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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

KIRK and AMY HENRY,

Plaintiffs,

vs.

FREDRICK RIZZOLO aka RICK RIZZOLO, an individual; LISA RIZZOLO, individually and as trustee of The Lisa M. Rizzolo Separate Property Trust and as successor trustee of The Rick J. Rizzolo Separate Property Trust; THE RICK AND LISA RIZZOLO FAMILY TRUST; THE RICK J. RIZZOLO SEPARATE PROPERTY TRUST; and THE LISA M. RIZZOLO SEPARATE PROPERTY TRUST, THE RLR TRUST; and THE LMR TRUST,

Defendants.

LISA RIZZOLO,

Crossclaimant,

vs.

FREDRICK RIZZOLO aka RICK RIZZOLO, individually and as trustee of The Rick J. Rizzolo Separate Property Trust; RICK J. RIZZOLO SEPARATE PROPERTY TRUST and THE RLR TRUST

Crossdefendant

Case No. 2:08-CV-635-PMP-GWF

REPLY TO PLAINTIFFS OPPOSITION TO LISA RIZZOLO'S SECOND MOTION TO ENFORCE PROTECTIVE ORDER

Defendant, LISA RIZZOLO ("Defendant" or "Ms. Rizzolo"), by and through her attorneys of record, BAILUS COOK & KELESIS, LTD., and submits her reply to Plaintiffs' opposition to Ms. Rizzolo's motion to enforce the protective order.

This Reply is made and based on all pleadings and papers on file herein, the attached Memorandum of Points and Authorities and such evidence and argument as may be adduced at any hearing on this matter.

DATED this 19th day of January, 2010.

BAILUS COOK & KELESIS, LTD.

/s/
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POINTS AND AUTHORITIES

I.

ARGUMENT

Ms. Rizzolo once again finds herself in the position of needing to enforce the terms of the Stipulation and Protection Order ("SPO") because, once again, the Plaintiffs are aggressively attempting, for reasons impermissible under Rule 26 of the Federal Rules of Civil Procedure ("FRCP"), to remove the confidentiality protections of private and personal information that she has already provided to the Plaintiffs in good faith. While citing a host of cases from various jurisdictions, Plaintiffs have provided no authority to do what Plaintiffs are attempting to do – decategorize confidential documents of a private individual for no stated purpose.

At the meet and confer, Ms. Rizzolo's counsel inquired several times of Plaintiffs counsel, Jack E. DeGree, Esq., if he has, in anyway been hampered in his preparation in this litigation by the confidential designation. Mr. DeGree could not point to one concrete instance. The best Mr. DeGree could do is hypothecate that a third party might contact him requesting documents which have been designated as confidential by Ms. Rizzolo. Again, Plaintiff has not offered one instance

where Plaintiffs have been hindered in their preparation in this litigation by Ms. Rizzolo's designation of her private and personal information as confidential. A careful reading of the entire body of case law cited in the Plaintiffs' opposition reveals a dubious logic and a misreading of case holdings. More importantly, it reveals an improper attempt to strip Ms. Rizzolo's privacy of matters wholly unrelated to Plaintiffs need in an effort to disseminate this information in a way to humiliate, embarrass and annoy Ms. Rizzolo. And while Ms. Rizzolo will discuss each of these cases, *supra*, it can be summed up that this conduct on the part of the Plaintiffs is specifically prohibited by FRCP 26 (c). Revealing confidential information is a tactic Plaintiffs counsel wishes to use for improper purposes, such as forcing a settlement of the case. However, one of the Plaintiffs' own case citations reveal this is improper.

In ***Joy v. North***, 692 F.2d 880 (2nd Cir. 1982)(cited as authority by the Plaintiff in their Opposition at page 13), the Court held:

> Protective orders are useful to prevent discovery from being used as a club threatening disclosure of matters which will never be used at trial. Discovery involves the use of compulsory process to facilitate orderly preparation for trial, ***not to educate or titillate the public***. (Emphasis added.)

In the present case, Ms. Rizzolo has set forth through affidavit and case law, the good cause. Public disclosure of her private financial information (e.g. her tax returns, the specifics of her health insurance, her day to day purchases made from her checking accounts, etc.) would provide for irreparable embarrassment, humiliation and even danger from people who routinely seek this information for the purposes of identity fraud, finding targets for identity theft, etc. Plaintiffs fail in their attempt to negate that these type of materials are almost universally protected by the Courts.

