UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BLAKE LIVELY,

Plaintiff,

v. 24 Civ. 10049 (LJL)

WAYFARER STUDIOS LLC, *et al*,

Defendants.

----------x

STEPHANIE JONES,
JONESWORKS LLC,

Plaintiffs,

v. 25 Civ. 779 (LJL)

JENNIFER ABEL, *et al*,

Defendants. Oral Argument

----------x Videoconference

New York, N.Y.
March 6, 2025
10:05 a.m.

Before:

HON. LEWIS J. LIMAN,

District Judge

APPEARANCES

WILLKIE FARR & GALLAGHER LLP
Attorneys for Plaintiff Lively
BY: MERYL C. GOVERNSKI
MICHAEL GOTTLIEB
-and-
MANATT PHELPS & PHILLIPS
BY: ESRA A. HUDSON

APPEARANCES (continued)

QUINN EMANUEL URQUHART & SULLIVAN
Attorneys for Plaintiffs Jones and Jonesworks LLC
BY: NICHOLAS INNS

LINER FREEDMAN TAITELMAN + COOLEY LLP
Attorneys for Defendant/Consolidated Plaintiff
BY: BRYAN FREEDMAN
JASON SUNSHINE
SUMMER BENSON
THERESA TROUPSON
-and-
MEISTER SEELIG & FEIN PLLC
BY: KEVIN A. FRITZ
MITCHELL SCHUSTER

BOIES SCHILLER & FLEXNER LLP
Attorneys for Leslie Sloane and Vision PR, Inc.
BY: SIGRID S. McCAWLEY
ANDREW VILLACASTIN

DAVIS WRIGHT TREMAINE LLP
Attorneys for The New York Times Co.
BY: KATHERINE M. BOLGER

(Videoconference)

THE COURT: Good morning. This is Judge Liman.

Matt, are we ready to get started in *Lively v. Wayfarer*?

THE DEPUTY CLERK: Yes, Judge, we're all set.

(Case called)

THE DEPUTY CLERK: We'll just ask, starting with counsel for plaintiffs, please state your appearance for the record.

MS. GOVERNSKI: Good morning, your Honor.

This is Meryl Governski with Willkie Farr & Gallagher, on behalf of Ms. Lively and Mr. Reynolds.

I'm joined by my colleague Michael Gottlieb, also from Willkie Farr & Gallagher, on behalf of the same parties.

THE COURT: Good morning.

MS. GOVERNSKI: Good morning.

MS. McCAWLEY: Good morning, your Honor.

Sigrid McCawley, along with my colleague Andrew Villacastin from Boies, Schiller & Flexner. We're here on behalf of Leslie Sloane and Vision PR.

MR. INNS: Good morning, your Honor.

In the related case of *Jones v. Abel*, this is Nicholas Inns of Quinn Emanuel, representing Ms. Jones and Jonesworks LLC.

MS. BOLGER: Good morning, your Honor.

Katherine Bolger from Davis Wright Tremaine, on behalf of *The New York Times*.

MR. FREEDMAN: Good morning, your Honor.

Bryan Freedman, on behalf of Wayfarer Studios, Justin Baldoni, Jamey Heath, Melissa Nathan, Tag PR, Jen Abel, It Ends With Us LLC, and I believe that's it.

THE COURT: Any other counsel?

MR. FREEDMAN: I apologize. I'm joined by my colleague Summer Benson is here, Theresa Troupson is also here.

MR. SCHUSTER: And I believe Jason Sunshine is here as well from your office, Bryan.

MR. FREEDMAN: Yes. And my local counsel, Nick Schuster is here.

MR. SCHUSTER: Good morning, your Honor.

I'm here with my partner Kevin Fritz from Meister Seelig & Fein.

THE COURT: Good morning.

Any other counsel needing to make an appearance?

Okay. I have the proposed protective order provided by the *Lively* parties which differs from my model protective order principally by adding an attorneys' eyes only category. It's opposed by the *Wayfarer* parties.

I'll hear first from the *Lively* parties why there's a need to enter this protective order with the attorneys' eyes only category at this time. And in particular, counsel might

focus herself or himself on what kinds of documents would fall within the attorneys' eyes only category.

This case has been marked by allegations by both sides that the attorneys for each side have disclosed information to the press and have used the case to make claims in the press. That's not the subject of today's hearing, but it does prompt the question as to why I need an attorneys' eyes only category and what information is to be given to the attorneys but kept confidential to the parties.

Ms. Governski, I'm not sure whether you're going to address that or Mr. Gottlieb, but I'll hear from the *Lively* parties first.

MS. GOVERNSKI: Thank you, your Honor.

Ms. Lively and Mr. Reynolds are the moving parties here, along with Ms. Sloane and Vision PR. We understand Ms. Jones in the related case also has moved for an identical PR.

If the Court permits, it may make sense for counsel for Ms. Sloane and Vision PR to argue their position in the first instance, and then we can fill in additive arguments after.

THE COURT: That's acceptable.

MS. McCAWLEY: Thank you, Judge.

Sigrid McCawley, on behalf of Leslie Sloane and Vision PR.

You're right, Judge, this is a unique case certainly. And here we have an instance where there are a number of competitive business parties involved in the case such that it would require the attorneys' eyes only designation for that competitively sensitive information.

Your Honor, you entered these similar orders, for example, in your *Allstate v. Mota* case, which is 2022 WL 500419. This is common in these types of cases because it's absolutely necessary. When you have competitors who could be receiving information, having that heightened level of an attorneys' eyes only designation to protect that sensitive information is critical.

And here, the protective order is designed to have a mechanism for the parties to be able to meet and confer. To the extent that that is not acceptable to one of the parties, there's a built-in safety net where they can confer over that. And to the extent there's any concern, it can ultimately be raised by the Court, if necessary. But at the outset, it's going to help facilitate discovery because we can exchange information, but yet protect our clients' interests.

And this goes on both sides of the fence, frankly. These publicists run on both sides of the V. They are in this space and they have a number of competitively sensitive information they would want to protect.

Your Honor, you asked for some information about what

that would be. Certainly these publicists have trade secrets they want to protect; they have their clients' business plans, strategies, marketing plans.

THE COURT: Slow down for a moment, Ms. McCawley.

MS. McCAWLEY: Sure.

THE COURT: Because I am familiar with *Allstate v. Mota*. I decided it some time ago, but I do recall it.

So you mentioned trade secrets. What else was on your list?

MS. McCAWLEY: Correct.

Other clients' business plans and strategies, marketing plans, any discussions in the documents concerning other clients or nonpublic projects or leads. And I believe I started with trade secrets.

THE COURT: In your category of documents discussing other clients and leads, I guess I can understand why to the extent that this is a feud between PR firms and similar to *Allstate v. Mota*, if there are leads, maybe that would call for an attorneys' eyes only category. But simply because they mention clients, this is a case where I suspect there are going to be documents that mention a number of people who are not parties to the case but who, because of the business they are in, are potential clients. So isn't that category extraordinarily broad?

