

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KIMBERLY A. HIVELY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:14-cv-01791-JD-MGG
)	
IVY TECH COMMUNITY COLLEGE,)	
)	
Defendant.)	

JOINT STIPULATED PROTECTIVE ORDER

The parties to this action stipulate and agree, and subject to the Court’s approval, that the following Joint Stipulated Protective Order be entered in this action:

Recitals

1. The Parties anticipate that this case will involve the production of certain private information regarding parties and non-parties. The Parties reasonably believe that the entry of this Joint Stipulated Protective Order is necessary and proper to prevent the harm that would result from the unnecessary public dissemination of private information relating to parties and non-parties. The specific categories of information to be protected as well as each basis for protection are detailed below.

2. The Parties agree that this Joint Stipulated Protective Order is necessary to comply with the Seventh Circuit’s decision in *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943 (7th Cir. 1999), and this Court’s application of the *Citizens* decision.

Agreement

3. The Parties stipulate and agree as follows:

A. Prior to trial, this Protective Order governs the handling of all documents, records, tangible materials, testimony, responses to discovery and other information produced, served, disclosed or filed, whether voluntarily or through discovery or other proceedings including, without limitation, all copies, excerpts, and summaries (collectively “Material”) in connection with this action.

B. The provisions of this Protective Order shall apply to (1) the Parties to this action, (2) court reporters and court personnel, (3) non-parties who produce Materials, and (4) any person who agrees to be bound by the terms of this Protective Order by signing the “Agreement to Be Bound By Court’s Protective Order.” (*See* Exhibit 1: Agreement).

C. This Order will be replaced and superseded by the pretrial order regarding use of materials at trial. As to Material produced in discovery but not used at trial, this Order will remain in force.

D. The Court has continuing jurisdiction over this Order and may modify it upon motion of any party, non-party or sua sponte.

Definitions

4. As used herein, the meanings of the following terms are defined:

A. “Designator” means one who provides, serves, discloses or files any Non-Public Material that has been designated as “Confidential” in connection with this action.

B. “Person” means any individual who has agreed to be bound by this Order by signing the “Agreement to Be Bound by Court’s Protective Order.” A copy of this Agreement is attached as Exhibit 1.

C. “Confidential” means non-public medical, financial, tax, or employment information that is by federal or state law or common practice, confidential or non-public.

Categories of Materials Protected

5. The Parties have an interest in keeping documents or Materials (or portions thereof) confidential if such Materials contain fall within the specific, demarcated categories of materials identified below that would needlessly subject non-parties to the annoyance, embarrassment, and undue burden of having certain private information made public. The

specific category or categories of “Confidential Materials” are described in the subparagraphs below along with an explanation regarding why the Parties have an interest in these categories of Material:

A. “Confidential Personal Information” means personal health, financial, or employment-related information that is not publicly available and including but not limited to the following: social security numbers, results of drug testing, accommodations for disabilities, medical information, or other information of a personal or confidential nature. This definition is not intended to include an employee’s job title, job description, hiring date, or work assignment, location or other substantially similar documents which could not reasonably be foreseen to be used to annoy or embarrass a non-party or submit a non-party to the possibility of identity theft. Moreover, the definition of Confidential Personal Information is not intended to encompass entire documents. Maintaining the confidentiality of Confidential Personal Information is important as such information could be used to annoy or embarrass the nonparty or submit a nonparty to the possibility of identity theft. Further, Defendant has a “valid interest in the privacy of nonparty personnel files” and it is within the district court's power to grant protection to such documents. *McGee v. City of Chicago*, Case No. 04 C 6352, 2005 U.S. Dist. LEXIS 30925, *7 (N.D. Ill. 2005) (“Public disclosure of private information contained in personnel files” was prohibited due to risk of “unnecessary annoyance or embarrassment” and because it would “unfairly and gratuitously invade their privacy.”); *Smith v. City of Chicago*, Case No. 04 C 2710, 2005 U.S. Dist. LEXIS 26454, *6 (N.D. Ill. Oct. 31, 2005); *Cory v. Aztec Steel Bldg., Inc.*, 225 F.R.D. 667, 673 (D. Kan. 2005) (same); Fed. R. Civ. P. 26 (Courts may issue “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”).

