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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11	HYPERTOUCHE,)	CASE NO. C 04 5203 SI
)	
12	PLAINTIFF,)	REPLY MEMORANDUM RE PROTECTIVE
)	ORDER; SUPPLEMENTAL DECLARATION
13	vs.)	OF CYNTHIA WOOLLACOTT
)	
14	KENNEDY-WESTERN UNIVERSITY,)	
)	
15	DEFENDANT.)	
	_____)	Hearing Date: 12 August 2005
16			Time: 9:00 a.m.
			Courtroom 10.

17
18 None of the opposition’s three points have merit or demonstrate good cause to
19 refuse the proposed Protective Order.

20 Plaintiff first opines, based on Mr. Fallat’s declaration, that the parties are actively
21 working towards a stipulated protective order, so there is no need for the motion and it
22 should be denied on that ground (see plaintiff’s proposed order). What Mr. Fallat fails to
23 mention, however, is that the last “work” done was when defendant’s counsel drafted a
24 proposed order containing the terms agreed to by his associate in the meet and confer
25 process and transmitted it for approval on 28 June. Defendant waited a week before filing
26 this motion in the hope plaintiff would stipulate, and it has now been three weeks since the
27 motion was filed. In this month-long period, plaintiff has done nothing toward finalizing a
28 Protective Order. Neither has it communicated any critiques of the 28 June draft other than

1 in the opposition.¹ [Woollacott Supp. Decl. ¶12.] Defendant has shown a good faith effort to
2 work out the issues prior to bringing this motion per Rule 26(c) – defendant thought the
3 issues had been worked out, and plaintiff did not have a different thought until the opposi-
4 tion brief.

5 Plaintiff's second argument is that the draft Protective Order has four flaws not
6 revealed in the meet and confer process.

7 Objection #1 is that the order would apply to all documents: yes, all documents produced
8 in discovery by either party to the other, and other forms of discovery, would be subject to
9 the "level one" use restriction. But as cited in the moving memorandum (THE RUTTER
10 GROUP, FEDERAL CIVIL PROCEDURE BEFORE TRIAL 11:113.15), this is a common restriction that
11 protects misuse of discovery without burdening the production process.

12 Objection #2 is that the order applies retroactively to prior discovery and to the entire case,
13 and thus might lead to amorphous and speculative disputes. What disputes? So far there
14 have been only the Rule 26 exchange, two document productions and one deposition to be
15 covered by the proposed order – and all are clearly delineated by their accompanying
16 documentation. The only dispute so far is plaintiff's refusal to produce documents without
17 a protective order.

18 Objection #3 is the idea there is a lack of attorneys eyes only protection for plaintiff's
19 customer information. But that exact concern was dealt with in the meet and confer
20 process by adding the "level two" "Attorneys Only" designation for such material!

21 Objection #4 is that the proposed order allows a party who disagrees with a designation to
22 move for redesignation. This allowance, however, is standard language to prevent unfet-
23 tered abuse of the "Attorneys Only" designation to include more than is reasonable, but
24 putting the burden on the complaining party to move for relief.

25 ¹ Plaintiff appears to mistakenly believe as well that defendant is seeking sanctions
26 for making this motion; not so, as there is no requirement that plaintiff stipulate to a
27 protective order, even one that contains terms to which Mr. Fallat's associate
28 agreed in the meet and confer.

1 The final argument is a lack of urgency to enter any protective order. But as
2 established in the moving declaration, plaintiff twice already has withheld discovery on the
3 ground there is no protective order – including documents that were supposed to be
4 exchanged long ago in the Rule 26 process.

5 And the urgency cited in the moving memorandum is real. Following this hearing on
6 12 August is a scheduled site inspection of plaintiff’s business and computers; and on 16
7 August is the deposition of plaintiff’s principal and sole employee. Based on plaintiff’s past
8 withholding of discovery in the absence of a protective order, defendant anticipates plaintiff
9 will obstruct the inspection and deposition processes if this order is not in place. [Woollacott
10 Supp. Decl. ¶13.] Defendant has shown good cause to enter this order now. Rule 26(c).

11 Dated: 28 July 2005.

WOOLLACOTT JANNOL LLP

12 BY _____ *Cynthia Woollacott/s/* _____

13 CYNTHIA WOOLLACOTT
14 Attorneys for Kennedy-Western University

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SUPPLEMENTAL DECLARATION OF CYNTHIA WOOLLACOTT

I, CYNTHIA WOOLLACOTT, declare:

1. I am a member of the bar of this court and a partner in the law firm Woollacott Jannol LLP, counsel for defendant Kennedy-Western University in this action. I have personal knowledge of the facts stated in this declaration, and if called as a witness could and would testify competently to those facts.

2. The last "work" done on this proposed order was when I drafted a proposed order containing the terms agreed to by Mr. Fallat's associate in the meet and confer process and transmitted it for approval on 28 June. I then waited a week before filing this motion in the hope plaintiff would stipulate, and it has now been three weeks since the motion was filed. In this month-long period, plaintiff has done nothing toward finalizing a Protective Order. Neither has it communicated any critiques of the 28 June draft other than those raised for the first time in the opposition.

3. The urgency cited in the moving memorandum is real. Following this hearing on 12 August is a scheduled site inspection of plaintiff's business and computers; and on 16 August is the deposition of plaintiff's principal and sole employee. Based on plaintiff's past withholding of discovery in the absence of a protective order, I anticipate plaintiff will obstruct the inspection and deposition processes if this order is not in place.

Executed on 28 July 2005 at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

_____*Cynthia Woollacott/s/*_____

CYNTHIA WOOLLACOTT

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10350 Santa Monica Boulevard, Suite 350, Los Angeles, California 90025-5057.

On 28 July 2005, I served the foregoing documents described as REPLY RE PO: SUPPLEMENTAL DECLARATION on the interested parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Law Offices of John L. Fallat
John L. Fallat
Brian J. Triplet
523 Fourth Street, Suite 210
San Rafael, California 94901

I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business. The correspondence described above was placed for deposit in the United States Postal Service at 10350 Santa Monica Boulevard following ordinary business practices this date for collection and mailing on this date.

Executed on 28 July 2005 at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____*Justin Thomas/s/*_____
Justin Thomas