

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

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 CAPITOL RECORDS, INC., et al.,)
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 Plaintiffs,)
)
 v.)
)
 NOOR ALAUJAN,)
)
 Defendant.)

Civ. Act. No. 03-cv-11661-NG
 (LEAD DOCKET NUMBER)

)
 SONY BMG MUSIC ENTERTAINMENT,)
)
 et al., Plaintiffs,)
)
 v.)
)
 JOEL TENENBAUM,)
)
 Defendant.)

Civ. Act. No. 07-cv-11446-NG
 (ORIGINAL DOCKET NUMBER)

MOTION FOR ENTRY OF PROTECTIVE ORDER
AND REQUEST FOR EXPEDITED RULING

Plaintiffs respectfully move under Fed. R. Civ. P. 26(c) for entry of a protective order to protect confidential business information from unnecessary disclosure. At one point, the parties had agreed in principle to the entry of a protective order to protect certain confidential information that each side intended to disclose to the other. Now, Defendant has changed his mind, and no longer wants a protective order and will not agree to Plaintiffs' proposed order. Accordingly, Plaintiffs now move the Court for entry of the attached Proposed Protective Order to protect confidential business information.

Specifically, Plaintiffs request a protective order for two categories of documents: (1) the revenue information regarding the 30 sound recordings at issue, which the Court ordered

Plaintiffs to estimate by today, July 10, 2009, and (2) a number of confidential agreements demonstrating Plaintiffs' ownership of certain of the sound recordings at issue in the case.¹ The protective order is necessary as to the revenue information because this information is highly confidential and because, for legal and business competition reasons, the record companies do not share this information with each other or with third parties. The protective order is necessary as to the chain of title documents because the documents contain agreements among the record companies and certain artist-owned companies and include confidential business information. Unnecessary disclosure of this information would cause competitive harm to Plaintiffs and to the artist-owned companies. Indeed, the parties to these agreements have kept them confidential and have avoided disclosure of these documents to the public.

For these reasons, Plaintiffs seek a very limited protective order that prohibits disclosure of this confidential information to the public or use of this confidential information for purposes other than this lawsuit. Plaintiffs are seeking expedited ruling because the Court has ordered Plaintiffs to provide revenue information by July 10, 2009, and because trial is approximately two weeks away, and Plaintiffs would like to produce the few remaining confidential chain of title documents to Defendant. Plaintiffs are prepared to immediately turn over the information and documents upon entry of a protective order ensuring confidentiality.

ARGUMENT

Plaintiffs Have Shown Good Cause For Entry Of A Protective Order.

Trial courts possess broad discretion to supervise discovery and enter protective orders. *See Pharmachemie, B.V. v. Pharmacia, Inc.*, 1998 U.S. Dist. LEXIS 2192, at *4-5 (D. Mass.

¹ Plaintiffs note that they have already produced to Defendant approximately 1,000 pages of chain of title documents demonstrating copyright ownership. The remaining approximately nine documents are the only ones for which Plaintiffs are seeking protection.

Jan. 30, 1998); *Baker v. Liggett Group, Inc.*, 132 F.R.D. 123, 125 (D. Mass. 1990). Rule 26(c) specifically allows trial courts to make any order necessary to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, and to prevent the unnecessary disclosure of trade secret and other confidential business information. F.R.C.P. 26(c).

Rule 26(c) states, in relevant part:

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . .

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, . . . ;
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way

F.R.C.P. 26(c).

Upon a showing of good cause, Rule 26(c) grants the district courts broad discretion to restrict what materials are obtainable from a party through discovery, how the materials may be obtained, and what use can be made of such materials once obtained. F.R.C.P. 26(c)(1)-(8). The Supreme Court has noted, in particular, that “[t]he unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984); *accord Bank of New York v. Meridien Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 143 (S.D.N.Y. 1997) (trial judge has discretion to determine whether to limit boundaries of discovery based on particular facts and circumstances of case).

Numerous courts have determined that the need to preserve the confidentiality of information, for any number of reasons, is sufficient “good cause” to warrant protection under Rule 26(c). Indeed, federal courts routinely enter protective orders to protect the dissemination of confidential or commercially sensitive information obtained through discovery. *See, e.g., Pharmachemie*, 1998 U.S. Dist. LEXIS 2192, at *4-5 (entering protective order to protect sensitive business information); *Baker*, 132 F.R.D. at 127 (same); *GTE Prods. Corp. v. Gee*, 112 F.R.D. 169, 170 (D. Mass. 1986) (prohibiting disclosure of confidential information about third parties); *Dynamic Microprocessor Assoc. v. EKD Computer Sales*, 919 F. Supp. 101, 106 (E.D.N.Y. 1996) (limiting disclosure of computer source code); *Four Star Capital Corp. v. Nynex Corp.*, 183 F.R.D. 91, 111 (S.D.N.Y. 1997) (entering protective order prohibiting disclosure to anyone but counsel for the parties and observing that protective orders limiting disclosure are standard practice); *In re NASDAQ Market-Makers Antitrust Litig.*, 164 F.R.D. 346, 354-357 (S.D.N.Y. 1996) (good cause shown for protection of audiotapes containing confidential commercial information such as trading strategies); *Uniroyal Chem. Co. Inc. v. Syngenta Crop. Protection*, 224 F.R.D. 53, 56-58 (D. Conn. 2004) (granting protective order and limiting disclosure of proprietary database information to counsel). Indeed, many courts consider it their duty to protect sensitive business information through the entry of a protective order. *See, e.g., Powers v. Chicago Transit Auth.*, 846 F.2d 1139, 1143 (7th Cir. 1983) (“District courts have a responsibility to protect sensitive information in discovery, where the utility of that information is less than the injury its disclosure may do, even if the information is not technically privileged.”).

Here, good cause exists for entry of the requested protective order. The revenue information is highly confidential, is not available to the public, and implicates business and

legal competition issues. This information is kept strictly confidential and is not shared among the record company Plaintiffs or with third parties. The chain of title documents, including contracts between the record companies and artist-owned companies, also contain highly confidential business information. This information is kept confidential, is proprietary to Plaintiffs and the artist-owned companies, and gives Plaintiffs and the artist-owned companies a competitive advantage. Disclosure of the revenue information or the information in the contracts between the record companies and artist-owned companies would cause significant competitive harm to Plaintiffs. Moreover, nothing in the proposed order will harm Defendant or impinge upon his ability to defend this lawsuit.

CONCLUSION

To facilitate disclosure of revenue information and chain of title documents and to protect themselves from significant and irreparable harm through the unnecessary disclosure of revenue information and information in the contracts between Plaintiffs and artist-owned companies, Plaintiffs ask the Court to enter the attached Protective Order. The attached order provides simple and workable protections for all confidential and proprietary information that might be subject to disclosure in this case, whether produced by Plaintiffs, Defendant, or a third party. The attached order also permits any party to challenge the designation of any document or other information by the disclosing party. Given the Court's Order to produce revenue information by July 10, 2009, and because trial is only two weeks away, Plaintiffs respectfully request expedited ruling on this Motion.

Respectfully submitted this 10th day of July, 2009.

SONY BMG MUSIC ENTERTAINMENT;
WARNER BROS. RECORDS INC.;
ATLANTIC RECORDING CORPORATION;
ARISTA RECORDS LLC; and UMG
RECORDINGS, INC.

By their attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 10, 2009.

s/ Eve G. Burton _____