



FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OCT 23 2026

RICK WARREN
COURT CLERK

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BILLY & LACY HURSH,

Plaintiffs,

v.

Case No. CJ-2025-2626

STATE FARM FIRE & CASUALTY COMPANY;

MARK D. WELTY; and MARK D. WELTY

INSURANCE AGENCY, INC.,

Defendants.

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S
REPLY IN SUPPORT OF EMERGENCY MOTION TO STRIKE
PLAINTIFFS' SUPPLEMENT TO PLAINTIFFS' MOTION TO COMPEL
RE-PRODUCTION OF ELECTRONICALLY STORED
INFORMATION IN THE FORM DEFENDANT STATE FARM ELECTED**

Plaintiffs' Response to State Farm's Motion to Strike ignores the limited, discrete issue before the Court: whether Plaintiffs' use of materials over which State Farm has claimed privilege violates Oklahoma law. As State Farm explained in its Motion to Strike, the clear language of 12 O.S. § 3226(B)(5)(b) prohibits exactly what Plaintiffs did when they attached materials subject to State Farm's unresolved privilege claim to their purported "Supplement" to their Motion to Compel Re-Production of Electronically Stored Information. In responding to State Farm's Motion to Strike that Supplement, however, Plaintiffs stray off course and—instead of explaining their position on 12 O.S. § 3226(B)(5)(b)—argue the merits of their Motion to Compel and whether the documents State Farm produced at HUR00158701-19 are privileged or confidential.¹ But whether the Court ultimately determines State Farm's documents are privileged or confidential is irrelevant to the 12 O.S. § 3226(B)(5)(b) analysis, and State Farm's Response to Plaintiffs' Motion to Compel included uncontroverted evidence rebutting Plaintiffs' allegations that State Farm failed to produce metadata.²

For all of these reasons and those set forth below, the Court should strike the Supplement and deny Plaintiffs' Motion to Compel.

I. The Court Should Strike Plaintiffs' Supplement

State Farm established in its Motion to Strike that Plaintiffs' Supplement violates 12 O.S. § 3226(B)(5)(b) because it attaches and cites material subject to State Farm's unresolved privilege claim. Plaintiffs' only argument is that the Court implicitly allowed them to continue using the materials in any way they want when it allowed use of the materials subject to a privilege claim at

¹ Apparently unable to fit their arguments within the page limits imposed by Local Rule 37(B), Plaintiffs filed a purported "Supplement" and then used their Response to State Farm's Motion to Strike to argue the merits of their Motion to Compel. The additional pages do not make Plaintiffs' arguments any more accurate.

² Plaintiffs' allegations rely solely on their attorneys' representations and an expert opinion that accepts those representations.

a deposition. Resp. at 6-7 & Ex. 1, 229:7-16 (citing counsel's question "It is your understanding that the Court has, essentially, ordered that we can ask you about Exhibit 133?"). Nothing in the excerpts Plaintiffs cite, nor in the full transcripts of the Court hearings, supports Plaintiffs' tortured reading of the Court's ruling, which does not even appear in the materials Plaintiffs cite.

Plaintiffs also argue that because they filed State Farm's privileged materials under seal, their violation of the law caused no harm. But Plaintiffs point to no authority—because there is none—that filing materials under seal excuses a violation of § 3226(B)(5)(b). To the contrary, the clear terms of § 3226(B)(5)(b) required Plaintiffs to return, sequester, or destroy the materials over which State Farm asserted privilege, and further prohibited Plaintiffs from using or disclosing them until the privilege claim was resolved. 12 O.S. § 3226(B)(5)(b); *e.g.*, *Greater New York Taxi Ass'n v. City of New York*, No. 13-CV-3089(VSB)(RWL), 2018 WL 2316629, at *6 (S.D.N.Y. May 8, 2018) ("Upon being notified that the documents were privileged, Plaintiffs should have immediately ceased their review of the clawed back documents."). Plaintiffs nevertheless reviewed the materials, filed them, and relied on them to advance substantive arguments. Apart from these failed arguments, Plaintiffs do not dispute that Oklahoma law prohibits Plaintiffs from making and the Court considering arguments about materials subject to a claim of privilege unless and until the privilege claim is resolved. The Court should strike Plaintiffs' Supplement.

II. Documents Produced at HUR00158701-19 Are Privileged and the Court Should Uphold State Farm's Redactions

Plaintiffs spend most of their response brief arguing about whether the documents State Farm produced at HUR00158701-19 are privileged or confidential. But challenging the applicability of privilege is no excuse for ignoring Plaintiffs' obligations under § 3226(B)(5)(b). *E.g.*, *Raymond v. Spirit AeroSystems Holdings, Inc.*, No. 16-1282-JTM-GEB, 2017 WL 2831485, at *15 (D. Kan. June 30, 2017) (citation omitted). Nor does the confidentiality of the documents

have anything to do with the applicability of § 3226(B)(5)(b). These arguments thus do not matter for purposes of State Farm's Motion to Strike.