MS. McCAWLEY: Judge, I can understand that concern.

But here, that is sometimes the trade secret, right, who their clients are. To the extent these PR companies are warring over the competitive nature of who they can represent, having to disclose that, basically their lists or other information would put them in a competitive disadvantage. And surely to somebody like Leslie Sloane and Vision PR, who have been unnecessarily dragged into this litigation, to have to then disclose to their competitors information about who their clients are and the sensitive nature of that information, we consider that to be something that would warrant the AEO.

And again, your Honor, this is not absolute. There is a mechanism. To the extent something is designated as AEO and the other side does not believe it should be, there's a mechanism for the parties to confer over that. But this allows discovery to flow out without the alternative that the other side has proposed would require us to hold that back and then come directly to you and have that argument immediately. So this really is a much more reasonable way and very common in these cases, your Honor, as you well know. I know you're very seasoned in this. But this is a very common way to deal with this issue when you have competitive parties in a case together of this nature.

THE COURT: Okay. Let me hear from anybody else advocating for the attorneys' eyes only category.

Thank you, Ms. McCawley.

MS. McCAWLEY: Yes. Thank you, your Honor.

MR. INNS: Yes, your Honor. This is Nicholas Inns for Jonesworks and Stephanie Jones.

And just to add to what Ms. McCawley was saying, we certainly join in everything she said.

And to our mind, your Honor, this is precisely what the Court just referenced, which is, this is functionally — for our case at least — a feud between public relations firms. As the Court, I'm sure, is aware our complaint includes a number of allegations that theft of trade secrets and theft of confidential information has already occurred by the defendants in that case by Ms. Abel and Ms. Nathan, each of whom operate a competing public relations firm or at least something related to the public relations industry.

So allowing the attorneys' eyes only designation to protect the disclosure of further confidential information is precisely what your Honor, of course, did in *Allstate* and, I would also note, in a nearly on-point case, what Judge Engelmayer did last year in the *Jane Street v. Millennium Management* case, in which he specifically noted the risks of requiring a company that has been aggrieved by former employees to continue turning over confidential information to those former employees.

So without repeating everything Ms. McCawley stated, I think those grounds, specifically with respect to this

competitively sensitive information, warrant the entry of an attorneys' eyes only designation.

THE COURT: So, Mr. Inns, as I hear you, what you're referring to are documents that could be considered to be trade secrets.

MR. INNS: Correct, your Honor.

And I would generally agree with Ms. McCawley on the categories those would fall into; so business plans formulated for clients, with the caveat that the business plans specifically at issue here with respect to the clients at issue here between Ms. Jones and Ms. Abel, specifically Wayfarer, we would not expect that to be covered. But other clients' business plans, as Ms. McCawley said, the existence of other clients, any potential future plans that Jonesworks has, requiring the disclosure of that to competing firms in the guise of Ms. Abel and Ms. Nathan would expose Jonesworks to a significant competitive injury.

THE COURT: All right.

Anybody else advocating for the attorneys' eyes only category?

MS. GOVERNSKI: Yes, your Honor, on behalf of Ms. Lively and Mr. Reynolds.

Your Honor, of course all the parties agree that the Court should enter at a minimum its model protective order. And so the creation of the AEO category that we're requesting

is actually built off of that model protective order.

The model protective order already protects information of a personal or intimate nature regarding any individual. And so what our proposed AEO category seeks to do is to add an extra level of protection for materials that would fall in that category, but that are especially personal, sensitive or proprietary that would caught irreparable harm if it were misused or revealed publicly.

I understand that the Court, it seems like, is primarily interested in two aspects: One is the reason why the confidential designation is insufficient to capture all discovery information, why an AEO designation generally is needed; but also specific examples of the materials that we would proffer would qualify as AEO.

So I'll start with the second and then go to the first, unless the Court prefers a different ordering.

THE COURT: I'll leave it to you.

MS. GOVERNSKI: Great.

So as far as some specific examples of the types of materials that we would imagine that would be subject to discovery and that would pose the kind of irreparable harm it disclosed, one example is specific security measures that Ms. Lively and Mr. Reynolds have taken in order to protect themselves and their families from this retaliatory campaign.

Defendants have notice and intent to subpoena a

third-party firm who Ms. Lively and Mr. Reynolds hired to provide security and privacy protections. That third-party subpoena asks for all documents and communications concerning or to or from Ms. Lively and Mr. Reynolds.

We will, of course, lodge objections to that subpoena. But in the event that production is necessary, we don't see any reason why the parties themselves need to know the specific details about Ms. Lively and Mr. Reynolds' security measures that they've put into place.

THE COURT: So let me interrupt you for a moment on that.

Are you saying that you believe that Mr. Freedman's clients present a risk to your clients' security different than what Mr. Freedman and his colleagues present? I'm not saying that Mr. Freedman presents a risk to your clients' security, but your argument raises that issue.

MS. GOVERNSKI: Of course, your Honor.

So, you know, Mr. Freedman, of course, is an officer of the Court and is subject to the professional rules of responsibility, as well as additional obligations unique and specific to attorneys.

Unlike in typical cases, the parties in this case on both sides of the V include people and businesses whose entire living is made off of providing information to the press and content creators. I'm not intending to be pejorative; it's

just the reality of what they do. They make money and to stay in relationships by trading information with them, and having techniques for doing so off the record and on background.

And, in fact, a particular note in this case, the defendants themselves have bragged in text messages about being able to do this in an untraceable way, of being able to publish information without fingerprints and also having individuals who will "do anything" for them and who hate Ms. Lively. So we'll pursue further evidence of this through the course of discovery, but the evidence in this case so far demonstrates that there is a significant risk, unlike others that perhaps have been before this Court.

I also think it's worth noting that the defendants appear to be operating on an unlimited budget that really renders the traditional mechanism of using sanctions to control parties meaningless in this case. Defendant Sarowitz has committed to spending $100 million to ruin the lives of Ms. Lively and her family. And the amended complaint includes a separate quote saying -- in which Mr. Sarowitz says that Ms. Lively and Mr. Reynolds will be the equivalent of dead bodies when he is done with them.

We respectfully submit that threats like this raise the question of whether traditional sanctions could possibly deter the abuse of highly sensitive, personal and intimate information that many parties and third parties may produce in

this case. And really no amount of sanctions could unring the harm that we think would come from this quite narrow category of what we think would fall into this AEO designation.

THE COURT: Why don't you get back to — now that you've answered my question — what you mean by the quite narrow category; because it appears that the *Wayfarer* parties already are privy to a fair amount of personal information about your clients. So what is incremental that you think poses a particular risk in this case?

MS. GOVERNSKI: Okay. So I'm going to get to the categories in one quick second, but I just want to make one final point which is directly relevant to that question.

