

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA
STATE UNIVERSITY, and

THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

**DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA'S
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION AND BRIEF IN SUPPORT**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), ("Defendants"), respectfully move the Court for entry of a temporary restraining order for such period of time until the Court rules on Defendants' Motion for Protective Order filed August 30, 2017 [Doc. 156] and/or enters a preliminary injunction requiring all parties to maintain confidentiality of Defendants' settlement agreement with the United States of America ("USA"). In support hereof, Defendants submit the following:

1. Defendants filed a Motion for Entry of Protective Order on August 30, 2017 [Doc. 156].
2. Defendants executed a settlement agreement with Plaintiff USA on August 30, 2017.
3. On August 30, 2017, Defendants had a telephone conversation with Plaintiff USA to inquire about Plaintiff USA's position on maintaining confidentiality of the settlement agreement until the Court issued a ruling on Defendant's Motion for Protective Order.
4. On August 30, 2017, Defendants had a meet and confer telephone conference with Plaintiff USA, during which Plaintiff USA communicated their position that they would release the settlement agreement per any media request.
5. Plaintiff USA's position underscores the need for a temporary restraining order during the pendency of Defendants' Motion for Protective Order, as it is Defendants' belief that Plaintiff USA will release the settlement agreement in its entirety prior to a ruling from the Court on Defendant's Motion for Protective Order, regardless of Defendants' pending Motion.

ARGUMENTS AND AUTHORITIES

I. A Temporary Restraining Order and Preliminary Injunction Are Necessary to Protect Defendants From Irreparable Harm Pending a Ruling on Defendants' Motion for Protective Order

Defendants request that the Court, through a temporary restraining order followed by a preliminary injunction, enjoin all parties from the release of the settlement agreement reached between Plaintiff and Defendants, or any details of the agreement pending the Court's ruling on Defendants' Motion for Protective Order. Absent such relief, the Defendants' ability to receive a fair trial from an untainted jury pool may be irreparably harmed.¹

A temporary restraining order is designed to preserve the relative positions of the parties and prevent irreparable injury until such time as the Court may determine a [parties'] motion for temporary injunction. *See Granny Goose Foods, Inc. v. Int'l Bhd, of Teamsters*, 415 U.S. 423, 429 (1974). A preliminary injunction serves the same purpose pending outcome of the dispute. *See Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986).

The standards to be applied to temporary restraining orders are almost identical to the standards applied to temporary injunctions. *See Smith v. Soil*

¹ Defendants have no objection to disclosing the Settlement Agreement to Plaintiff/Intervenor (Tudor), if Plaintiff/Intervenor will agree to maintain its confidentiality, and be bound by the confidentiality provisions set forth in the Settlement Agreement.

Conservation Serv., 563 F. Supp. 843, 844 (W.D. Okla. 1982); 43 C.J.S. *Injunctions* §17 at 782-784. To obtain a temporary restraining order and preliminary injunction, Defendants must, and herein do, show: (1) they have a substantial likelihood of prevailing on the merits; (2) they will suffer irreparable harm unless the restraining order or injunction is issued; (3) the threatened injury to Defendants outweighs the harm the restraining order or injunction may cause Plaintiff USA; and (4) the order, if issued, would not be adverse to the public interest. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1246 (10th Cir. 2001); 43 C.J.S. *Injunctions* § 17.

A. Defendants Have Substantial Likelihood of Success on the Merits

To obtain a preliminary injunction, the movant need not prove positively that it will prevail on the merits of its claims. In *Atchison, T. and S. F. Ry. Co. v. Lennen*, the court explained:

It is not necessary that [defendants] show positively that they will prevail on the merits before a preliminary injunction may be granted. As this court stated in *Valdez v. Applegate*, 616 F.2d 570, 572 (10th Cir. 1980), “(t)he determination of a motion for a preliminary injunction and a decision on the merits are different.” It is only necessary that [defendants] establish a reasonable probability of success, and not an “overwhelming” likelihood of success, in order for a preliminary injunction to issue. *Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir. 1980).

640 F.2d 255, 261 (10th Cir. 1981).

Here, there is a reasonable probability that Defendants will prevail in their quest to seek a Protective Order. There is a reasonable inference that publicity surrounding any settlement agreement, or the terms contained therein, will cause irreparable harm to the potential jury pool. When weighed against the dubious benefits of releasing a settlement agreement's terms to the public or media prior to the parties' trial of the matter, confidentiality better serves the judicial interest of testing the claims and defenses before an unbiased jury.

B. Defendants Will Suffer Irreparable Harm without an Injunction

The Tenth Circuit has recognized that “the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Greater Yellowstone Coalition v. Flowers*, 321 F.3d 1250, 1260 (10th Cir. 2003). Defendants are the only party in the agreement that is proceeding to trial on the merits with Plaintiff/Intervenor (“Tudor”). Therefore, in the interest of fairness and justice, Defendants should be allowed to seat an unbiased and untainted jury. Should Plaintiff USA decide to distribute the agreement or its terms, potential jurors may be given the impression that Defendant accepts liability, which Defendants clearly do not.

C. No Party Will Be Harmed by a Temporary Restraining Order or Preliminary Injunction

By contrast, neither Plaintiff nor Plaintiff/Intervenor can assert any measurable harm by the enforcement of confidentiality until such time as the Court rules on Defendants' Motion for Protective Order. Plaintiff USA's ostensible motive for the release and distribution of the agreement is that they are bound to release the details of the settlement pursuant to statute. However, as explained in detail in Defendant's Motion for Protective Order, Plaintiff USA is ignoring the exceptions to the statute. Plaintiff USA and Plaintiff/Intervenor will suffer no irreparable harm, or indeed any harm whatever, by waiting for the Court to rule on Defendants' Motion. Rather if the parties' relative positions are simply preserved, the interest of impartial justice is more readily attained. The balance of hardships decidedly favors Defendants if the restraining order is not entered.

D. The Public Interest is Served by the Issuance of an Injunction

Finally, the public interest in resolving this dispute without undermining the parties' right to a fair trial by an impartial jury is substantial. This can only be accomplished through the enjoining of the parties discussing or disclosing the agreement or its details pending this Court's ruling on Defendants' Motion. If Plaintiff USA is allowed to distribute

or disclose the agreement and/or its details, Defendants will suffer greatly by trying to defend their position in front of a tainted jury pool.

CONCLUSION

Plaintiff USA's position underscores the need for entry of a temporary restraining order for such period of time until the Court rules upon Defendants' Motion for Protective Order, as it is Defendants' belief (based on counsel for USA's correspondence and communications) that Plaintiff USA will release the settlement agreement, prior to the Court having the opportunity to rule upon Defendants' pending Motion for Protective Order.

In the alternative, Defendants respectfully request an expedited ruling upon Defendants' Motion for Protective Order, and an Order to maintain the confidentiality pending the Court's ruling.

WHEREFORE, Defendants respectfully request that their Motion for Temporary Restraining Order and Preliminary Injunction be granted and Plaintiff USA be prohibited from releasing the settlement agreement, or any details regarding the settlement agreement, until the Court rules upon Defendants' Motion for Protective Order. Defendants further request an Order requiring all parties to maintain confidentiality of Defendants' settlement agreement with the United States of America ("USA") until further ruling from this Court.

Respectfully submitted,

/s/ Timothy M. Bunson

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2017, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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