Nonetheless, Plaintiffs' arguments are incorrect. Plaintiffs argue that the documents produced at HUR00158701-19 are not privileged because merely including an attorney in a communication is insufficient, Resp. at 3, but State Farm has not based its privilege claims on mere inclusion of a lawyer as a recipient of a copy of a draft document.³ To the contrary, State Farm has submitted documents *in camera* to the Court showing tailored redactions of the materials at HUR00158701-19, which cover legal advice from counsel and recitations of that legal advice. The eight cases Plaintiffs cited addressing mere inclusion of counsel on business communications are factually inapplicable and legally irrelevant.

Plaintiffs again invoke the crime-fraud exception without establishing its application. Section 2502(D) excludes communications from the privilege when a client seeks legal advice to facilitate a crime or fraud. But Plaintiffs do not identify the alleged crime or fraud, offer evidence regarding Scott Welsh's purpose in seeking advice from Mark Cavanaugh and Tim Marron, or connect that advice to any alleged crime or fraud. Plaintiffs therefore have not established that § 2502(D) applies to HUR00158701-19. *See* State Farm's Br. In Support of Application of Attorney-Client Privilege and Work Product Protections, at 9-11 (Oct. 5, 2026).

Plaintiffs also argue that the documents produced at HUR00158701-19 cannot be privileged because other versions of the document exist with different redactions. Mot. at 6. But Plaintiffs cite no authority that varying redactions are determinative of privilege. In fact, HUR00158702-09 and HUR00158712-19 are *near* duplicate documents—they are not the same—and thus have different redactions applied. As explained in State Farm's Brief In Support of

³ As explained above, Plaintiffs' argument has nothing to do with the propriety of their ongoing use of HUR00158701-19 while subject to a claim of privilege.

Attorney-Client Privilege and Work Product Protections, at 14 & n. 2, State Farm produced versions of the documents at HUR00158702-09 and HUR00158712-19 in *Foster v. State Farm Fire & Cas. Co.*, No. CJ 2023-1425 (Cleveland Cty.). The documents it produced in *Foster*, like the documents State Farm produced in this case, required adjustment of redactions based on inadvertent production. None of this establishes that attorney-client and work product protections are inapplicable to HUR00158701-19.

Finally, Plaintiffs argue that documents produced at HUR00158701-19 are not confidential. Resp. at 1-2. The Court has already ruled on Plaintiffs' Motion to De-Designate, and the question of whether these documents are confidential is no longer before the Court. Minute Order (Sept. 28, 2026) (declining to de-designate materials within the Bates range HUR00158701-19). In any case, Plaintiffs' argument that no materials addressing first-party claim handling can be confidential is based on a misreading of the law. *E.g., Hadley v. Kellogg Sales Co.*, 2019 WL 12495009, at *2 (N.D. Cal. Dec. 12, 2019) (finding that such materials are entitled to confidentiality protection even under the elevated standard for sealing court records) (quoting *Krieger v. Atheros Commc'ns, Inc.*, 2011 WL 2550831, at *1 (N.D. Cal. June 25, 2011)). Plaintiffs' arguments that the reference to "trade secrets" in the Protective Order precludes designation of HUR00158701-19 as confidential commercial information is based on a misreading of the Protective Order. *See* Protective Order, ¶ 3(c) (Dec. 11, 2025). Plaintiffs' arguments about the settled matter regarding the confidentiality of HUR00158701-19 are not relevant.

III. Plaintiffs Have Not Established Entitlement to a Re-Production of ESI

Nothing in Plaintiffs' Supplement or their Response to State Farm's Motion to Strike the Supplement establishes entitlement to additional re-production of ESI. Plaintiffs' Supplement merely regurgitates Plaintiffs' misplaced arguments that metadata is missing from State Farm's

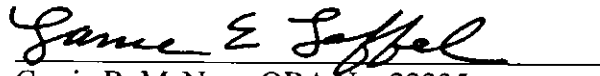
productions. But State Farm has established that the non-privileged documents Plaintiffs raise do, in fact, include the metadata that Plaintiffs claim is missing. *See generally* Ex. A to State Farm's Response to Motion to Compel Re-Production of ESI ("Siff Decl."). In their Reply in Support of the Motion to Compel, Plaintiffs feign confusion over the fact that State Farm did not provide full metadata for redacted documents. Aside from being meritless,⁴ Plaintiffs' complaints about redacted documents will be moot as State Farm is preparing and delivering a privilege log for such documents, which will include the non-privileged metadata fields about which Plaintiffs complain.