There is an insatiable appetite for any information about this case, no matter how salacious it is. We've seen even the most benign and routine information become tabloid fodder. And just this week, for instance, your Honor, *The Daily Mail* published a story based on an insider source with information from Mr. Baldoni's legal team about the "first group of potential witnesses who Baldoni's team want to hear from who have been contacted but not yet scheduled." So even the prospect of discovery. And so it's not a stretch for the Court to imagine the harm that could come from actual discovery information being placed in the wrong hands.

And so what kinds of information. We've talked about security measures.

Another category of information that they do not have access to right now is medical information, including relating to the physical and mental health of parties and nonparties alike. So there's, of course, an inherent privacy interest in protecting information about one's health. And we think guaranteeing privacy with respect to medical information is particularly critical here, where it may involve third parties who this Court has a responsibility to protect, including pursuant to *Seattle Times Co. v. Rhinehart*.

And then related to the third parties — who really are one of our primary concerns here without an AEO protection — is a third category of documents are personal and intimate conversations with really unrelated third parties who have a marginal relevance to this case where the PR value would be high, but the evidentiary value would be virtually nonexistent.

We know that there will be significant third-party discovery. We received RFPs from the parties; they are designated as confidential by the defendants, so I'm limited in what I can talk about in open court. But I can tell you that there are dozens and dozens of third parties named by name. And so we know that there will be production from parties involving third parties; we know that there will be subpoenas to third parties involving third parties. And we think that there is a significant chance of irreparable harm if marginally relevant communications with high-profile third-party

individuals who are unrelated to the case were to fall into the wrong hands.

And so we think that this narrow category would allow the designation for the types of communications that have tremendously high PR value, low evidentiary value, and could do irreparable harm, that we would suggest this Court does have an obligation to protect. As the Supreme Court in *Seattle Times* said, if information about third parties is released, it could be damaging to their reputation and privacy, and that the government clearly has a substantial interest in preventing this sort of abuse of its processes.

THE COURT: Ms. Governski, give me an example of the type of "personal or intimate conversations" that you have in mind, picking out something that would be remote from the actual facts of this case.

MS. GOVERNSKI: Sure.

THE COURT: I'm not asking you -- decidedly I'm not asking you to reveal what kind of communications you're concerned about protecting at the same time as you're trying to protect it, but so that I can give some definition to this particular category.

MS. GOVERNSKI: I understand, your Honor.

So let's take a complete hypothetical that I would not have access to. Let's say Mr. Baldoni has a very good friend who is a very high-profile individual. And he was venting

about his day. And he mentioned something about our clients in connection with what happened on the film. That would be responsive arguably; that would potentially be relevant, it's communication by a party about another party. But its value to the case, its necessity to the case, its evidentiary value would be outshadowed by the fact of who he was communicating with. If he was communicating with a high-profile individual, that all of a sudden creates significant PR intrigue for a communication that to a friend who was a completely private anonymous individual, just would not carry the same kind of weight.

That is entirely different, your Honor, from Mr. Baldoni talking with Mr. Sarowitz. That is a directly relevant case — or even Mr. Baldoni speaking with another cast member. That is a different type of relevance by nature of who the individuals are as compared to the category of the types of communications we would suggest would fall into this third protective category.

THE COURT: Are there other categories that you have in mind?

MS. GOVERNSKI: Well, so, you know, one of the reasons that we use the language we did, which was reminiscent and taken from other protective orders that courts in this district have used, including I just referenced *River Light*, 20-CV 07088; *We the Protesters*, 22-CV 9565; and *Cowan*, involving the

Kardashians, that's 12-CV-1541.

One of the reasons that we use the type of language that we did without expressly identifying specific categories like we're using as exemplars today is because it's hard to predict exactly what might fall into this. But it's not difficult to envision that there would be the type of materials that are speaking about children or speaking about profound mental health issues or locations of private residences or homes. You can imagine that there is just a level of personal and intimate information that is particularly relevant because of who these people are that in an ordinary case may not be subject to an AEO, but would be in here.

This case is quite reminiscent of the cases before other courts in this district in *Paisley*, which involved Prince and Stern, which involved Rita Crosby. And there, the court was particularly concerned about discovery being used as a vehicle for generating content. And the court in *Paisley* opined that court must be vigilant to ensure that their processes are not used improperly for purposes unrelated to that role.

THE COURT: So a couple of follow-up questions to you.

First question is why wouldn't your objectives, if they are legitimate, be accomplished by something that is more narrowly tailored that says, in essence, that the names and PII — personally identifiable information — of persons who are not

parties to this litigation, you know, may fall within the definition of attorneys' eyes only, but certainly people who are parties. I mean, if Ms. Lively or Mr. Reynolds said something about what was going on on the set or said something that is relevant to this case, I wouldn't imagine that that would be attorneys' eyes only. Mr. Freedman should have the right to discuss that evidence with his client.

MS. GOVERNSKI: I appreciate the Court's question and thought that you've put into this question.

I think that it would be too narrow to only limit it to parties because, of course, these parties make their business off of celebrities and people -- high-profile individuals. It's highly likely that the content of the communications would indicate clues as to who these people were, that would defeat the point of just abbreviating names.

For example, if there's a communication talking about, I was at this event on this date, that would divulge a pretty narrow universe of who might be covered by that; or a communication, It was so great to see you last night, and we know that Mr. Baldoni, Ms. Lively and Mr. Reynolds often are photographed out publicly. It would not take much to add one and one together and figure out who the party is.

So we think that that would be too narrow and we think that the current draft is certainly in keeping with the language of the Court's original protective order and just

heightens it for a different level of sensitivity and intimacy.

THE COURT: Now, Ms. Governski, as you know from my model protective order, and if it's not sufficient, then I can hear the parties with respect to it, but the obligations of the protective order don't just apply to the lawyers, they also apply to the parties. And there's a separate document that people have to sign who get access to confidential information under the protective order that binds them to the protective order. That means that they can be held liable for contempt if they violate it. So why wouldn't that be sufficient?

First of all, I presume that people are going to follow my orders. And second, my orders are clear, and they violate it, then they are going to be held liable for contempt. And I'm perfectly comfortable having a contempt hearing and, if necessary, authorizing discovery in connection with that.

MS. GOVERNSKI: Well, as you and I both know, your Honor, contempt proceedings and the processes that lead up to them can take quite a while. And in this case it would not be sufficient to unring the bell if this material is released publicly.

Also, your Honor, I don't believe that sanctions or contempt proceedings are sufficient to protect the very significant concerns that we have here, especially with respect to trade secrets, but also with respect to health and mental health records that really have absolutely no business being

publicly released.

And I would just suggest, your Honor, that this is an entirely different case. There are 100 million reasons for these parties to leak information because the PR value is greater than complying with the Court's orders. And I just don't think sanctions will be appropriate.