6. In the event that any documents, Materials, testimony or other matters produced during the course of discovery are designated as “Confidential” in accordance with this Order, such documents, Materials, testimony or other matters, and the information therein, shall be maintained in confidence and shall be subject to the remaining provisions of this Order.

Designation Of Materials

7. The Material within the definition of Confidential Personal Information and so designated as confidential shall be deemed “Confidential Material” subject to this Protective Order. If Materials or documents also contain information, the Parties redact only portions of the

Materials that contain confidential information unless redaction cannot reasonably be done in a way to protect the Confidential Information from public disclosure.

8. The restrictions set forth in this Protective Order shall not apply to information or tangible items which at or prior to disclosure in this action have been placed in the public domain by the Producing Party or which, after disclosure, come within public knowledge, in substantially the same form in which it is being produced, other than by act or omission of the one receiving the Material or its agents, consultants, or attorneys.

Restrictions on Disclosure of Confidential Materials

9. Subject to Paragraph 16 below, any and all documents, Materials, testimony or other matters developed during the course of discovery and designated as “Confidential” shall be used solely for the purpose of this lawsuit.

10. When any “Confidential Material” is ultimately filed with this Court, it shall be done in accordance with N.D. Ind. L.R. 5-3.

11. Any document designated by either party as confidential shall be marked “Confidential.”

12. Any deposition transcript, or portions thereof, containing “Confidential Material” shall be so designated and if filed with the Clerk of this Court shall be held pursuant to N.D. Ind. L.R. 5-3. Each party to this cause shall endeavor to designate those portions of deposition testimony which it deems “Confidential” at the time of the deposition, but in no event later than thirty (30) days following receipt of the transcript from the reporter. Each court reporter shall designate those portions of such deposition transcript(s) with the legend “Designated Confidential” and shall place on the cover of any such transcript of confidential information the following legend:

This transcript contains information designated confidential –Access restricted to designated persons only by Court Order.

13. Information that is designated “Confidential” may be shared only with the parties, parties' counsel and office staffs, expert witnesses or consultants solely for purposes of this litigation, agents, the Court and its personnel; and any other fact witness who may testify regarding his or her personal knowledge of the designated matter. Each individual to whom disclosure is made shall first agree to be bound by the provisions of this Protective Order prior to such proposed disclosure. In the event that a non-party witness refuses to agree to be bound by this Protective Order, the Parties will endeavor to resolve the issue amongst themselves utilizing procedures similar to those found in Local Rule 37.1.

14. The restrictions embodied in the present Protective Order shall be binding on the party to whom such Confidential Material (as designated above under Paragraph 7) is disclosed unless and until there is a showing that: (1) information which is so designated as confidential was or has become public knowledge absent a breach of the restrictions embodied herein; or (2) such information was already known to the party to whom such disclosure was made by a third party who himself has not breached any confidential relationship which may have existed or exists between such third party and the party making the disclosure; or (3) further Order of the Court.

Miscellaneous Provisions

15. Parties' Ability to Challenge Designations. The agreement of the Parties to this Protective Order shall not be construed as an agreement or admission: (1) that any Material or document designated as “Confidential” is, in fact, confidential; (2) as to the correctness or truth of any allegation made or position taken relative to any matter designated as “Confidential”; or (3) with respect to the authenticity, competency, relevance or materiality of any document or thing designated as “Confidential.” Execution and entry of this Protective Order does not preclude a party or non-party to the litigation from seeking relief from this Protective Order or

from seeking other relief or Protective Orders as may become appropriate or necessary. If a party or non-party challenges a Designator's classification of Materials as "Confidential," the party who designated the Material shall bear the burden of proof to show that the Material is entitled to protection.

16. Non-Parties. This Protective Order shall also apply to any documents and Materials that non-parties produce pursuant to Fed. R. Civ. P. 34(c) provided the Materials are designated as "Confidential" in accordance with this Protective Order.

