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Case Number CJ-2025-135

IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA

NEIL and LACY WEST, Plaintiffs, v. STATE FARM FIRE AND CASUALTY COMPANY and NANCY HOLCOMB INS. AGENCY, INC., Defendants.	)	Case No. CJ-2025-135 JUDGE SHEPERD

DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S
REPLY IN SUPPORT OF MOTION FOR ENTRY OF PROTECTIVE ORDER

Defendant State Farm Fire and Casualty Company ("State Farm"), files this Reply in support of its Motion for Protective Order (the "Motion") solely to address erroneous statements of law and fact in Plaintiffs' Response. Specifically, the Reply addresses Plaintiffs': (1) mischaracterization of State Farm's Proposed Protective Order (the "Proposed PO")—including their reference to a phantom non-party provision ***that does not appear anywhere in the Proposed PO***; (2) misstatement of the applicable law; and (3) novel theory about first-party insureds.

I. Plaintiffs Mischaracterize the Proposed PO

Plaintiffs assert that the Proposed PO is "simply unworkable" by pointing to the definition section and a non-existent non-party provision they claim will "invite[] sweeping, indiscriminate designations across all discovery modes and set[] an exceptionally expansive baseline for the order's scope." Response at 2–3. But Plaintiffs' objections are negated by the plain text of the Proposed PO's customary good-faith designation standard and court-supervised challenge process. The fact that Plaintiffs are grasping at straws is driven home by their arguments about an alleged provision in the Proposed PO that "compounds the effects of over-designation" by "importing" private confidentiality agreements "without independent judicial scrutiny," which they claim appears in ¶18 of the Proposed PO. Response at 3. Not only does ¶18 not contain any such language, but **no such language appears anywhere in the Proposed PO.**[1] As such, Plaintiffs characterizations are demonstrably false and should be rejected.

A. The good-faith designation standard is customary and anchored in 12 O.S. 3226(C).

Plaintiffs contend that the Proposed PO's good-faith designation standard is "open-ended" and invites over-designation. Response at 3. Not so. By its plain terms, the Proposed PO only

[1] To further underscore the point, ¶18 does the exact *opposite* of broadening over-designation, as it explicitly describes "Documents, testimony, and/or information" that the parties **cannot** be prevented from using or disclosing, such as information in the public domain.

authorizes designations if the producing party "determine[es], in good faith, [the material] constitutes **Trade Secret; Confidential research, development, or commercial Information**; or Personal Confidential Information as defined in Section II." Proposed PO, ¶2 (emphasis added). This is a conventional standard used in protective orders across Oklahoma and explicitly limited to the categories 12 O.S. § 3226(C) contemplates. Indeed, the language closely parallels the language in the rule itself, which states:

> the court in which the action is pending . . . may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following . . . **that a trade secret or other confidential research, development or commercial information** not be disclosed or be disclosed only in a designated way.

12 O.S. § 3226(C)(1)(g) (emphasis added). Nothing about the definitions in Section II alters this reality. On the contrary, "trade secrets" is defined as having the same meaning as in 78 O.S. § 86, while "Confidential research, development, or commercial information" is defined as: "proprietary information the Producing Party maintains in secrecy from third parties and in good faith believes would result in substantial competitive harm, or other commercial harm, if publicly disclosed" and includes specific examples. Proposed PO, ¶¶4(c), (j). As such, the Proposed PO is far removed from being "untethered to narrowly defined categories" and instead only contemplates designations for the exact types of documents courts routinely protect.[2] Response at 1.

B. The court-supervised challenge process supplies meaningful safeguards that align with the purpose of protective orders.

Plaintiffs acknowledge the challenge process in the Proposed PO but suggest that State Farm's designations could persist "indefinitely" and that "every motion filed with the Court in this case will be required to be filed under seal." Response at 3. Plaintiffs provide no evidence or case

[2] Plaintiffs provide no support for their implicit claim that trade secrets are the only type of confidential information entitled to protection under Oklahoma law. Response at 5.

law in support of this dramatic misinterpretation, which is unsurprising since the Proposed PO unambiguously mandates that **"[t]he burden** of establishing a Document or Testimony contains Confidential material and is entitled to the protection of this Protective Order **shall remain on the Producing Party**." Proposed PO, ¶11 (emphasis added). As such, Plaintiffs can easily defeat State Farm's alleged ability to over-designate documents in bad faith without check; if Plaintiffs are so confident of over-designation, then they should prevail in court.

Requiring the parties to meet and confer before a motion is filed does nothing to shift this explicit burden and directly aligns with the goal of reducing judicial inefficiency by eliminating unnecessary motions. Certainly, a conferral may either (1) convince Plaintiffs to withdraw their objection once they have more information or (2) convince State Farm to withdraw its designation. Either way, both parties—and, more importantly, the Court—benefit from the elimination of time-consuming briefing and hearings regarding a resolved dispute. *Cf.* 12 O.S. §3237 (requiring good faith conferral before filing). Indeed, allowing designations for defined categories of documents while subjecting individual designations to a robust challenge process *aligns* with the primary goal of protective orders—facilitating the efficient exchange of information—rather than undermining it as Plaintiffs' claim. *See, e.g.*, *S2 Automation LLC v. Micron Technology, Inc.*, 283 F.R.D. 671, 683 (D.N.M., 2012)("The toll . . . would indeed be severe if district courts had to review, on a document-by-document basis, materials to determine whether they were confidential each time one party sought a protective order.").