THE COURT: Well, but there is a huge amount of information, I presume, that is of PR value that's also centrally relevant to the case that will, if the case goes forward, become public. It will be filed in connection with motions for summary judgment as to which there is a presumptive right of access. If the case goes to trial, there are very strict rules against closing the courtroom, and those will be challenging obstacles for the parties. So a lot of what you are talking about is just inherent in the nature of the case.

You sue a high-profile person in this industry, as to which there's a lot of attention paid, it's going to get picked up by the press. Mr. Freedman sues somebody who's high-profile, it's going to be picked up by the press. There's a public interest in how the courts are being used that the Court has to respect.

Now, that doesn't mean that you can't share discovery confidentially in order to facilitate the processes of discovery. That's the point of the *Seattle Times* case. But it does mean that coming down the road, the stuff that's highly

relevant is going to end up being disclosed, maybe not every bit of health information.

Want to respond to that?

MS. GOVERNSKI: Of course, your Honor.

And it is absolutely not in our ultimate interest to prevent the public from seeing all the evidence. That is, of course, what is going to happen here.

But in order to facilitate the production of highly sensitive materials especially from third parties, we think it makes sense for there to be an AEO category and then deal with de-designation — whether with respect to summary judgment or with trial — in a holistic way, which is standard in cases, right. I mean, we're going to have to deal with this for confidential, so why not also deal with it for AEO. It doesn't really materially change the process you're describing that would have to happen with confidential.

All that we think the AEO would do is actually allow us to keep with your Honor's schedule. Because six months to produce all of this information — actually, four months for substantial discovery — if we have to layer into that conferrals anytime that a party or a third party wants to designate it as AEO, I think we're just asking to divert resources to meet-and-confers and to divert judicial resources towards dealing with this as an *ad hoc* basis as opposed to in the manner you have described as we get closer to summary

judgment designation.

THE COURT: Isn't it going to lead to meet-and-confers and coming to the Court no matter what? If you designate stuff that's AEO, and Mr. Freedman wants to discuss it with his client and he thinks that it's overbroad, I'm going to have to deal with that. So I'm not sure how convincing relieving the burden of the Court is or of the parties, because the question is just what the default is.

MS. GOVERNSKI: Well, but I think -- first of all, I think the default, if we allow AEO, would allow the materials to get produced much more quickly. It seems to me like the process as contemplated in the PO would require conferral or coming to the Court in advance of production. So if we allow the AEO designation in the first place, it would facilitate and allow us to keep this tight four-month schedule for substantial completion and six months for the close of discovery.

But I also think, your Honor, that it would reduce the resources -- the burden on the Court because it would allow us to do it in a more holistic strategic manner. By the time we get closer to summary judgment or trial, the parties will know what documents they need to use or plan to use.

Of course, if we do it this way, where it's every single material that -- we all know that you produce a ton of material that never sees the light of day or needs to see the light of day. And if the current process sticks, then we'll be

negotiating AEO for every single type of discovery material, as opposed to knowing what we really need to come to the Court to, because what needs to be de-designated or have a reduced designation. It will be a narrower world, a narrower universe; it will be less *ad hoc*, it will be more comprehensive and strategic.

THE COURT: I've got a couple of follow-up questions, but I do want to let you finish your argument before I ask those questions and then turn to the other side.

MS. GOVERNSKI: Your Honor, I think we've gotten through everything that I had intended to discuss.

The Court has quite broad authority here to enter a protective order, and broad discretion and an obligation to protect personal interests and especially of third parties. So we would just submit, your Honor, that the way that we propose (indiscernible) standard, routine and narrow way to do so.

THE COURT: Let me ask my specific questions about the form of the order that has been submitted. And I'll call on any party who's moving for this to address it. Most of my questions have gone to the broad language that defines what could be attorneys' eyes only.

One question is whether if I agree to an AEO category, the word "likely" should be modified by "highly likely." The notion of likely to cause a competitive injury to the producing party is essentially a prerequisite to any protective order; it

would not seem to me to be sufficient for an AEO category.

Is there anybody who wants to address that from the moving party?

MS. McCAWLEY: Judge, this is Sigrid McCawley, on behalf of Leslie Sloane and Vision PR.

We are comfortable with that from the perspective of the business information we're trying to protect here. "Highly likely" would be something that would be sufficient in that regard. That's really what we're looking for; we're really looking for to just protect that very, very sensitive information that will cause a business harm to our clients.

THE COURT: Okay.

Second, in paragraph 1, there is reference to testimony and presentations by the parties or counsel, two are in court. There's no way that I'm going to sign a protective order that defines information that is submitted to the Court. With respect to information that goes to the Court, you're going to follow my individual practices and the law of the Second Circuit with respect to confidentiality. I don't need particular argument on that. That is my ruling.

The last two points are that there is a reference throughout to high-profile individuals. For example, the protective order refers to the personal interests of the producing person and/or third party, including high-profile individuals. It's not apparent to me whether those words

"high-profile individuals" are intended to be language of limitation or why there needs to be a reference to high-profile individuals, in this what work that is doing.

There also is ambiguity in the model protective order that you've submitted, the form protective order that you've submitted, about whether information that is already public is to be treated as confidential or AEO. For example, there may be photographs of family members that have been shared with the *Wayfarer* parties already or that are in the press already. That would not in my mind be the proper subject of a confidentiality order.

Does anybody want to address either of those points? Then I'll move to the *Wayfarer* parties.

MS. GOVERNSKI: Your Honor, I'm happy to.

We would be fine striking the reference to high-profile individuals and agree that's inclusive in "third party."

As far as the second point, we do agree and think it's inherent in the definition of "confidential discovery material" that it would not cover information that is already in the public sphere or that a party already has in their possession separate from this litigation.

THE COURT: Your picture didn't show up on my Teams. Who was that who was speaking?

MS. GOVERNSKI: Oh, this is Meryl Governski.

THE COURT: Okay.

And just so it's clear, I should have said this earlier, but because this is a public proceeding as to which the members of the public may be listening in, but not see the visuals, I'm going to ask each counsel before they speak to identify themselves for the record. I should have done that earlier.

It was counsel, Ms. Governski, for the *Lively* parties, who spoke immediately before the last attorney who spoke.

All right. Let me hear from the *Wayfarer* parties.

MR. FREEDMAN: Thank you, your Honor.

This is Bryan Freedman on behalf of -- I'll just reference it as the *Wayfarer* parties, which would include the Tag PR, Melissa Nathan, and whatnot.

First of all, I do want to address, I think it's rather offensive that anyone would suggest that we would disregard a protective order. In fact, we're in favor of the Court's model protective order; we think it's sufficient to protect the parties.

And it's not only sufficient to protect the parties, but it feels like what the other sides are asking for is that because there is celebrity, because there are people who are powerful people in the industry, that somehow they get treated differently and somehow there's a different law that applies to them that otherwise would apply to normal, everyday people.

THE COURT: So, Mr. Freedman, I'm going to hear you with respect to that point. I do want to make sure that on your list to address is the PR firms and the feud between the PR firms and the allegations of competitive injury.