17. Public Challenges. Any interested member of the public may also challenge particular "Confidential" designations under this Protective Order and may challenge the scope of this Order. If an interested member of the public makes such a challenge, the party who designated the Material as "Confidential" shall be allowed to oppose any such challenge. The party who designated the Materials as "Confidential" shall bear the burden of proof to show that the Material is entitled to protection.

18. Inadvertent Disclosure of Undesignated Materials. In the event that a producing party discovers that "Confidential Materials" have been inadvertently produced without being marked with the appropriate designation, the producing party may thereafter notify the receiving party or parties and require the latter to retrieve and return any unmarked or incorrectly marked Material and to substitute therefore appropriately marked Material, provided: (1) that the producing party has initially taken reasonable measures to identify and designate Confidential Material; (2) that the producing party notifies the receiving party or parties promptly after learning of such inadvertent failure; and (3) that the amount of Material as to which an assertion of inadvertent failure is made is reasonably small in amount. Upon receipt of such notification from the producing party, the receiving party or parties shall not thereafter disclose any such Material or any information contained therein to any persons who are not entitled to receive such

information as set forth above in Paragraphs 13 and 14. However, the receiving party or parties shall have no liability with respect to any prior disclosure or use of such Material which is consistent with the terms of this Order.

The inadvertent production of any privileged or otherwise protected or exempted information shall not be deemed a waiver or impairment of any claim of privilege or protection including but not limited to the attorney-client privilege, work product doctrine immunity, or the confidential nature of any such information, provided that the Producing Party shall promptly notify the receiving party and require the receiving party to retrieve and return any such Material, and counsel shall not use such information for any purpose until further order of the Court. Any analyses, memoranda or notes which were generated based upon such inadvertently-produced information shall immediately be treated in conformance with the protected nature of the information.

19. Modification. The Parties reserve the right to move the court to modify this Order should the need arise throughout the course of the discovery process. Such modification will occur only upon Order of the Court. The Court will enter a separate Order dealing with Confidential Material used at trial.

20. Use at Trial. Prior to the trial of this matter, the Parties shall confer in good faith in an effort to reach agreement concerning a joint proposal to the Court with respect to the handling of "Confidential Materials" at trial, and shall make such proposal no later than the final pre-trial conference in this case. If the Parties are unable to reach agreement on this subject, each party may make its own submission to the Court no later than the final pre-trial conference.

21. Return of Material. Within 45 days of the final conclusion of all aspects of this litigation, including any and all appeals the Parties shall identify all persons to whom designated Materials were produced (providing a copy of each executed undertaking (*see* Exhibit1) and

shall either: (1) assemble and return to the person providing information designated as “Confidential” all such Material in his or her possession; or (2) destroy all such Material in his or her possession, delivering to the person providing such information a written certificate that he or she has complied with this Order. Notwithstanding the foregoing, at the close of the case, the parties may retain a copy of Confidential Documents that were filed with the Court, used at trial, or made an exhibit to a deposition so long as such documents are held in the strictest confidence and remain subject to the provisions of this Agreement.

Dated September 20, 2017

s/Michael G. Gotsch, Sr.
Michael G. Gotsch, Sr.
United States Magistrate Judge

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IVY TECH COMMUNITY COLLEGE,)	
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AGREEMENT TO BE BOUND BY COURT’S PROTECTIVE ORDER

1. I, _____, hereby acknowledge that I am about to receive confidential information supplied by one of the parties to the above-captioned matter.

2. I have read the Joint Stipulated Protective Order governing the restricted use of Materials or information identified as “Confidential” in this litigation, a copy of which has been provided to me. I agree to be bound by the terms hereof.

3. I will not utilize any documents marked with the legend “Confidential” or any information contained therein for any purpose other than this litigation. I further affirm that I will not reveal the “Confidential” information to, nor discuss it with, anyone, except in accordance with the terms of the Joint Stipulated Protective Order.

4. At the termination of this litigation, I will return to the attorney providing the “Confidential” information to me all documents marked with the legend “Confidential” as well as any copies, summaries or abstracts of same, and documents related thereto.

Dated

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