Indeed, many of the "authorities" cited by the Plaintiffs in their opposition, involve *newspapers* (as interveners) and their attempts to get at information on matters of traditional public concern (e.g. the actions of public agencies) marked confidential so presumably it can be published to the world at large. Other "authorities" the Plaintiffs cite concern parties who have not received documents because of confidentiality concerns (which is not the issue in the case, *sub judice*, since Ms. Rizzolo has been compliant with discovery requests).

First, the Plaintiffs are not a newspaper. Newspapers intervene in cases like the ones cited

by Plaintiffs so they can obtain and publish confidential information. Ms. Rizzolo hopes the Court will take pause and ask the simple question: If the Plaintiffs already have all the materials they complain about as being confidential, what purpose is served though their vexatious and repeated attempts to strip Ms. Rizzolo's private financial information of their traditional privacy? Is it not clear that the underlying motivation is the intention to use what appears to be Plaintiffs' counsel direct pipeline to his client, newspaper columnist John L. Smith, whose article was biased against Ms. Rizzolo.

At the last hearing, the Court stated this case was "newsworthy." However, if this case is newsworthy, it is not because of Ms. Rizzolo, but rather, because of the trial and tribulations of her former husband, Rick Rizzolo. This should not abrogate Ms. Rizzolo's right to have her private and personal information kept confidential, especially when their has been no showing by Plaintiffs of how it has hindered their preparation in this litigation.

Ms. Rizzolo, did not engage in any fraudulent conduct in divorcing her former husband, Rick Rizzolo. She has made good faith efforts to comply with each and every broad and arduous request for her personal information and to answer truthfully every question posed to her at her deposition in support of her desire to show as much. And for her good faith efforts, she finds headlines in the newspaper, not only revealing her private financial information, but inferring that she is engaging in fraud and a suggestion from a well-read editorial columnist that she should be investigated for criminal wrongdoing. (*Reply to Plaintiffs Opposition to Lisa Rizzolo's Motion to Enforce Protective Order (*# 178*), Exhibit A*). That editorial columnist, John L. Smith of Stephens Media, admits in his column that he was giving his interpretation of transcript excerpts from a Plaintiff's motion. He also discloses specifics with regard to assets, net worth and location of assets.

Plaintiff, Kirk Henry's counsel, Donald J. Campbell, Esq., has an apparent attorney-client relationship with Stephens Media, LLC. Stephens Media owns the Las Vegas Review-Journal. Not only does Plaintiffs' counsel represent the Stephens Media group in many ongoing affairs, but he has also represented the columnist at issue, John L. Smith. (*Reply to Plaintiffs Opposition to Lisa Rizzolo's Motion to Enforce Protective Order (*# 178*), Exhibit B*).

Further, Plaintiffs' counsel has before made use of confidential information in an effort to

resolve cases. Mr. Smith's newspaper previously praised Mr. Campbell in an editorial column for forcing settlement by threatening to expose confidential information (to the specific benefit of Mr. Smith, who coincidentally was the Defendant in that case). (*Reply to Plaintiffs Opposition to Lisa Rizzolo's Motion to Enforce Protective Order (#* 178*), Exhibit C*). It should be noted, it was Mr. Smith who published excerpts of Ms. Rizzolo's deposition in this case. It's all too cozy of a relationship. A careful review of that opinion column reveals that Mr. Smith took the most unflattering answers out of context and made suggestions that Ms. Rizzolo is engaged in criminal activity to her humiliation and embarrassment in the community. It should be noted that in this alleged "newsworthy" item – Mr. Smith does not even bother to seek comment from Ms. Rizzolo.

In reality, there is no culpability on the part of Ms. Rizzolo and none of the documents and/or personal information are probative of any other conclusion. Plaintiffs have not offered any cogent argument as to why Ms. Rizzolo's desire to keep her private and financial information confidential is not, as represented, made with good cause. Even though not required under the SPO, Ms. Rizzolo's affidavit clearly demonstrates "good cause" for keeping her personal, financial and/or asset information confidential. See, Fed. R. Civ. P. 26 (c) That rule is designed to protect parties, like Ms. Rizzolo, from "annoyance, embarrassment and oppression."

