

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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GARY WEBB,	)	
	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	NO: <u>1:09-cv-1026-egb</u>
	)	
	)	
WINDSOR REPUBLIC DOORS	)	
	)	
DEFENDANT.	)	

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**ORDER DENYING MOTION FOR LIMITED PROTECTIVE ORDER**

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Before the Court is Plaintiff’s Motion for Limited Protective Order (Doc. 9) pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. Defendant has responded. For the following reasons this motion is DENIED.

Plaintiff seeks a limited protective order so that Plaintiff can depose Larry Land, Defendant’s human resources manager, before producing a tape recording of a conversation between Plaintiff and Mr. Land. Plaintiff claims this limited protective order is necessary to preserve Mr. Land’s untainted and unrefreshed testimony at his deposition, particularly because Defendant has alleged a Rule 11 violation in this case.<sup>1</sup>

Rule 26(c) addresses when Courts may issue protective orders. The Rule provides that the Court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .” The burden is upon the movant to

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<sup>1</sup> Importantly, Plaintiff does not dispute the discoverability of the tape recording, but rather the sole issue before the Court is *when* the tape recording must be produced.

show the necessity of the protective order sought, “which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements, in order to establish good cause.” *Amway Corp. v. P&G*, 2001 U.S. Dist. LEXIS 2880, 5-6 (W.D. Mich. Mar. 7, 2001).

Here, Plaintiff has failed to cite, and the Court has not found, any Sixth Circuit authority supporting his contention that he should have the benefit of withholding the deponent’s recorded statement until after the deposition in order to obtain the deponent’s unrefreshed testimony. Courts that have dealt with this issue are divided on whether a stated need for unrefreshed testimony is enough to meet the good cause standard. *Cf. Roofers Local 30 Combined Welfare Fund v. Union Roofing Contractors, Inc.*, 2008 U.S. Dist. LEXIS 82065 (E.D. Pa. Oct. 15, 2008) with *Rofail v. USA*, 227 F.R.D. 53 (E.D.N.Y. 2005) and *Fausto v. Credigy Servs. Corp.*, 251 F.R.D. 436, 439 (N.D. Cal. 2008). Many of the cases on this issue contain little analysis and are decided upon their particular facts.

In this case, the Court finds that Plaintiff has failed to demonstrate good cause. The Court is not persuaded by Plaintiff’s conclusory statement that by providing the tapes Mr. Land will tailor his testimony. *See Jerolimo v. Physicians for Women, P.C.*, 238 F.R.D. 354, 356 (D. Conn. 2006) (finding that mere conclusory statements, “unsupported by any particular and specific demonstration of fact, that a party might tailor its testimony to conform with previously recorded statements does not rise to the level of good cause.”). Further, Plaintiff does not provide an explanation of how Defendant’s Rule 11 violation allegations entitle him to depose Mr. Land before producing the tapes.

Additionally, fairness and equity considerations weigh in favor of Plaintiff producing the recorded conversation prior to Mr. Land’s deposition. The Supreme Court has observed that

“[m]odern instruments of discovery . . . [and] pretrial procedures make a trial less a game of blind man’s buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958); *see also Rofail*, 227 F.R.D. at 58 (“Open discovery is the norm. Gamesmanship with information is discouraged and surprises are abhorred. Adherence to these principles assists the trier of fact and serves efficiency in the adjudication of disputes.”).

Accordingly, Plaintiff’s Motion for Limited Protective Order is DENIED. Plaintiff is required to disclose the tape recording at issue in accordance with Rule 26 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

**s/ Edward G. Bryant**  
EDWARD G. BRYANT  
United States Magistrate Judge

**June 25, 2009**  
Date