And I should lay out one of the premises of that question.

The premise of that question is that a reason for attorneys' eyes only designations is that there is information that may be useful to a party in business that when they are exposed to it, they cannot put out of their minds and that, therefore, presents a separate type of risk than the ordinary risk of a disclosure or violation of the protective order. So make sure you're covering that point.

I do hear you and I'll permit you to continue to be heard with respect to the general point about this being a high-publicity case.

MR. FREEDMAN: Sure.

And let me address the PR firms, because it's very important within the entertainment industry to understand what's publicized and what's publicized by those very PR firms.

Who people represent and who they speak on behalf of is well-known. It's in *Deadline*, it's in *The Hollywood Reporter*, it's in *Billboard*. It's in all of the trade publications. People are referenced all the time as which firm that represents them as their publicists. And that's very

common. It's not secret as to which firm represents which celebrities at all. It's not something that's kept secret; it's not something that's not disclosed to the public. In fact, it's not only disclosed to the public, but on a routine basis PR agents call up the press all of the time to talk about their clients and why their clients either shouldn't be in a story, should be in a story, what their clients are up to, what their clients are doing. It is in no way a trade secret or kept confidential by any PR firm who they represent in any way.

And even in this case, we're not really interested in who is represented by what PR firm and what other clients are at issue. That's not the issue in this case. There's not a trade secret or something that's kept confidential by the PR firms that we're interested in at all. In fact, a lot of these people within the PR firms -- Jen Abel used to work for Stephanie Jones. And so there is commonality amongst all of that.

But most importantly, it's not something that's kept secret. As a matter of fact, it's something that's advertised who they represent. In articles it's quoted all the time that the publicist for so-and-so says this. And, in fact, in this case you'll see numerous text messages from reporters, whether it be at *The Daily Mail*, whether it be reporters at *TMZ*, whether reporters otherwise, who specifically state the names of the publicists that they spoke with on behalf of those

particular clients. This is not confidential trade secret information.

And I think that when we talk about publicists and we talk about the parties in this case, I'm reminded of a couple of things: Number one, the case started with *The New York Times* having five weeks worth of confidential information, and put out an article with all of that confidential information right out there. That confidential information was obtained by *The New York Times* themselves from these parties in the case.

THE COURT: That's at least the allegation.

MR. FREEDMAN: That's the allegation. I'm not sure how else it could be, but --

MS. BOLGER: Your Honor, just to be clear, *The New York Times* would dispute that allegation. And it is just an allegation.

THE COURT: Thank you, Ms. Bolger. But I will call on you later if you wish to be heard. I'll give anybody else who wants to an opportunity to be heard.

I'm taking from both sides what their allegations are. So I understand there are allegations that are made by the *Lively* parties with respect to the *Wayfarer* parties. I understand, Mr. Freedman, you're making allegations with respect to the *Lively* parties and with respect to *The New York Times*. Parties are free to make allegations to a limited extent, to some extent. That's what discovery and trials are

for.

Go ahead, Mr. Freedman.

MR. FREEDMAN: Thank you, your Honor.

I actually am not even making an allegation; I'm almost quoting *The New York Times* who came out and said, We've reviewed thousands of pages of documents.

THE COURT: You're not testifying. If you want to testify as a witness, I'll put you under oath. So everything you're saying with respect to the facts, I'm going to take it as an allegation. You understand that.

MR. FREEDMAN: I do, your Honor.

And to continue, it almost reminds me of the argument being like the old *Sesame Street*, one of these things is not like the other. And this is not Texaco/Pennzoil; this is not Apple/Microsoft. These are not direct competitors that have trade secret information that is so highly protective. This is not Coke and Pepsi and the formula for Coke and Pepsi or anything like it. These are hardly competitors and information that's not truly protected at all. As a matter of fact, they use it to advertise.

We do believe you have broad discretion, your Honor. And we do believe that the parties seeking the burden, the protective order has the burden of showing good cause that it exists for issues and an issue of what would be a strenuous attorneys' eyes only provision. We think it's important and,

frankly, necessary that we are able to utilize our clients who are in this industry and to discuss with our clients those documents and other information that could be helpful for us defending the case and clearing our clients' names in the case. And we think that's imperative and it would be a burden on us every single time to come into the court and argue about whether an AEO provision which is highly unusual is proper.

In fact, your Honor, your model order addresses all of this. It says that if you need greater protection, you're welcome to come into the court and ask for greater protection, first to meet and confer with the other side. Of course, things like medical records of Ms. Lively, you know, she's alleged emotional distress, there will be an IME. We wouldn't dispute in a meet-and-confer that that information would be confidential and could even be attorneys'-eyes-only information. That's an issue in the case because of the damages in the case. And we certainly are not interested in saying that that's something that somehow is not protected.

But this is a confidential protective order. Things are supposed to remain confidential. We intend to follow the confidentiality. And there are provisions in the order which fully protect all of the parties that if they need some sort of greater protection and for some reason they don't need our clients to see something, that they can make a showing for it. But there just has not been a specific showing at all today.

And my concern is that the burden from the *Lively* parties is they are trying to shift the burden; and somehow that there should be an AEO provision in here and we should have to prove up and run into court every single time, when we feel like that's a burdensome process, that that's an unnecessary process.

It's all addressed in your model order, your Honor. And, in fact, it's not only addressed in your model order, there's a specific provision that says that any party can come in at any time if they think they are not protected by the model order. We're prepared to adhere to the model order. We think the model order protects all of the parties. And frankly, we see no difference because someone is a celebrity or because someone advertises their client as a PR agency that they should have the right to somehow indicate that this is a trade secret, which it's clearly not.

THE COURT: So one difference between this case and many other cases is that there are allegations in this case by each side against the other that the other has leaked confidential sensitive information that they were entrusted with through their job position in ways that are difficult to trace. That's not an allegation about the attorneys, it's an allegation about the parties and it is something that I have to take seriously.

So why wouldn't that support at least some limited

amounts of an AEO provision?

MR. FREEDMAN: It wouldn't support it, your Honor, because the confidentiality in the order should be enough. I mean, what you've seen in the model order, it does protect that. And my concern is this: So far in the case what has been disclosed are addresses of my clients in proofs of service which we have not done at all. There have been addresses now that the world knows about where certain clients live and where they reside which has been highly offensive and unnecessary.

THE COURT: So let's actually now drill down a little bit more on categories. It may be a burden on the parties to protect certain PII such as addresses, medical information, email addresses, telephone numbers that are really of marginal value — no value — to an attorney consulting with their client as to how to defend or prosecute the case.

There are other specific categories that were mentioned by the other side such -- beyond the physical health information, but that included security measures, trade secrets, business plans. Maybe you can address yourself to the specific things that the other side said, you know, presents particular concerns for them and why those concerns are not appropriate ones for an AEO category.

