

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	Δ COURT USE ONLYΔ
CANDY A. CAMPBELL, Plaintiff, v. BJORN K. BORGEN, Defendant.	Case Number 09 CV 0591 Courtroom 3
Attorneys for Defendant: G.W. MERRICK & ASSOCIATES, LLC Glenn W. Merrick, No. 10042 Joseph T. Bernstein, No. 37753 Suite 912, 5445 DTC Parkway Greenwood Village, Colorado 80111 (303) 831-9400 (303) 771-5803 <i>fax</i> gwm@gwmerrick.com jtb@gwmerrick.com	
MOTION TO SEAL DEFENDANT’S “MOTION TO AMEND CASE MANAGEMENT ORDER AND FOR LEAVE TO ASSERT ADDITIONAL COUNTERCLAIMS AND AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS” AND RELATED FILINGS AND ORDERS	

Pursuant to C.R.C.P. 121 § 1-5, Defendant/Counterclaim-Plaintiff, Bjorn K. Borgen (“Borgen”), through his undersigned counsel, G.W. MERRICK & ASSOCIATES, LLC, respectfully moves the Court for entry of an Order limiting public access to: (i) Motion to Amend Case Management Order and for Leave to Assert Additional Counterclaims (the “Motion”); (ii) Amended Answer, Affirmative Defenses and Counterclaims (“Amended Answer”), attached to the Motion as Exhibit A; (iii) any responsive filings, briefs and memoranda related to the Motion and Amended Answer; and, (iv) any Orders of the Court subsequently issued which relate to the Motion and Amended Answer. In support of this request, Borgen advises the Court as follows:

1. Certification Pursuant to C.R.C.P. 121. The undersigned certifies pursuant to C.R.C.P. 121 § 1-15(8) that he conferred with Plaintiff prior to filing the instant Motion. Plaintiff has responded that she is opposed to the relief requested herein.

2. C.R.C.P. 121 § 1-5 authorizes the Court to limit access to court files upon motion by any party and upon a showing that the harm to the privacy of a person in interest outweighs the public interest.

3. As set forth in more detail in the Motion and appended Amended Answer, Plaintiff has published to the internet highly false, defamatory and profoundly injurious allegation and matters respecting Borgen.

4. Colorado courts have recognized that potentially defamatory material is among that which can and should be restricted from public access, because the harm caused by potentially defamatory material outweighs the public's interest in such material. *Anderson v. Home Ins. Co.*, 924 P.2d 1123, 1127 (Colo. App. 1996) (“Generally, under the common law, a heightened expectation of privacy or confidentiality in court records has been found to exist [where] ... potentially defamatory material ... may be implicated”); *see also Daines v. Harrison*, 838 F.Supp. 1406, 1409 (D. Colo. 1993).

5. Borgen has a substantial interest in ensuring that the defamatory material published by Plaintiff is filed under seal because of the enormous and incalculable injury that could result to his reputation and privacy if the information remains accessible to the public. Conversely, the public has no interest in access to untrue, misleading and defamatory material about Borgen.

6. Accordingly, the potential harm to Borgen outweighs the public interest and Borgen's Motion and Amended Answer, all related filings, including any Response and Reply briefs and memoranda related to the Motion and Reply to the Counterclaims contained in the Amended Answer, and any Orders issued by the Court related to the Motion and Amended Answer, must be filed under seal.

For the foregoing reasons, Borgen respectfully requests entry of an Order limiting public access to: (i) the Motion to Amend Case Management Order and for Leave to Assert Additional Counterclaims; (ii) Amended Answer, Affirmative Defenses and Counterclaims (iii) any responsive filings, briefs and memoranda related to the Motion and Amended Answer; and, (iv) any Orders of the Court subsequently issued which relate to the Motion and Amended Answer. A proposed Order is filed herewith for the consideration and convenience of the Court.

Dated: February 23, 2010.

G.W. MERRICK & ASSOCIATES, LLC

By: /s/ Glenn W. Merrick
Glenn W. Merrick, No. 10042

Attorneys for Bjorn K. Borgen

CERTIFICATE OF SERVICE

The undersigned certifies that on February 23, 2010, the foregoing **MOTION TO SEAL DEFENDANT'S "MOTION TO AMEND CASE MANAGEMENT ORDER AND FOR LEAVE TO ASSERT ADDITIONAL COUNTERCLAIMS AND AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS" AND RELATED FILINGS AND ORDERS** was served upon Plaintiff via e-mail transmission and U.S. mail, postage prepaid as follows:

Candy Campbell
1245 Eudora
Denver, Colorado 80220
candy@coloradowomen.org

/s/ Dyanna Spicher

In accordance with C.R.C.P. 121 ' 1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.