Furthermore, contrary to Plaintiffs' assertions, State Farm produced the documents at HUR00158701-19 with metadata allowing the association of attachments to the cover email, and State Farm has submitted declarations from the participants in the email string establishing the applicability of State Farm's privilege claims. Nothing in Plaintiffs' Motion to Compel Re-Production of ESI, their Reply in Support of their Motion, their Supplement in Support of their Motion, or their Response in Opposition to State Farm's Motion to Strike their Supplement identifies any missing information that is relevant to the claims or defenses of the parties. The Court should reject Plaintiffs' attempts to conflate unrelated issues, credit the uncontroverted, actual evidence State Farm submitted explaining how State Farm produced its discovery (*see* Siff Decl.), and deny Plaintiffs' Motion to Compel Re-Production of ESI.

Furthermore, because Plaintiffs' filing of materials subject to a claim of privilege in Plaintiffs' Supplement violates 12 O.S. § 3226(B)(5)(b), the Court should strike Plaintiffs' Supplement.

⁴ Plaintiffs do not need a privilege log for redacted documents because the information needed to assess the applicability of privilege is available from the face of the document. *See Graham v. Mukasey*, 247 F.R.D. 205, 207 (D.D.C. 2008) ("There is also no need, and the federal rules do not require a defendant, to create a log that describes the author, the date, the type of document, and so on, when the requesting party can see that information simply by looking at the document."). Nonetheless, State Farm is providing a privilege log for redacted documents here as a showing of good faith and in attempt to resolve Plaintiffs' meritless dispute.

Respectfully submitted,



Carrie B. McNeer, OBA No. 22235

Grant A. Fitz, OBA No. 19806

Nathan A. Miramontes, OBA No. 36212

GABLEGOTWALS

110 N. Elgin Ave., Suite 200

Tulsa, OK 74120-1490

PH: (918) 595-4800

FAX: (918) 595-4990

cmcneer@gablelaw.com

gfitz@gablelaw.com

nmiramontes@gablelaw.com

-and-

Lance E. Leffel, OBA No. 19511

David R. Herber, OBA No. 33527

GABLEGOTWALS

BOK Park Plaza

499 W. Sheridan Ave., Suite 2200

Oklahoma City, OK 73102

PH: (405) 235-5500

FAX: (405) 235-2875

[lleffel@gablelaw.com](mailto:llefel@gablelaw.com)

dherber@gablelaw.com

Diane Lee McGimsey -*Admitted Pro Hac Vice*

SULLIVAN & CROMWELL

1888 Century Park

East, Suite 2100, Los Angeles, CA 90067

PH: 310-712-6600

mcgimseyd@sullcrom.com

Erica B. Zolner -*Admitted Pro Hac Vice*

REDGRAVE LLP

230 West Monroe Street, Suite

210, Chicago, IL 60606

PH: 773-720-9169

ezolner@redgravellp.com

Tiffany Lynne Powers -*Admitted Pro Hac Vice*

ALSTON & BIRD, LLP

1201 West Peachtree Street NW,
Atlanta, GA 30308
PH: 404-881-7000
Tiffany.powers@alston.com

Samuel J. Park - *Admitted Pro Hac Vice*
Alston & Bird, LLP
350 S. Grand Ave., 51st Floor
Los Angeles, CA 90071
PH: 213-576-1000
Samuel.Park@alston.com

Kristin A. Shepard - *Admitted Pro Hac Vice*
Alston & Bird, LLP
950 F Street, NW
Washington, DC 20004
PH: 202-239-3277
Kristin.Shepard@alston.com

Attorneys for Defendant
State Farm Fire and Casualty Company

CERTIFICATE OF MAILING

I do hereby certify that on October 23, 2026, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, to those parties as listed below:

Reggie N. Whitten
Michael Burrage
Blake Sonne
Hannah Whitten
John S. Sanders
Jake Denne
WHITTEN BURRAGE
512 North Broadway Avenue, Suite 300
Oklahoma City, OK 73102
rwhitten@whittenburragelaw.com
mburrage@whittenburragelaw.com
bsonne@whittenburragelaw.com
hwhitten@whittenburragelaw.com
jsanders@whittenburragelaw.com
jdene@whittenburragelaw.com

R. Ryan Deligans,
Durbin, Larimore & Bialick
920 North Harvey
Oklahoma City, OK 73102
rdeligans@dlb.net

Patrick F. Colloghan
BIBY LAW FIRM
6305 E. 120th Ct., Suite F
Tulsa, OK 74137
pat@bibylaw.com

Lloyd "Trey" Duck
Andrew Pate
NIX PATTERSON, LLP
512 N. Broadway Ave., Ste. 200
Oklahoma City, OK 73102
tduck@nixlaw.com
dpate@nixlaw.com

Attorneys for Plaintiffs

James E. Saffel