II. Plaintiffs Misstate the Applicable Law

Plaintiffs repeatedly misstate the applicable law by referencing cases that are inapplicable to the current dispute. For example, unlike the Proposed PO, which relates to discovery materials, the disputed protective order in *Harvest Group, LLC v. Love's Travel Stops & Country Stores, Inc.*, No. CIV-20-435-D, 2025 WL 2576696 (W.D. Okla. July 18, 2025), related solely to an apex deposition. *Reed v. Bennett*, 193 F.R.D. 689 (D. Kan. 2000)—a twenty-five-year-old case from Kansas—is equally distinguishable because the disputed protective order in that case allowed for designation of anything that a party "reasonably contends contain[s] proprietary and confidential information" rather than a good faith limitation tied to the 3226(C) standard like the one in the Proposed PO. *Reed*, 193 F.R.D. at 691. The citation to *Lisle v. Owens*, 1974 OK 57, 521 P.2d 1375 is particularly egregious, as that 1974 case involved a question of whether good cause existed **to order the production of documents** and said nothing about good cause in the context of protective orders. Plaintiffs' citations to *Beers v. Hillory*, 2010 OK CIV APP 99, 241 P.3d 285, *Christian v. Am. Home Assur. Co.*, 1977 OK 141, 577 P.2d 899, *Milroy v. Allstate Ins. Co.*, 2007 OK CIV APP 6, 151 P.3d 922, and 36 O.S. § 1250.7 are just as inapplicable, as they all address the duty of good faith and fair dealing—a substantive question that is not currently before the court **because it has nothing to do with protective orders.**

Finally, Plaintiffs appeal to protective orders entered in *Hursh v. State Farm Fire & Casualty Co.*, No. CJ-2025-2626 (Okla. Cnty. Dist. Ct.) and *Wong-Faust v. State Farm Fire & Casualty Co.*, No. CJ-2025-1675 (Okla. Cnty. Dist. Ct.), two cases pending before the same judge in a different jurisdiction. Plaintiffs provide no authority or cogent reasoning for this suggestion, and none exists other than the fact that, as set forth in State Farm's Motion, those protective orders greatly benefit Plaintiffs' *counsel*. As such, the Court should enter the protective order that best aligns with the weight of Oklahoma law—the Proposed PO—rather than the protective order that aligns with one particular judge's interpretation of Oklahoma law.

III. Plaintiffs' Novel "First-Party Insured" Theory Has No Basis in Law.

Failing to distinguish the wealth of case law that supports the Proposed PO and opposes their own, Plaintiffs turn to a novel theory that their protective order should be entered because "their Protective Order is reflective of the duties State Farm owes first-party insureds like

Plaintiffs, even post-litigation." Response at 6–7. The only case Plaintiffs cite to support this theory is completely inapplicable[3] and State Farm has not located any such case law that supports their theory. This is unsurprising, because Plaintiffs' theory, if accepted, would directly undermine insurance companies' ability to ***ever*** safeguard their sensitive information in discovery—a result which would fly in the face of legal precedent throughout the country, from the U.S. Supreme Court down. *See, e.g.*, Zakary A. Drabczyk, *Share with Caution: The Dangers Behind Sharing Orders*, 65 WAYNE L. REV. 401, 421 (2020)("[F]ew assets are more valuable to defendants than confidentiality in litigation."); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 35–36 (1984) ("[R]estraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information. . . . The prevention of the abuse that can attend the coerced production of information under a State's discovery rule is sufficient justification for the authorization of protective orders."); *Micron Technology*, at 683 ("Protective orders facilitate production. Corporations are quicker to release their documents if they know the information will not be revealed in the *Wall Street Journal* or in the local paper's business section the next day.") The Court should not endorse Plaintiffs' indefensible attempt to reinvent the law.

CONCLUSION

WHEREFORE, State Farm respectfully requests that the Court reject Plaintiffs' proposed protective order and enter the protective order attached to State Farm's Motion as Exhibit 1.

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[3] As with Plaintiffs' other cases, *Barnes v. Oklahoma Farm Bureau Mut. Ins. Co.*, 2000 OK 55, 11 P.3d 162 has nothing to do with protective orders in discovery. This is instantly clear from its holding, which states: "We hold: 1) the jury was presented sufficient evidence to find insurer breached the implied duty of good faith and fair dealing [where the insurer unreasonably delayed paying a UIM claim]; 2) the trial judge did not err by submitting the issue of punitive damages to the jury or in lifting the statutory cap on such damages; 3) the punitive damage award is not excessive; and 4) adherence to the American Rule regarding the recovery of attorney fees requires reversal of the trial judge's attorney fee award and remand of that issue to the trial court for further consideration." *Barnes*, 2000 OK 55, ¶2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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