MR. FREEDMAN: Your Honor, no one is interested in what somebody's security is doing. It hasn't even been the suggestion of anyone that what is a security guard or a

security person. It's not even remotely relevant to the case at all what someone's security is doing. It is a complete ruse and not relevant at all to the proceeding. So I don't know why that even comes up at all and why that's even a concern.

With respect to Ms. Lively's medical records and psychological records based on her own damage allegations, there's a process in the model order that says meet and confer. We would fully intend to agree that that should be something that should be designated as highly confidential. It's something that should not be disclosed. We have no intention in disclosing that. We have no intention in violating the Court's order.

But the point is, is something going to be ordered that's so restrictive that's not even -- it's so premature for this, it's not even something that's at issue in the case itself yet, it's not even something that's relevant to the case itself yet, and it's guesswork on whether something is going to come up or not.

There's a procedure in here to meet and confer. No one is disclosing anything to the public or anything like that. And we can meet and confer. And if there's a disagreement as to something that should be AEO, we can present it to your Honor. But it's highly unusual to have a blanket AEO provision and us not being able to utilize that with our clients and to gain information from our clients if it's relevant to the case

itself.

And certainly if there's an objection and they want to meet and confer about something and want to try to designate it with some sort of higher standard, we'd be happy to meet with them before sharing that information with our clients. We'd be happy to give them the opportunity, like the model protective order allows, and allow them to go to court and ask for higher protection, if we object. The likelihood is most of these things we won't object to likely. But they are not even at issue yet.

The idea that we would care what Mr. Reynolds' or what Ms. Lively's security people are up to in terms of how they are being protected or otherwise is clearly nonsense. The only people that have been mentioned, frankly, third parties in this case, is an executive — I won't repeat her name — from Sony whose name is mentioned three times in Ms. Lively's complaint. And we have gone to great lengths to not mention third parties by names and things like that. I think it's completely unnecessary.

I think the model order completely protects everyone. And certainly if we're meeting and conferring and there's a disagreement, they can go to the Court, like the model order provides, and ask the Court for greater protection. And we can discuss it before it's disclosed to clients. We can give them that right.

THE COURT: How does that work? They produce it to you. And there's a pause before you present it to your client, for them to press the claim that it's AEO, is that what you're saying, Mr. Freedman?

MR. FREEDMAN: No, I'm saying when they produce it to us, that they say, Hey, we want greater protection on this particular document. Please don't share that with your client, which we would agree to. We would meet and confer.

If we met and confer and agreed on that, then there's not an issue. If we met and confer and didn't agree, we would still be holding on to it, not sharing it with our client, until they had an opportunity for your Honor to make that decision. There's no harm whatsoever under the model order in that.

THE COURT: Isn't that actually exactly what the attorneys' eyes only provision does? The only difference between what you're saying and what the attorneys' eyes only provision does is it gives a little bit of definition to attorneys' eyes only. And it means that you're not just promising them that you're not going to disclose the information to your clients, you're bound by a court order.

I mean, it's easy enough to write into this protective order that if there is not a meet-and-confer within a certain period of time after production, then the information will not be deemed to be attorneys' eyes only, provisions like that that

puts a little bit of process around it.

MR. FREEDMAN: The difference -- I'm sorry to interrupt, your Honor.

THE COURT: Go ahead.

MR. FREEDMAN: The difference is the burden and who is the one running to court. Under the model protective order, they are entitled to go to your Honor and ask for greater protections. The model protective order is no different for this case than it should be for any other case. And the difference is the burden, the burden of who has to run to court to be able to either try to undo something that they deem to be an attorneys' eyes only provision or whether it's their obligation to go to court and seek greater protection if they can't agree on it. And that's the difference.

We shouldn't have to run to court every time that something is given greater protection that is not something that should be attorneys' eyes only. We shouldn't be put in a position where we are the ones who have to run into court every single time and say, No, this shouldn't be blanketly just given attorneys'-eyes-only protection. It should be their burden, because this is what they want to designate to go into court and get greater protection. There shouldn't be a presumption that they're entitled to that greater protection. And there's no harm, there's no damage. There's a process to meet and confer, and there's a process to go in and see your Honor,

which is what the model protective order provides. The burden shouldn't be on us to do that, it should be on the party seeking attorneys'-eyes-only protection.

THE COURT: Anything else from you, Mr. Freedman?

MR. FREEDMAN: Yes, your Honor.

THE COURT: Mr. Freedman, you're now on mute, so I don't hear you either.

MR. FREEDMAN: Am I still on mute?

THE COURT: No, you're not on mute anymore.

MR. FREEDMAN: Terrific. Sorry about that. I apologize.

The proposed protective order in paragraph 16.

THE COURT: Okay. Give me a second to go there.

Yes.

MR. FREEDMAN: It basically says you cannot transmit any confidential information over the internet or use in communications that flow through the internet, including, but not limited to, via text message, Snapchat, Instagram, TikTok, Reddit, YouTube, or any other online or social media platform.

That provision is so overbroad, your Honor, that it would prevent me from sending an email to my own colleague about anything that would be considered to be confidential discovery material, because you have to use an internet platform system to use email. It's so hopelessly overbroad and unnecessary, that that's why, first of all, it's not in the

model order; second of all, it's not even usable in the form that it talks about.

THE COURT: I'm going to hear from the other side with respect to that.

MS. GOVERNSKI: Do you want to hear it now, your Honor?

THE COURT: No, I'll let Mr. Freedman finish.

Is there anything else, Mr. Freedman?

MR. FREEDMAN: I'll just close by saying that, your Honor, I don't think that because this case is so different than any other case, that what it requires is that persons of celebrity switch the burden, and the burden has to be on the other side to run to court when they object.

The model protective order fully protects everything we've heard about today, and it fully has a mechanism in it which we agree with which allows the other side to go to court if they seek greater protection on certain issues. And I have no doubt that we'll be reasonable in being able to meet and confer, and hopefully being able to work something out on a meet-and-confer.

My concern is what's going to happen is things are going to be stamped by one of these many parties as attorneys' eyes only, and we'll be seeing -- and we enjoy seeing your Honor, but I think you'll see maybe too much of us and possibly get a little tired of us under this scenario, the way that it's

proposed in the modified order.

THE COURT: Is there anybody else who wishes to be heard in opposition to the protective order with the attorneys' eyes only provision?

Okay. Now let me hear from the proponents of it.

Ms. McCawley, did you wish to -- or Ms. Governski?

MS. McCAWLEY: This is Sigrid McCawley. I'm happen to address it briefly and then turn it over to Ms. Governski.

Just to have this resonate with the Court, your Honor, Mr. Freedman made the argument for us. This is exactly why we need an AEO.

While he used disparaging language about my client's business, certainly her trade secrets and her business information is entitled to protection. She was dragged into this court inappropriately and she should not have to give over competitive information.

So let's just talk about that a little bit --

THE COURT: It will be for me to determine whether she was brought into this case inappropriately. Go ahead.

