
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UTAH NEWSPAPER PROJECT dba
CITIZENS FOR TWO VOICES,

Plaintiff,

v.

DESERET NEWS PUBLISHING COMPANY
and KEARNS-TRIBUNE, LLC,
Defendants.

**ORDER DENYING JOINT MOTION FOR
PROTECTIVE ORDER**

Case No. 2:14-cv-445-CW-BCW

District Judge Clark Waddoups

Magistrate Judge Brooke Wells

District Judge Clark Waddoups has referred this case to Magistrate Judge Brooke C. Wells pursuant to 28 U.S.C. § 636(b)(1)(A).¹ Before the Court is Defendants Deseret News Publishing Company and Kearns-Tribune, LLC's (hereinafter collectively referred to as "Defendants") Joint Motion for Protective Order.² In deciding this Motion, the Court has carefully considered the Court's Standard Protective Order and the arguments made by counsel at the informal hearing held on November 5, 2014 and in their memoranda related this Motion. The Court believes it is now fully informed and no further written materials or oral argument is necessary. For the reasons set forth more fully below, the Court finds Defendants have not carried their burden in establishing good cause exists to deviate from the Court's Standard Protective Order.³

¹ Docket no. 31.

² Docket no. 70.

³ See DUCivR 26-2(a).

RELEVANT BACKGROUND

On November 5, 2014, the parties were to appear for an Initial Pre-trial Conference.⁴ Before the hearing, the parties informed the Court that a dispute had arisen regarding the Court's Standard Protective Order and its application in the instant case.⁵ As a result, it was likely that the parties would not have been able to establish litigation deadlines during their Initial Pre-Trial Conference.⁶ Due to alleged sensitive issues, Defendants' requested the parties meet in chambers prior to convening in Court.⁷ Plaintiff, The Utah Newspaper Project dba Citizens for Two Voices ("Plaintiff") opposed this request.⁸ Out of an abundance of caution, the Court agreed to Defendants' request and on November 5, 2014, an informal conference was held before the undersigned. Following that conference, the Initial Pre-Trial Conference was vacated and the Court issued a minute entry that stated in relevant part:

The Court heard arguments from counsel relating to the application of the Standard Protective Order in this case. At conclusion of argument, the Court Ordered that within 14 days, the parties are to meet and confer and come to a compromise on the exchange and protection of confidential materials. If the parties are unable to reach a compromise, then Defendant[s] [are] to file a Motion with the Court.⁹

The parties did not reach a compromise and as directed by the Court, Defendants filed the instant Motion. Plaintiffs then filed a timely Opposition Memorandum.¹⁰ In their Motion, Defendants assert

[c]ounsel for the parties have met and resolved all issues respecting modification of the standard protective order, with the exception of paragraph 4(g), with respect to which Defendants urged that any party could initially mark a document "confidential" if it contained confidential information, without the necessity of marking only the confidential portions of each discrete documents. This would

⁴ Docket no. 60.

⁵ See Correspondence from Parties, docket no. 66.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Docket no. 67.

¹⁰ Docket no. 70.

avoid the unnecessary delay and expense of marking selected portions of documents as confidential.¹¹

Defendants further assert that they have already carefully screened for privilege and relevance approximately half a million pages that were produced to the Department of Justice and related to this litigation. Thus, Defendants argue that having to re-sift through those documents in order to further designate confidential portions for this litigation would place a substantial burden upon Defendants. Defendants argue this burden is undue, overly expensive and time consuming.¹² Moreover, Defendants argue that “[t]his motion is made on the basis that this action involves confidential business matters, public disclosure of which would seriously harm Defendants’ interests.”¹³

On the other hand, Plaintiff seeks to have the Court’s Standard Protective Order entered verbatim. As stated in its Opposition Memorandum, “Plaintiff is not seeking to prevent Defendants from designating material confidential; Plaintiff simply wants Defendants to actually identify what is supposedly confidential.”¹⁴ Plaintiffs argue that Defendants’ proposed Protective Order improperly shifts the burden onto Plaintiffs to determine what parts of the documents produced by Defendants are confidential rather than properly placing that burden on Defendants as the producing party. According to Plaintiffs, “...portions of documents that are *not confidential* would nonetheless be sealed in their entirety, with Plaintiff subject to sanctions for inadvertent disclosure and forced to incur additional burdens in court filings and working with experts and witnesses.”¹⁵

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Docket no. 72.