That stated, this Reply will analyze the Plaintiffs' cases to reveal they have no merit for the propositions set forth. In fact, many of the cases when read in their entirety support Ms. Rizzolo's position that it is both reasonable and appropriate to mark private information as confidential and that it should remain so during the discovery phase of this litigation. It would truly be unprecedented in any jurisdiction for the Court to order Ms. Rizzolo's private and personal information as free to be disseminated to the media, especially when the media hasn't even asked for it and it does not involve an area of great public concern.

Ms. Rizzolo beseeches the Court to recall the whole nature of this litigation. There was a tort settlement between the Plaintiffs and Defendant, Rick Rizzolo, primarily involving an assault and battery by one of Mr. Rizzolo's employees and Plaintiff, Kirk Henry, outside of the Crazy Horse Too club. This tort case did not in any way name or involve Ms. Rizzolo. At the time of the tort settlement, Plaintiffs were content with the settlement they secured and the assets which were

available at the time to insure payment. Due to no fault of Ms. Rizzolo, those assets loss value and the Plaintiffs in hindsight made a bad settlement. In state court, Plaintiffs never attempted to attach or encumber the assets that Ms. Rizzolo received in her divorce settlement. Ms. Rizzolo is a bystander who has been required to turn over all her private information, financial and otherwise, to the Plaintiffs as part of the compulsory process. She has done that in good faith. While Plaintiffs argue the documents are relevant, this is not sufficient to remove the confidential designation, let alone any reason for their public disclosure, and yet they persist and persist. As a tactic, this is obvious. As a victim of an aggressive attorney trying to salvage a tort payment to his client from a non-party to the tort, Ms. Rizzolo and her privacy interests are at risk. The necessity for the granting of Ms. Rizzolo's motion to enforce the protective order, now filed for a second time, is hopefully both self-evident and vital to disallow the bullying that the Plaintiffs suggest is somehow allowable by merely filing a Complaint.

THE TIMELINESS OF PLAINTIFF'S OBJECTIONS TO CONFIDENTIALITY DESIGNATIONS

Plaintiffs desire to recast their November 24, 2009, letter of objection as to confidential designations as "supplemental" to the first round of objections that occurred well before this Court's hearing on September 1, 2009. At that hearing, the Court sanctioned the procedure that was set forth in the SPO wherein upon an objection to materials produced, the Plaintiffs would have 30 days to make formal objection. The agreement in its most simple, obvious and apparent contract terms required a 30 day objection for the time any materials were produced, to wit:

> Such written objection shall specify the information in question and the grounds for the objection. The written objection shall be made on the other party within thirty (30) calendar days of the date the information designated as Confidential is produced to the objecting party.

There is no language in the SPO or the Court's rulings on the matter that suspend that requirement because the Plaintiffs made an initial objection to previously provided materials back on July 8, 2009. Further, the SPO and the Court's ruling required that any objection be made with specificity. Plainly stated, the Plaintiffs did not comply with the terms of the SPO and cannot now

claim that the materials provided prior to October 24, 2009 are even at issue. Further, while they do complain of the "blanket" designation of confidentiality of the obviously private and personal documents of Ms. Rizzolo, to date, they still have not indicated with any specificity which of these specific documents should be rendered available for dissemination to the media or why they don't believe them (in general) to be confidential. As the Plaintiffs' contend in their cited case of ***Department of Econ. Dev. v. Arthur Andersen & Co.***, 924 F.Supp. 449, 487 (S.D. N.Y. 1996), "confidentiality agreements are interpreted according to contract principles." It is Ms. Rizzolo's position that under the terms of the SPO, the Plaintiffs have failed to comply on all levels.

THE FALLACY OF PERCENTAGES OF DOCUMENTS DESIGNATED AS CONFIDENTIAL AS BEING CONTROLLING

In their opposition, the Plaintiffs suggests that other Courts have looked at the percentage of documents marked confidential and from that magical number determine whether or not good cause exists. Such is not the case.