MS. McCAWLEY: Understood, your Honor.

But the point that Mr. Freedman made was he was not so interested in this material. If that's the case, then he has no argument against the AEO designation. It allows the parties to have that designation, protect their sensitive commercial business information. And if there is something in that that

he believes he needs to share with his client, there's a meet-and-confer process. And then if it can't get resolved, it goes to the Court. But that's a much smaller universe of what ultimately goes to the Court. Rather, with the protective order as it is now, all of that -- we'd have to go to the Court before any of that could be disclosed.

So Mr. Freedman made the points for us, your Honor. This is exactly why --

THE COURT: So why aren't your concerns entirely satisfied by a draft of this that creates and permits you to designate something as presumptively attorneys' eyes only or claim of attorneys' eyes only, but then requires you to establish to my satisfaction, if there's a dispute over it, that it is the type of information where there is an incremental risk with disclosure to Mr. Freedman's clients that would be unacceptable?

MS. McCAWLEY: It's a very fair point, your Honor. And if that's the only stumbling block with respect to why Mr. Freedman is objectionable to this, because he doesn't want to have to be the one moving in court, I think that's something that the Court can handle. Certainly the point is to be able to protect this information.

So I've seen protective orders where there's a period of time after which the dispute is that then the party who wants to protect that information has to move to protect that

information. The procedure by which this happens is not the concern I have. The concern I have is that information of this nature can be protected at the outset, and it is not disclosed to the competitive clients until such time that the Court deems that would be necessary.

THE COURT: Well, so maybe though you should address Mr. Freedman's point that the clients' PR agencies are well-known to the people in the industry and are known to competitors. It's not a case like the *Allstate* case, where there's virtually an unlimited list of clients. The people who will be a public interest is the limited group of people who are stars, right, or budding stars. And *Entertainment Weekly* knows who they are, *The Hollywood Reporter* knows who they are. And they also know who the agents are because those are the people who call them up, that's what even the complaint here establishes.

MS. McCAWLEY: Of course, your Honor, and that's not our argument. Our argument is within the context of the work that they are doing, there are clients that are not yet disclosed; there's clients that they are actively seeking to engage with. They don't want to turn that information over to their competitor. There is, as we said, marketing plans, business strategy, discussions of nonpublic leads and other things that they are going after. All of these are trade secrets of our client. All of this is information they should

be entitled to protect and not disclose. Now, we're not saying the lawyers can't see it, we're saying their competitor cannot see this.

THE COURT: So I take it, Ms. McCawley, from your argument that documents such as the marketing plans with respect to *It Ends With Us* would not be considered to be attorneys' eyes only; that's highly pertinent information to this case. Some, if not all of it, is information that the parties would have been privy to and it's already dated. The movie is out.

MS. McCAWLEY: Correct, your Honor. We are talking about a limited scope of information.

THE COURT: So you're not talking about the marketing plans for *It Ends With Us*.

MS. McCAWLEY: Correct.

I'm talking about my client's other marketing plans for other customers that she is dealing with that could cross over in the broad scope of what the discovery requests in this case would be.

And just to take issue with what Mr. Freedman said about arguing about this now, it's absolutely 100 percent commonplace, as you know in commercial litigation, to up front define and set forth a protective order so that the parties can cohesively go forward with discovery. So this is an appropriate conversation to be having now, even though we have

not yet received discovery requests. We know that the scope of what some of -- already been requested in the case itself encompasses this type of information. And because we want to ensure that we're able to protect our clients' information and not just take Mr. Freedman's word for it that he would hold it in good faith for some period of time, we really need this AEO designation.

And, Judge, this is not far off from cases where this happens all the time. I mean, AEO, while it's not in the model protective order, is not unusual when you're in a case with business competitors where that information needs to be protected.

So we would ask, your Honor, to entertain this. If for some reason the Court feels that it is not being utilized in the appropriate way, the first time we're in front of you, you're able to address that with the parties. So I think that this gives us the necessary protection to allow the parties to proceed appropriately with discovery in a logical manner without having to burden the Court. And if for some reason it doesn't feel to the Court that it is being utilized in an appropriate way, the Court can address that with us and we can change that at that time if it's necessary. But I believe that this is the only way to protect that competitive and highly sensitive information at the outset of discovery.

And I appreciate the Court's time today.

THE COURT: Thank you, Ms. McCawley.

Ms. Governski, do you wish to be heard?

MS. GOVERNSKI: Yes, your Honor. I have eight very discrete points. I'll start with the low-hanging fruit.

As far as paragraph 16, I think we can all agree that the intent of this provision is not to prevent the emailing internally, it's to prevent the publication of any confidential discovery information on the internet. So we would be happy to propose modified language or, better yet, we'd be happy for Mr. Freedman to provide modified language to us. He never objected to this or provided any suggestion that there was an issue or alternative language during the conferral. So we'd be happy to consider alternative language.

With respect to his accusation about publicizing his clients' addresses, my understanding is those addresses were pulled from publicly available sources, and so they were already in the public domain. But separate and perhaps more importantly, Mr. Freedman or no one from his team ever informed us about improper disclosure. Of course, if they had, we would have properly addressed it and considered the points.

Point three. Mr. Freedman made some reference about his attempt to limit the number of third parties. Again, I am restrained by their own use of the confidential designation on their (indiscernible). But I will represent that there are dozens and dozens of third parties specifically named and

identified even in -- I'll stop there. Specifically named. So he knows full well that there will be many third-party privacy interests implicated in his own requests.

Number four. You know, I think that there is a false assumption here that is predicating all of Mr. Freedman's arguments. He is assuming that Ms. Lively and Mr. Reynolds and Ms. Sloane and Vision PR will be the only people availing themselves of the AEO designation. This does not pose a burden uniquely on him. He said many times we would have to go to the Court or it's burden-shifting to us.

They would be available -- they would be availing themselves of the AEO provision, just as they already have availed themselves of the confidential provision before a PO is even in place. And not to mention, there are third parties. They are just assuming that every third party who designates AEO will be someone who they are contrary to. It may be, in fact, that we have issues with third parties over a designation or use of AEO provision. So the process that's contemplated here is not placing an unfair burden on him, it's the exact same burden as to every individual.

THE COURT: Ms. Governski, you're not making the argument to me that there shouldn't be an AEO category because you want to share the information with your clients, are you?

MS. GOVERNSKI: No.

THE COURT: Go ahead.

MS. GOVERNSKI: No, I'm sorry, I'm not making that suggestion. What I'm saying is that he was arguing that this having to come to the Court to de-designate places a different burden than the one established in the PO, as if it would be uniquely placed on him. I don't think that that's a unique burden for him. Everybody party will have that when they disagree with an AEO designation.

I also think Mr. Freedman made our point for us and it's difficult to understand why we're here. One, he's attempting to create a whole new process for, as your Honor knows, is essentially the AEO process. So rather than have to take their words for it or give them the benefit of the doubt or trust them, it should just be memorialized the way we propose.

