/or payment of fees in connection with Plaintiffs' (the recording labels) and Plaintiffs' trade

group, the Recording Industry Association of America (“RIAA”) in this litigation, including but not limited to engagement letters.” The March 30 discovery requests also asked for “all documents concerning any and all attorney fees and/or costs actually paid by Plaintiffs (the recording labels) and Plaintiffs’ trade group, the Recording Association of America (“RIAA”).” The defendant contends these requests fall within the scope of the Court’s March 15, 2007 order compelling the plaintiffs to produce their attorneys’ billing records and related materials. She further argues that the documents are relevant in that they “relate to a number of issues, including but not limited to Defendant’s burden, motions to add the RIAA as a party, LCvR 7.2 (k), and plaintiffs’ motive in continuing to pursue claims against Deborah Foster.”

The plaintiffs objected to the defendant’s discovery requests and moved for the Court to enter a protective order with respect to the requested documents on the grounds that the defendant’s requests were not timely, that the materials sought are “not possibly relevant to any issue in the case,” and that the plaintiffs will be prejudiced if they are required to produce the highly confidential materials.¹ In sum, the plaintiffs suggest that the defendant’s request is oppressive in light of the circumstances of this case. The defendant maintains that her requests are timely because they simply specify documents that should have been produced pursuant to the Court’s March 15 order. The Court disagrees.

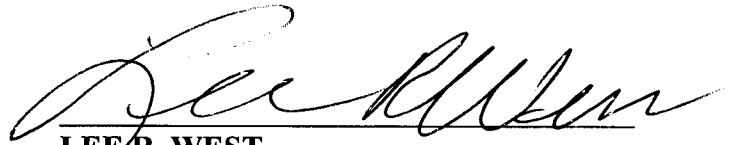
¹The defendant contends the Court must not consider the plaintiffs’ motion for protective order because they failed to meet and confer with her in good faith pursuant to LCvR 37.1. In their motion, the plaintiffs represent that they did, in fact, confer with the defendant as required. It appears that the parties were engaged in continuing discussions involving the RIAA documents and other materials, and that disagreements and misunderstandings have once again necessitated the Court’s intervention.

While the RIAA appears to coordinate litigation of this type for its member record companies, it is not a party to this litigation. Its counsel did not enter an appearance in the matter and its connection to this particular case appears to be highly attenuated. Thus, the Court concludes the RIAA materials did not fall within the Court's March 15 order requiring the plaintiffs to produce their attorneys' billing records and related materials. Furthermore, the lack of relevance of the RIAA materials to the issue remaining before the Court is revealed by the defendant's own argument. She asserts the documents relate to such issues as her need to add the RIAA as a party and the plaintiffs' motive in continuing to pursue their claims against her. The time for adding parties and assessing the plaintiffs' motives has long since passed. The Court has already determined that the defendant is entitled to an award of attorneys' fees. The *sole* issue remaining for determination in this case is the reasonableness of the amount of defendant's attorney fee request. Any possible relevance of the RIAA materials to that issue is negligible and clearly outweighed by the prejudice the plaintiffs will suffer should the highly confidential materials be produced.

It is well established that trial courts have broad discretion in issuing protective orders and determining what degree of protection is required. Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984). Before a protective order may issue, however, the plaintiffs must meet their burden of establishing "some" showing of good cause. Id., at 31, 37. "Good cause" includes protecting a party from annoyance, embarrassment, oppression, or undue burden or expense. See In re Independent service Organizations Antitrust Litigation (aka CSU Holdings, Inc., et al.), 162 F.R.D. 355, 356 (D. Kan. 1995). The Court finds the plaintiffs have met their burden of establishing "some" showing of good cause why their requested protective order should enter.

For the foregoing reasons, Defendant Deborah D. Foster's Motion For the Court to Shorten Time For Plaintiffs' To Respond To Discovery is DENIED. The Plaintiffs' Motion For Protective Order is GRANTED. The defendant is barred from obtaining from the plaintiffs the documents sought by the written discovery requests served on March 30, 2007.

ENTERED this 27 day of April 2007.


LEE R. WEST
UNITED STATES DISTRICT JUDGE