For example, the Plaintiff cites *THK America, Inc. v. NSK Co.*, 157 F.R.D. 637, 645 (N.D. Ill. 1993), and states that the court found "a designation of 79 per cent of produced documents to be "absurdly high." The Plaintiffs, however, neglect to inform this Court what *designation* was at issue. *THK America* had nothing to do with disseminating materials to the public, but merely to the parties. This litigation involved two corporations litigating over patent infringement.

In *THK*, the Defendants had marked two-thirds of the documents produced as confidential. There was no issue with regard to this designation. However, within those produced documents, 79 per cent had additionally been marked "For Attorney Eyes Only." Many of these materials were in fact originally produced by the adversary party and by definition could not be confidential. In light of this the Court found the "super-confidential"designation of 79 per cent of these particular documents given this litigation between the parties was "absurdly" high. The Court ruled that only sensitive documents cannot be seen by the parties, themselves, and held accordingly. In the present case, 100 per cent of the documents had been made available for the proper use of the parties.

Likewise, the Plaintiff's cited ***In re Ullico, Inc. Litigation***, 237 F.R.D. 314, 317 (D. D.C.

2006) for the proposition it is a "gross abuse" to label all documents as confidential but fails to engage in the same analysis that this district court in another jurisdiction did. In ***Ullico***, the Plaintiff was suing his former employer, a corporation. The corporation produced 200,000 pages of documents as confidential. There, however, the Court went through the documents and specifically identified which ones could not have been confidential (e.g. newspaper clippings, press releases, its own annual released reports, *blank* income tax forms, CLE brochures, blank pages, tabs and folders, newsletters available on its website, etc.). Specifically allowable, however, as confidential were "***sensitive or otherwise confidential personal and financial information***." ***Id***. at page 317. The Court made special note that the because of the mass labeling of "obviously non-confidential" materials and the difficulties that were presented to the other side with regard to using the ECF system, that corporation acted in bad faith. ***Id***. In the present case, the materials marked as confidential are indeed "sensitive or otherwise confidential personal and financial information." There is no allegation that at this stage, the designation is in any way hindering the Plaintiffs from litigating their case. ***Ullico*** is absolutely inapposite for the Plaintiffs' proposition.

THE PLAINTIFFS ARE NOT A NEWSPAPER, THE SUBJECT MATTER IS NOT OF GRAVE PUBLIC CONCERN AND THE MATERIALS AT ISSUE ARE NOT ATTACHED TO DISPOSITIVE MOTIONS

The Plaintiffs place great weight on and quote liberally from the case of ***Kamakana v. City and County of Honolulu***, 447 F.3d 1172 (9th Cir. 2006). As the Plaintiff's acknowledged, the case involved the intervention of a newspaper. The facts of the case, not referenced by the Plaintiffs, are quite instructive.

In ***Kamakana***, there was a settlement of a civil rights suit between a police detective and the city regarding his claims of retaliation for whistle blowing. The whistle blowing at issue concern reporting "misconduct and illegal acts by other police officers and the FBI." *Id*. at 1176. Once the case was settled, the newspaper intervened to unseal "the judicial record." There the Court found that since a protective order was stipulated to, the record was devoid of a good cause showing. As such, that Court went through a series of protective measures to evaluate the confidentiality of the documents at issue through mostly *in camera review*. ***Id***. Again, this was not hastened by the parties,

but well after litigation had concluded by the newspaper who had an obvious interest in misconduct and illegal acts by public law officials. The materials at issue did not concern those law officials private bank information, insurance records, or private correspondence. Indeed, upon evaluation, the Court still excluded medical records. ***Id***. at 1186. The Court also engaged in a deliberate weighing process of the need for public access and ruled in favor of the newspaper. *Id*.

The Plaintiffs, thereafter, take this very fact specific case involving an overwhelming and compelling reason for public access and conclude "the Court made this point to protect against a party's attempt to seal documents based on the same rationale set forth by Ms. Rizzolo i.e., the information is 'traditionally confidential' and 'universally presumed to be private.'" (Opposition at page 9).

