

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

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as Trustees of the Noorda Family Trust, William Mustard, and
Intervenor The Canopy Group, Inc.

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

**RALPH J. YARRO III, an individual,
DARCY G. MOTT, an individual,
BRENT D. CHRISTENSEN, an individual**

Plaintiffs,

vs.

**VAL NOORDA KREIDEL, an individual,
TERRY PETERSON, an individual,
WILLIAM MUSTARD, an individual,
THE NOORDA FAMILY TRUST, a Trust,
RAYMOND J. NOORDA, an individual,
and a trustee of the Noorda Family Trust,
LEWENA NOORDA, an individual and a
trustee of the Noorda Family Trust, and
JOHN DOES I THROUGH 10,**

Defendants,

- and -

THE CANOPY GROUP, INC.,

Intervenor-Defendant.

**MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER**

Civil No. 050400205

Honorable Anthony W. Schofield

Defendants, Raymond J. Noorda and Lewena Noorda, in their capacity as trustees of the Noorda Family Trust, William Mustard, and Intervenor-Defendant, The Canopy Group, Inc. (collectively, the “Canopy Defendants”), through their counsel, respectfully submit this Memorandum in Opposition to Plaintiffs’ Motion for Protective Order. For the reasons set forth below, the Canopy Defendants respectfully request that the Court deny Plaintiff’s Motion seeking the entry of a protective order barring “retaliatory action” against certain persons for providing testimony in this action.¹

ARGUMENT

Plaintiffs seek the entry of an ambiguous order providing that the “affiants and the portfolio companies they manage should not be subjected to retaliatory action by defendants for providing testimony in this litigation.”² (Motion at 2.) This Court should decline to enter such an order because Plaintiffs are not entitled to the relief they seek. (*Id.*)

Plaintiffs offer no legal basis for the Court to impose such an extraordinary protective order in this action. Plaintiffs have not sought an injunction preventing “retaliatory action” against the affiants or the portfolio companies, nor have they made any effort to show they are

¹ In their Motion to Seal Affidavits, which was filed concurrently with the Motion for Protective Order, Plaintiffs ask the Court to seal four affidavits that purportedly contain “highly sensitive and confidential information regarding the Canopy portfolio companies.” (Motion at 2.) As Plaintiffs’ counsel has been advised, the Canopy Defendants have no objection to the affidavits being filed under seal, and the Court has already permitted Plaintiffs to do so.

² In violation of Rule 7 of the *Utah Rules of Civil Procedure*, Plaintiffs failed to file a memorandum in support of their Motion. On that basis alone, the Court should deny Plaintiffs Motion.

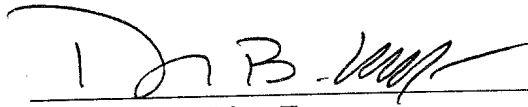
entitled to such relief. *See* Utah R. Civ. P. 65A. Instead, Plaintiffs have improperly sought a Rule 26(c) protective order that seeks to regulate matters having no relation to discovery in this case. Utah R. Civ. P. 26(c); *see Sump v. Fingerhut, Inc.*, 2002 WL 160423 (D. Kan. 2002) (“Protective orders are primarily to protect parties from ‘annoyance, embarrassment, oppression, or undue burden or expense’ in *discovery* matters” (citation omitted) (emphasis in original).); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 825 A.2d 153, 175 (Conn. Ct. App. 2003) (“Injunctions and protective orders are substantively different because an injunction is a remedy . . . and a protective order is a case management tool.”); *Pescod v. Wells Road Veterinary Medical Center, Inc.*, 748 So. 2d 1095, 1098 (Fla. Ct. App. 2000) (stating that the Florida equivalent to Utah R. Civ. P. 26(c) is intended “to protect [party] from annoyance and oppression” during the course of discovery). Plaintiffs have failed to cite any statute, case law, or other authority showing they are entitled to the relief they seek. Because Plaintiffs have failed to argue any legal basis in support of their request, the Court should deny the Motion.

Moreover, and more importantly, the Canopy Defendants do not intend to engage in any “retaliatory action” against any person for providing testimony in this case. Nevertheless, the ambiguous protective order sought by Plaintiffs could materially hamper Canopy’s ongoing business operations by casting doubt on legitimate business decisions that Plaintiffs may claim constitute “retaliatory” actions. Because Plaintiffs have failed to present the Court with any basis to impose such extraordinary relief, this Court should deny Plaintiffs’ Motion seeking a protective order.

CONCLUSION

For the reasons set forth above, the Canopy Defendants respectfully request that the Court deny Plaintiffs' Motion to the extent it seeks a protective order.

DATED this 11th day of February 2005.



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Anthony C. Kaye, Esq.

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BALLARD SPAHR ANDREWS & INGERSOLL, LLP

Attorneys for Canopy Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PROTECTIVE ORDER** was served on the following this 11th day of February 2005, in the manner set forth below:

- Hand Delivery
- U.S. Mail, postage prepaid
- Federal Express
- Certified Mail, Receipt No. _____, return receipt requested

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