

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

LUCILLE RUBIN,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv1657 (PCD)
	:
T. DONALD HIRSCHFELD,	:
HIRSCHFELD MANAGEMENT, INC.,	:
and GINETTE S. OWINGS,	:
Defendants.	:

**RULING ON DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

Defendants move for a protective order to prevent defendant T. Donald Hirschfeld's ("Hirschfeld") appearance at a deposition noticed for October 9, 2001 but stayed pending this ruling.

The motion is denied.

**I. BACKGROUND**

Defendants allege that plaintiff has deposed Hirschfeld for over seven hours in two separate sessions and now plaintiff seeks a third session. On August 31, 2001, defendants served their motion for judgment on the pleadings on the plaintiff. On September 5, 2001, plaintiff deposed Hirschfeld for a full day and asked a number of questions as to his domicile. On September 11, 2001, a second deposition was adjourned prematurely because of the terrorist attack on the World Trade Center. Plaintiff alleges that, had he completed the deposition, he would not need to further depose Hirschfeld to respond to the pending motion for judgment on the pleadings.

Plaintiff alleged in his complaint that Hirschfeld is domiciled in Connecticut. Defendants responded that Hirschfeld is domiciled in Florida, as is plaintiff, thus a motion for judgment on the

pleadings is forthcoming contesting subject matter jurisdiction for lack of diversity of citizenship.

Plaintiff indicates that a motion to compel discovery is also forthcoming and that defendants have until October 9, 2001 to respond to that motion, pursuant to the Supplemental Order.

## II. DISCUSSION

A protective order may issue on good cause shown by the moving party. FED. R. CIV. P. 26(c); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 789 (1st Cir.1988). Rule 26(c), however, “is not a blanket authorization for the court to prohibit disclosure of information whenever it deems it advisable to do so, but is rather a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court’s processes.” *Bridge C.A.T. Scan Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir.1983).

Defendants have not established good cause for the granting of a protective order. They argue that the documents and testimony produced suffice to address the domicile issue on which they move for judgment on the pleadings. Defendants further argue that the pendency of both the motion to compel and the motion for judgment on the pleadings support issuance of a protective order.<sup>1</sup> Plaintiff responds that defendants have not been cooperative in discovery, as evidenced by his motion to compel, and that more discovery is needed to address the domicile issue.

Defendants have failed to specify why plaintiff should not be able to depose Hirschfeld, other than their opinion that no more discovery is needed and that further discovery would be duplicative.

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<sup>1</sup> Pending motions are not a part of the calculus in determining whether a movant has satisfied good cause and will not be considered. The moving party must present particular facts of duplicative discovery, not hypotheticals. *See Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16, 101 S. Ct. 2193, 68 L. Ed. 2d 693 (1981).

*See* FED. R. CIV. P. 26(b)(2). To satisfy the good cause showing, defendants must make “a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.” *Gulf Oil Co.*, 452 U.S. at 102 n.16. Defendants cite plaintiff’s failure to specify what more information is needed through discovery as a basis for granting the order. No such burden is imposed on a nonmoving party in disproving good cause. Nor have defendants established that a protective order is required “to protect [Hirschfeld] . . . from annoyance, embarrassment, oppression, or undue burden or expense.” *Thomas v. IBM*, 48 F.3d 478, 482 (10th Cir.1995). Defendants, therefore, have not established good cause for a protective order.

### III. CONCLUSION

Defendants’ motion for a protective order (Doc. 34) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, October \_\_, 2001.

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Peter C. Dorsey  
Senior United States District Court Judge