Frankly stated, this is not the holding of ***Kamakana*** which clearly and unequivocally held:

> "We have, however, 'carved out an exception to the presumption of access' to judicial records for a 'sealed discovery document (attached) to a non-dispositive motion' such that the 'usual presumption of the public's right of access is rebutted.' There are, as we explained in *Foltz,* 'good reasons to distinguish between dispositive and non-dispositive motions.' Specifically, the public has less of a need for access to court records attached only to non-dispositive motions..." ***Id***. citing *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F.3d 1122, 1135 (9th Cir. 2003); *Phillips v. General Motors Corp*., 307 F.3d 1206, 1213 (9th Cir. 2002); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984).

Further, the ***Kamakana*** court acknowledged that:

In general "compelling reasons" sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes such as the use of such records to "gratify private spite, promote public scandal, circulate libelous statements..." ***Id***. citing *Nixon v. Warner Commc'ns, Inc*. 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978).

Finally, the Plaintiffs suggest that only two types of documents fall within the traditionally kept secret designation – grand jury transcripts and warrant materials during the pre-indictment phase of an investigation. (Plaintiffs' Opposition at page 9). A carefully reading of the case, however, reveals that these two designations are the only two categories of traditionally kept secret specifically in the context and broader "category of the law enforcement privilege" – the Court never states that the only two traditionally secret matters are transcripts and warrants. ***Id***. at 1185. It's just common

sense that there are more exceptions such as medical records, personal financial records and the like. The ***Kamakana*** Court was specifically speaking to the type of law enforcement secrets and for the Plaintiffs to suggest otherwise is purely misleading. Moreover, the ***Kamakana*** case involved documents, not merely produced in discovery, but which were attached to motions. In the case *sub judice,* the "compelling reasons" standard is not applicable as the subject documents are not attached to a dispositive motion. In fact, Plaintiffs acknowledge in their opposition that the appropriate standard is "good cause" which Defendant has met. But even though applying the more demanding "compelling reasons" standards, the Court stated:

> Even so, the magistrate judge did not summarily order the production of the City's documents. Rather, she conducted an "exhausting if not exhaustive" *in camera* review of the materials. After this review, the magistrate judge noted that "the testimony and documents attached to the dispositive motions do not contain information that could be used for 'scandalous or libelous' purposes," ***and that these documents did not contain sensitive personal information.*** She also determined that deposition testimony on confidential informants and criminal investigations was "years old" and "largely resulted in criminal indictments which were made public over three years ago." ***She found, however, that the personal information of Kamakana and various law enforcement officers (home addresses and social security numbers) met the "compelling reason" standard.*** *Id.* at 1182. (Emphasis added.)
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> * * * *
>
> In her order, the magistrate judge acknowledged the nature of Kamakana's claims and concluded that "the testimony and documents concerning this matter are of significant public concern. ***She also determined that the testimony and documents did not contain "sensitive personal information" or information that would be used for "scandalous or libelous" purposes. Finally, as to the documents she ordered to remain sealed, the magistrate judge concluded that disclosure of the officers' home address and social security numbers could expose the officers and their families to harm or identity theft.*** *Id* at 1184. (Emphasis added.)

Unlike the ***Kamakana*** case, the documents that Ms. Rizzolo has sought to keep "Confidential" contain sensitive personal information.

In the case *sub judice,* Ms. Rizzolo has objected to the discovery of her private financial information. Notwithstanding these objections, Ms. Rizzolo has, in good faith, produced documents that contain information regarding her private assets, under the premise that such matters would be subject to the Stipulation and Protective Order. Ms. Rizzolo's good faith compliance with discovery

should not be punished by further invasion of her right to privacy, and the restrictive disclosure provisions of the Protective Order should apply to all of her personal, financial and/or asset information.

The Plaintiff also cites ***Schiller v. City of New York***, 2007 WL 136149 (S.D.N.Y), a case which was not reported in the F.Supp.2d edition. (Opposition: page 9). Nonetheless, the limitations drawn from ***Schiller*** equally reveal the pattern of providing case authority that lacks precedential value.

The ***Schiller*** case, also involved an intervening newspaper, in this case the New York Times, who was interested in removing confidential designations from documents related to a case where a mass group of individuals who were arrested at a public demonstration. The individuals had sued the city of New York. Setting aside the obvious issues of grave public concern in this litigation, the Court clearly set forth the standards regarding the public right of access to discovery materials versus those made part of the judicial record.