In addition, Plaintiff argues Defendants have not adequately shown how public disclosure of non-confidential documents or other information unearthed during litigation would harm their interests in a way that is outside the scope of the Standard Protective Order. Specifically, Plaintiffs' argue, "Defendants do nothing more to define the nature of the injury they will suffer if such information is disclosed to the public, or how such an injury would be sufficiently serious to justify entry of the protective order Defendants seek."¹⁶

ANALYSIS

Pursuant to civil rule 26-2(a) of the Rules of Practice for the United States District Court for the District of Utah, the Court's Standard Protective Order applies in every case where disclosure of any information is designated as confidential.¹⁷ "Unless the court enters a different protective order, pursuant to stipulation or motion, the Standard Protective Order...shall govern [and] ...is effective by virtue of this rule and need not be entered in the docket of the specific case."¹⁸ Further, "any party or person who believes that substantive rights are being impacted by application of the rule may immediately seek relief."¹⁹ "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense..."²⁰

Here, the Court agrees with and is persuaded by the arguments made by Plaintiff and finds good cause does not exist to deviate from this Court's Standard Protective Order. The Court finds Defendants have not adequately shown how they will be harmed or impacted if the Standard Protective Order is entered in this case. Generically arguing that their business interests will be harmed by public disclosure of documents does not provide the Court with

¹⁶ Id.

¹⁷ See DUCivR 26-(a)(1).

¹⁸ Id.

¹⁹ DUCivR 26(a)(2).

²⁰ Fed. R. Civ. P. 26(c).

enough information to make a reasoned decision as to whether good cause exists to deviate with the Court's standard practice.

Moreover, at this preliminary stage of litigation, without specific document requests having been exchanged, it is speculative as to the exact burden that will be placed on Defendants or whether the expense and/or burden is extraordinary or undue. Therefore, in balancing the significant public interests at stake, the presumptive need for transparency of federal court proceedings, the reasons why the Court adopted the Standard Protective Order²¹ and Defendants' failure to establish (or even identify) business matters that might be harmed if non-confidential information is produced under the Court's Standard Protective Order, the Court finds good cause does not exist to deviate from the Court's Standard Protective Order. Therefore, Defendants' Motion is denied.

CONCLUSION & ORDER

For the foregoing reasons, the Court DENIES Defendants' Joint Motion for Protective Order.²² Therefore, the Court's Standard Protective Order shall be in effect verbatim in this case, with the exception of allowing Plaintiffs to show documents produced by Defendants to their clients, as per the previous agreement reached by counsel for both sides.

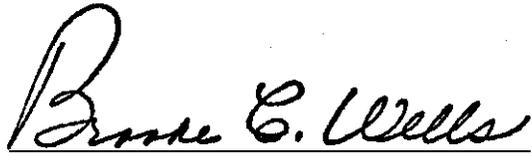
It is FURTHER ORDERED that **the Initial Pre-Trial Conference is re-set for February 11, 2015 at 10:00 AM before the undersigned in Courtroom 7.400.**

IT IS SO ORDERED.

²¹ See DuCivR 26-2(a).

²² Docket nos. 70 .

DATED this 15 January 2015.

A handwritten signature in black ink that reads "Brooke C. Wells". The signature is written in a cursive style with a large initial 'B' and a distinct 'C' and 'W'.

Brooke C. Wells
United States Magistrate Judge