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|  | Plaintiff(s) | Business and Consumer Court | |
|  |  | County: Cumberland | |
| V. |  | Location (Town): Portland | |
|  |  | Docket No.: |  |
|  | Defendant(s) |  | |
|  |  |  | |

**CONFIDENTIALITY ORDER**

**[if by consent]** The parties to this Consent Confidentiality Order have agreed to the terms of this Order; accordingly, it is ORDERED:

**[if not fully by consent]**  A party to this action has moved that the Court enter a confidentiality order. The Court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the Court. Accordingly, it is ORDERED:

(**1) Scope.** All documents produced in the course of discovery, all responses to discovery requests, all deposition testimony and exhibits, and other materials which may be subject to restrictions on disclosure for good cause and information derived directly therefrom (hereinafter collectively “documents”), shall be subject to this Order concerning confidential information as set forth below. This Order is subject to the Maine Rules of Civil Procedure on matters of procedure and calculation of time periods.

(**2) Form and Timing of Designation.** A party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words “**Confidential – Subject to Protective Order**” on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the **Confidential – Subject to Protective Order** designation. Documents shall be designated **Confidential – Subject to Protective Order** prior to or at the time of the production or disclosure of the documents **[optional**: except for documents produced for inspection under the “Reading Room” provisions set forth in paragraph 4 below**]**. The designation “**Confidential – Subject to Protective Order**” does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

(**3) Documents Which May be Designated Confidential – Subject to Protective Order.** Any party may designate documents as **Confidential – Subject to Protective Order** but only after review of the documents by an attorney or a party appearing *pro se* who has in good faith determined that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, trade secrets, personnel records, or commercial information. The designation shall be made subject to the standards of Rule 11 and the sanctions of Rule 37 of the Maine Rules of Civil Procedure. Information or documents that are available in the public sector may not be designated as **Confidential – Subject to Protective Order**.

(**4) [This Reading Room paragraph may be appropriate only in cases involving extensive documents] Reading Room.** In order to facilitate timely disclosure of a large number of documents that may contain confidential documents, but that have not yet been reviewed and designated **Confidential – Subject to Protective Order**, the following “Reading Room” procedure may be used at the election of the producing party.

**(a) Reading Room Review.** Documents may be produced for review at a party’s facility or other physical or electronic controlled location (“Reading Room”) prior to designation as **Confidential – Subject to Protective Order**. After review of the documents, the party seeking discovery may specify those for which copies are requested. If the producing party elects to designate any documents **Confidential – Subject to Protective Order**, the copies shall be so marked prior to further production.

**(b) No Waiver of Confidentiality.** The production of documents for review within the Reading Room shall not be deemed a waiver of any claim of confidentiality, so long as the reviewing parties are advised that pursuant to this Order the Reading Room may contain confidential documents that have not yet been designated **Confidential – Subject to Protective Order**.

**(c) Treatment of Produced Documents as Confidential – Subject to Protective Order.** The reviewing party shall treat all documents reviewed in the Reading Room as designated **Confidential – Subject to Protective Order** at the time reviewed. Documents copied and produced from the Reading Room that are not designated **Confidential – Subject to Protective Order** are not subject to this Order.

**(d) Production of Documents.** Unless otherwise agreed or ordered, copies of Reading Room documents shall be produced within thirty days after the request for copies is made. Production may be made by providing electronic copies of the documents so long as copies reasonably as legible as the originals may be produced therefrom.

(**5) Depositions.** Deposition testimony shall be deemed **Confidential – Subject to Protective Order** only if designated as such. Such designation shall be specific as to the portions to be designated **Confidential – Subject to Protective Order**. Depositions, in whole or in part, shall be designated on the record as **Confidential – Subject to Protective Order** at the time of the deposition. Deposition testimony so designated shall remain **Confidential – Subject to Protective Order** until seven days after delivery of the transcript by the court reporter. Within seven days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties of record as to specific portions of the transcript to be designated **Confidential – Subject to Protective Order**. Thereafter, those portions so designated shall be protected as **Confidential – Subject to Protective Order. Challenges to a designation of Confidential – Subject to Protective Order shall be resolved pursuant to paragraph 9, below.** The failure to serve a Notice of Designation shall waive the **Confidential – Subject to Protective Order** designation made on the record of the deposition. If deposition excerpts have not been designated as confidential pursuant to this order, they are not to be treated as non-public documents when filed with the court.