The Plaintiffs cite the case for the proposition that even with Stipulated Protective Orders there needs to be a showing of good cause under Rule 26 (c). The Plaintiffs then go on to suggest that the SPO is still subject to good cause which is not necessarily in dispute. However, the ***Schiller*** case is far more instructive than the Plaintiffs allow. In fact, the ***Schiller*** court found:

> It is somewhat misleading to refer as courts sometimes do, to a presumptive right of public access to pretrial discovery. While materials produced in discovery may be disclosed by the receiving party in the absence of a protective order, the public does not have a right of access to those materials. Documents exchanged in discovery are not a matter of public record. No public right of access exists with respect to materials produced during the early stages fo discovery. The presumption of public access to judicial documents is inapplicable to documents that play no role in the performance of Article III functions, such as those passed between the parties in discovery. (String citations omitted).

The ***Schiller*** court also acknowledged that a party can show good cause by "demonstrating that public disclosure would be substantially likely to prejudice the trial of these cases." **Id**. at 7. In the case, *sub judice*, it is clear that the Plaintiffs are equally trying to sway potential jurors by disclosing private facts about Ms. Rizzolo. One need look no further than John L. Smith's article which suggested she be investigated for criminal activity and painting her as collusive to see the impact of releasing information of such a private nature as personal income, nature of expenditures,

etc. Good cause is inherent in this case.

The other cases the Plaintiffs cite in footnote 2 of their Opposition, page 10, equally involve either a newspaper intervention - - a case involving a bribery of public officials scandal (***In Re Application of Akron Beacon Journal***, 1995 WL 234710 (S.D. N.Y. 1995 – also not cited in an official reporter); an issue of great public concern - - doping of Olympic athletes (***Exum v. United States Olympic Committee***, 209 F.R.D. 201, 206 (D. Colo. 2002); or two corporation fighting over trade secrets - - the confidentiality of the documents was upheld ***(Encyclopedia Brown Productions v. Home Box Office, Inc***. 26 F.Supp.2d 606, 611 (S.D. N.Y. 1998).

In fact, in ***Exum***, the Plaintiffs cite a case that holds:

Generally, the "good cause" determination requires the court to balance the party's need for the information against the injury which might result from unrestricted disclosure. The court should also consider privacy interests and whether the case involves issues important to the public. ***Exum*** *citing Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3rd Cir. 1994); *Chicago Tribune Co. v. Bridgestone/Firestone, Inc*. 263 F.3d 1304 (11th Cir. 2001). In the case, *sub judice*, the Plaintiffs have no need for unrestricted disclosure and certainly a dispute over collection of a private tort claim is not one of great importance to the public. Moreover, unlike the parties in ***Exum*** (where the court found there was no reasonable expectation of privacy with regard to the party's Olympic drug tests because they signed forms waiving confidentiality) Ms. Rizzolo has a great expectation of privacy in her personal affairs. Id. at 207.

THE PLAINTIFFS MIX STANDARDS OF GOOD CAUSE FOR PRODUCTION WITH THOSE OF CONFIDENTIALITY IN A MISLEADING WAY

The Plaintiffs one and only case from the Nevada District Court sets forth that Rule 26 (c) requires more than "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning." Opposition at Page 11 citing ***U.S. E.E.O.C. v. Caesars Entertainment, Inc***. 237 F.R.D. 428, 432 (D. Nev. 2006). The Plaintiffs fail to mention, however, that this case involved a public agency and a corporation where the Corporation refused to even *produce* the documents at issue. Indeed, most the cases the Plaintiff cites in suggesting the standards for good cause, do not involve

the confidentiality but rather, the production of documents. The Plaintiffs then embark a mixing and matching of ruling and application in a misleading way.

For example in its Opposition at page 11, the Plaintiffs suggest that "Courts have consistently held that it is not enough for a party seeking confidentiality to state a generalized objection to the publication of this material, but rather (in citing ***G-69 v. Degnan***, 130 F.R.D. 326, 331 (D. N.J. 1990)), "must demonstrate that a particularized harm is likely to occur." ***G-69*** is NOT in any way about publication of material, but the production of material. It is patently misleading for the Plaintiffs, as they have to suggest otherwise. The word publication never appears in the ***G-69*** case, and the Plaintiffs cannot find other case that support this proposition. The same is true for the cited case of ***Cipollone v. Liggett Group Inc***. , 106 F.R.D. 573 (D. N.J. 1985). The standards the Plaintiffs set forth are inapposite to the situation of confidentiality designations at issue in the present case.