And related to that, he agrees that the medical record would be AEO, that security would be AEO. So he here has admitted that there shouldn't really be a dispute over the text of categories we've been discussing today.

My next point --

THE COURT: So, Ms. Governski, I take it that you would not -- it would satisfy your concerns for there to be a protective order in place that has a category that is a claim of AEO, but that if you don't come to the Court within a certain period of time and you don't justify why there is an incremental unacceptable harm in disclosure to the -- to the

parties themselves, would lose that claim of AEO. Am I correct? That would satisfy your concerns?

MS. GOVERNSKI: No, I don't think that that would satisfy my concerns, your Honor. First of all, I've never -- most of the cases, respectfully, that I've done set it up this way, where you can -- right, designated as AEO, meet and confer. If they want to de-designate it, they can de-designate it. That is the typical process that I -- that is common in my practice.

I fear that doing it this new way, especially on the fly without actually seeing the language or how it would work, because, again, we were never proposed with this option during the conferral process, I fear that this will just create the same challenges and problems we had with what was in the model protective order, which is it would make us have to come over and over to the Court in a piecemeal *ad hoc* way, as opposed to at a point when de-designation makes sense. And I would --

THE COURT: What it does do is it protects against the promiscuous use of an AEO category; requires you to really think about it and to think about it after a meet-and-confer.

MS. GOVERNSKI: But I think it places a really unfair disproportionate burden on third parties, I really do. I think with the type of materials and individuals we're dealing with, they should be entitled -- they are third parties here. The rules try to prohibit the additional burdens on third parties.

The burden should be on the parties, if they want to de-designate third-party materials, to go to the Court and not make the dozens and dozens of third parties who are going to be implicated here run to the Court. I've never seen something like that and it doesn't feel consistent with the idea of reducing burden to third parties.

I want to be mindful of the time, so I'm trying to be very quick.

Mr. Freedman said that security is "not even remotely relevant." Well, if that's his position, then he should withdraw the third-party subpoena he served on a third-party security firm that asks for all documents and communications concerning Lively and Reynolds, and to Lively and Reynolds. This is a firm hired for their personal security; and so it's difficult for me to understand how we can be claiming that this is a fictitious concern and consistent with the third-party subpoena that they have served.

Two more very quick points.

One is, in their opposition -- it really wasn't an opposition, it was criticizing, casting aspersions, which I won't go into. And then it was a single paragraph that amounted to claiming that Ms. Lively had no privacy interest because she has chosen to defend herself and speak out against claims of sexual harassment.

I respectfully suggest, your Honor, that we are

dubious of his claim that "no doubt we will be reasonable," if their starting position is that a woman who speaks out against sexual harassment is entitled to no (indiscernible).

THE COURT: I'm going to assume that everybody is going to be reasonable in this case.

MS. GOVERNSKI: We would hope so, your Honor.

Finally --

THE COURT: It's my assumption for you, as well as for Mr. Freedman. Go ahead.

MS. GOVERNSKI: Well, I can commit to that, your Honor.

And finally, my last point is Mr. Freedman started his argument with saying that we are asking to be treated differently. And he multiple times — I counted at least twice — he said that AEO provisions are highly unusual.

Well, I would suggest to your Honor that they are not highly unusual; a significant number of cases include them. And I would note, your Honor, that Mr. Freedman himself has used an AEO designation in his defense of Mr. Tarantino in a case in California where they included an AEO provision specifically for any information that there is a good cause or a compelling reason why it should not be part of the public record of this case. Or, I'm sorry, that it's disclosure which to another party or nonparty would create significant risk of serious harms that could not be avoided by less restrictive

means. So we would proffer that not only is this not unusual in many cases, it appears not to be unusual to Mr. Freedman either.

THE COURT: Read that language to me again. Significant risk.

MS. GOVERNSKI: He said -- let me pull up the exact language here to read to you.

Highly confidential, attorney eyes only, extremely sensitive confidential information or items, disclosure of which to another party or nonparty would create substantial risk of serious harm that could not be avoided by less restrictive means. This was the *Miramax v. Tarantino* case in the Central District of California, 21-CV-08979.

I'm happy to answer more questions, otherwise I'll cede.

THE COURT: Anybody else wish to be heard on either side? Just identify yourself and speak, otherwise the Court will take this under submission.

MR. FREEDMAN: Yes, your Honor, briefly.

Mr. Freedman.

THE COURT: Okay.

MR. FREEDMAN: Just to quickly address the *Tarantino* matter. The *Tarantino* matter involved actual trade secrets. It involved actual screenplay pages from *Pulp Fiction*. And it was a highly -- very different situation.

And as the Court knows, these matters of attorneys'-eyes-only provisions are typical, but they are typical in trade secret cases, not cases like these.

And I think it's important that the Court understand that this is a case where no one has any intention of beating up or repeating or somehow harming Ms. Lively in any way as to her allegations. In fact, she filed 138-page amended complaint with nearly 500 paragraphs where she detailed the sexual harassment claims and put that out there. This is a case about -- and quite frankly, we've seen a lot of these, where my clients have been adjudicated as guilty right when the case was filed. And my clients have a right to defend themselves. They have a right to tell the truth. They have a right to transparency. That is not in any way abusing the victim, your Honor.

All we're trying to do in this particular case is agree to the model protective order which we think completely protects the parties and it places the burden on the party who's going to designate something as attorneys' eyes only or it wants greater protection. It forces them to go to court. And it's a way of stopping what's going to inevitably happen in this case, where everything is going to be stamped as attorneys' eyes only. And the burden should be on that party that takes that kind of extreme position for whatever reason they do.

And frankly, we think the model protective order is pretty good. I mean, it's actually a really well-thought-out, well-protected document.

Thank you very much for your time.

THE COURT: Thank you, Mr. Freedman.

I do think that the model was well thought out. The question of whether it's appropriate for this case is something that I'll take under submission and I'll give you my views soon.

I will end with an observation that I made during the course of this proceeding just so that there's no misunderstanding. The reason why we're talking about protective orders now is that we are in the discovery phase. And in *Seattle Times v. Rinehart*, the Supreme Court made it quite clear that courts are encouraged to use protective orders to facilitate the provision of information from one side to another, which in the discovery phase of a case is intended to be a private exercise; it doesn't take place in open court itself.

This is a case as to which there has been a lot of public attention. And there should be no confusion that with respect to anything that's filed in court or that takes place in court, there is a presumption of public access. The Second Circuit has been quite vehement about that, has been quite strong about that, and the Court is strong about that in terms

of protecting the rights of the public to know how the court is being used. So you all are on notice of that. And whatever I decide with respect to the protective order will not affect the way in which documents are used in court proceedings. There will have to be a separate application with respect to that.

That concludes the proceeding. I'll take it under submission.

Thank you all for excellent presentations.

* * *