**(6) Protection of Confidential Material.**

**(a) General Protections.** Documents designated **Confidential – Subject to Protective Order** under this Order shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof. **[INCLUDE IN PUTATIVE CLASS ACTION CASE:** The parties shall not disclose documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified.**]**

**(b) Limited Third-Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any **Confidential – Subject to Protective Order** documents to any third person or entity except as set forth in subparagraphs (1) - (6). Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated **Confidential – Subject to Protective Order**:

**(1) Counsel.** Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action;

**(2) Parties.** Parties and employees of a party to this Order **[OPTIONAL:** If the CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents contain trade secrets or other competitive, personnel or confidential information and disclosure to another party could be harmful to the disclosing party, then add language: but only to the extent counsel determines that the specifically named individual party or employee’s assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed];

**(3) Court Reporters and Recorders.** Court reporters and recorders engaged for depositions;

**(4) Contractors.** Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents but only after each such person has completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

**(5)** **Consultants and Experts.** Consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound; and

**(6)** **Others by Consent.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

**(c) Control of Documents.** Counsel for the parties shall make reasonable efforts to prevent unauthorized disclosure of documents designated as **Confidential – Subject to Protective Order** pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of eight years from the date this litigation is terminated either through settlement or final judgment.

**(d)** **Copies.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as “copies”) of documents designated as **Confidential – Subject to Protective Order** under this Order, or any individual portion of such a document, shall be affixed with the designation “**Confidential – Subject to Protective Order**” if the words do not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases or lists of documents provided these indices, electronic databases or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

(**7) Filing of** **Documents Designated** **Confidential – Subject to Protective Order**. Before any document marked as **Confidential – Subject to Protective Order** is filed with the court, the party filing the document shall make reasonable efforts to ensure that the document is protected from public disclosure or has been redacted to remove nonessential confidential information. The filing party shall first consult with the party who originally designated the document as **Confidential – Subject to Protective Order** to determine whether, with the consent of that party, a redacted document may be filed with the Court as a public document. Where complete agreement is not reached, the party filing a pleading that includes any document or information from a document designated as **Confidential – Subject to Protective Order**, shall file both a redacted “public” version and unredacted “non-public” version of the pleading and documents pursuant to the BCD Procedural Rules. The electronic filing shall be served upon all parties in electronic format in accordance with Rules 33-38 of the Maine Rules of Electronic Court Systems.

**(8) No Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an order providing such special protection.

**(9) Challenges by a Party to Designation as Confidential or Redactions.** Any **Confidential – Subject to Protective Order** designation is subject to challenge by any party or non-party. The party or non-party may challenge the designation by requesting a M.R. Civ. P. 26(g) conference.

**(10) Action by the Court.** Nothing in this Order or any action or agreement of a party under this Order limits the Court’s power to make orders concerning the disclosure of documents produced in discovery or at trial.

**(11) Use of Confidential Documents or Information at Trial.** A party which intends to present or which anticipates that another party may present at trial **Confidential – Subject to Protective Order** documents or information derived therefrom shall identify the issue, not the information, in the Joint Final Pretrial Statement. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

**(12) Obligations on Conclusion of Litigation.**

**(a) Order Remains in Effect.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

**(b) Return of Confidential – Subject to Protective Order Documents.** Within thirty days after dismissal or entry of final judgment not subject to further appeal, all documents treated as **Confidential – Subject to Protective Order** under this Order, including copies as defined in ¶ 6(d), shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated **Confidential – Subject to Protective Order**, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be **Confidential – Subject to Protective Order** under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use **Confidential – Subject to Protective Order** documents.

**(13)** **Order Subject to Modification.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter.

**(14) No Prior Judicial Determination.**  This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated **Confidential – Subject to Protective Order** by counsel or the parties is subject to protection under Rule 26(c) of the Maine Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

**(15) Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

Pursuant to M.R. Civ. P. 79(a), the Clerks shall incorporate this order into the docket by reference.

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| --- | --- | --- | --- |
| Date (*mm/dd/yyyy*): |  | ► |  |
|  |  |  | Judge/Justice, Business and Consumer Court |

**[Delete signature blocks if not wholly by consent]**

**WE SO MOVE**

**and agree to abide by the**

**terms of this Order**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Date (*mm/dd/yyyy*): |  | ► |  | |
|  |  |  | Signature | |
|  |  |  |  | |
|  |  |  |  | |
|  | | | Printed Name and Bar Number (if applicable) | |
|  |  |  |  | |
|  |  |  | Counsel for: |  |

**WE SO MOVE/CONSENT**

**and agree to abide by the**

**terms of this Order**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Date (*mm/dd/yyyy*): |  | ► |  | |
|  |  |  | Signature | |
|  |  |  |  | |
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|  | | | Printed Name and Bar Number (if applicable) | |
|  |  |  |  | |
|  |  |  | Counsel for: |  |

**ATTACHMENT A**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Plaintiff(s) | Business and Consumer Court | |
|  |  | County: Cumberland | |
| V. |  | Location (Town): Portland | |
|  |  | Docket No.: |  |
|  | Defendant(s) |  | |
|  |  |  | |

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Maine Superior Court in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use documents designated **Confidential – Subject to Protective Order** in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly there from to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name:

Job Title:

Employer:

Business Address:

|  |  |  |  |
| --- | --- | --- | --- |
| Date (*mm/dd/yyyy*): |  | ► |  |
|  |  |  | Signature |