MS. RIZZOLO HAS SHOWN GOOD CAUSE THAT HER PRIVATE DOCUMENTS ARE PROPERLY DESIGNATED AS CONFIDENTIAL

FRCP 26(c) states that when a party or a motion asserting good cause for a protective order, "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." Accordingly, Rule 26(c) authorizes the district court to issue "*any* order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden." The Supreme Court in ***Seattle Times Co. v. Rhinehart***, 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984), has interpreted the foregoing language as conferring "broad discretion on the trial court to decide when a protective order is appropriate and what DeGree of protection is required" *Id* at 36. The Supreme Court continued, by noting that the "trial court is in the best position to weigh the fairly competing needs and interests of the parties affected by discovery. The unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders" *Id*. Ms. Rizzolo's humiliation, embarrassment and feelings of oppression is not prospective, it is real, and her designation of private and personal information as confidential reflects good cause.

The public's interest in access to unfiled discovery materials is even less substantial than its interest in court filings and evidence presented at trial. In the ***Seattle Times*** case, the Supreme Court

stated that "pretrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law ... and, in general, they are conducted in private as a matter of modern practice." *Id*. at 33; see also ***Union Oil Co. v. Leavell***, 220 F.3d 562, 568 (7th Cir.2000) (observing that "[m]uch of what passes between the parties remains out of public sight because discovery materials are not filed with the court."); ***Citizens First National Bank of Princeton v. Cincinnati Ins. Co.***, 178 F.3d 943, 944 (7th Cir.1999) (stating "[i]t is true that pretrial discovery, unlike the trial itself, is usually conducted in private.").

There should be no quarrel that the district court has a duty and the discretion to oversee the discovery process. Pretrial discovery "has a significant potential for abuse." ***Id***. at 34. Discovery "may seriously implicate privacy interests of litigants and third parties." ***Seattle Times Co. v. Rhinehart***, 467 U.S. at 35. "There is an opportunity, therefore, for litigants to obtain-incidentally or purposefully-information that not only is irrelevant but if publicly released could be damaging to reputation and privacy." ***Id***. This Court has a substantial interest in preventing any abuse of the discovery process. ***Id.*** See, e.g., ***Baker v. Buffenbarger***, 2004 WL 2124787 (N.D.Ill. Sept.22, 2004) (granting defendant's motion for protective order prohibiting the use of deposition testimony for purposes other than the lawsuit because plaintiffs intended to misuse defendants' deposition testimony to criticize and embarrass the defendants and possibly influence an upcoming union election).

In its Opposition, Plaintiffs relies heavily upon ***Hollinger International Inc. V. Hollinger Inc.*** 2005 WL 3177880 (W.D. Ill. 2005), but even in that case the Court acknowledges that tax returns and other financial information are traditionally confidential. Like most of the Plaintiffs' specious and misleading arguments, those important facts are omitted.

II.

CONCLUSION

There has been no authoritative case law nor compelling reason set forth by the Plaintiffs to designate the confidential documents already produced in discovery and not part of any motion as anything other than confidential – which they are. These are records that reveal Ms. Rizzolo's day to day purchases, private correspondence, heath insurance records. The only conclusion and reason

for the Plaintiffs undaunted position to act like a newspaper is that they want it to be in the newspaper for improper purposes. For the foregoing reasons, it is respectfully requested that Defendant's designations of confidentiality be determined appropriate and subject to the Protective Order, and that Plaintiffs' counsel be enjoined from disclosure of said documents other than that specifically ordered by this Court.

DATED this 19th day of January, 2010.

BAILUS COOK & KELESIS, LTD.

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2010, I electronically filed a true and correct copy of the foregoing REPLY TO PLAINTIFFS OPPOSITION TO LISA RIZZOLO'S SECOND MOTION TO ENFORCE PROTECTIVE ORDER with the Clerk of the Court for the United States District Court, District of Nevada by using the appellate CM/ECF system. All parties were served by the CM/ECF system:

/s/
Stephanie O'Rourke
Employee of Bailus Cook & Kelesis, Ltd.