

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-02074-WYD-STV

MASTERPIECE CAKESHOP INCORPORATED, a Colorado corporation, et al.,
Plaintiffs,

v.

AUBREY ELENIS, Director of the Colorado Civil Rights Division, in her official capacity, et al.,
Defendants.

STIPULATED PROTECTIVE ORDER

Upon a showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of Confidential Information, IT IS HEREBY ORDERED:

1. This Protective Order shall apply to all documents, materials, and information appropriately designated as Confidential as outlined herein. This includes without limitation, documents produced, answers to interrogatories, responses to requests for admission, deposition testimony, and other information or documents disclosed pursuant to the disclosure or discovery duties created by the Federal Rules of Civil Procedure.

2. “Confidential Information” means information or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c). Such information includes any non-public (a) information required to remain confidential pursuant to § 24-34-306(3), C.R.S., including by way of example: information gathered during the Colorado Civil Rights Division’s (“Division’s”) investigation of a charge of discrimination, or the efforts to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion, letters of determination, charges of discrimination, requests for information, investigative

notes, and any other document generated during the Division's investigation of a charge of discrimination or documents generated during the mediation and conciliation process; and (b) business records of Plaintiffs that reflect confidential, proprietary, and/or sensitive information.

3. "Confidential Information" does not include any information that was disclosed at a public hearing in the Office of Administrative Courts.

4. Any designation of Confidential Information must have been reviewed by an attorney who made a good faith determination that the information is entitled to protection.

5. When Confidential Information is produced or otherwise disclosed by a Party, it will be designated in the following manner:

- a. by placing or affixing on the document (in a manner that will not interfere with their legibility) the following or other appropriate notice: "Confidential."
- b. by imprinting the word "Confidential" next to or above any response to a discovery request; or
- c. with respect to transcribed testimony, whenever possible, by indicating on the record which portions of the transcript should be designated "Confidential." Alternatively, after transcription, a Party may designate portions of the transcript as Confidential provided that written notice of the designation is promptly given to all counsel of record within thirty (30) days after notice by the court reporter of the completion of the transcript.

6. Each Party shall give the other Party reasonable notice—consisting of not less than two business days—if it reasonably expects a deposition, hearing or other proceeding to include Confidential Information so that the other Party can ensure that only authorized individuals are present at those proceedings. Counsel shall redact private or personal information (e.g., Social Security numbers, medical information, etc.) prior to use.

7. Confidential Information shall be subject to the following restrictions:

a. It shall be used only for the purpose of this litigation and not for any other purpose whatsoever; and

b. It shall not be communicated or disclosed by any Party’s counsel in any manner, either directly or indirectly, to anyone except for purposes of this case and pursuant to the restrictions stated herein.

8. A Party shall not disclose Confidential Information of an opposing Party, without the consent of the designating Party or further Order of the Court, except that such information may be disclosed to:

- a. attorneys actively working on this case;
- b. persons regularly employed or associated with the attorneys actively working on the case whose assistance is required by said attorneys in the preparation for trial, at trial, or at other proceedings in this case;
- c. the Court and/or its employees (“Court Personnel”);
- d. stenographic reporters who are engaged in proceedings necessarily incident to the conduct of this action;

- e. deponents, witnesses, or potential witnesses provided all such individuals have received a copy of this Protective Order;
 - f. Persons to or from whom it is apparent, on the face of a document, that the document was previously sent or received;
 - g. Plaintiffs, solely for the purposes of and to the extent necessary for their assistance of counsel in connection with this litigation;
 - h. Employees of the Division and members of the Colorado Civil Rights Commission, solely for the purposes of and to the extent necessary for their assistance of counsel in connection with this litigation; and
 - i. other persons by written agreement of all the Parties.
9. Prior to disclosing any Confidential Information to any person listed above (other than counsel, persons employed by counsel, Court Personnel, and stenographic reporters), counsel shall provide such person with a copy of this Protective Order.

10. A Party may object to the designation of information as Confidential by giving written notice to the Party designating the disputed information. The written notice shall identify the information to which the objection is made. If the Parties cannot resolve the objection within ten (10) business days after the time the notice is received, it shall be the obligation of the Party disputing the Confidential designation to file an appropriate motion (or other submission in compliance with the Court's practice standards) requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order. If such a motion or submission is timely filed, the disputed information

shall be treated as Confidential Information under the terms of this Protective Order until the Court rules on the motion. A Party does not waive its right to challenge the designation of information as Confidential by electing not to mount a challenge promptly after the original designation is disclosed.

11. At the conclusion of this case, including completion of all possible appellate procedures, each document and all copies thereof which have been designated as Confidential shall be returned to the Party that designated it Confidential, or the Parties may elect to destroy Confidential documents at the conclusion of the time required by the rules governing attorneys for maintenance of such documents. Where the Parties agree to destroy Confidential documents, the destroying Party shall provide all Parties with an affidavit confirming the destruction.

12. In the event Confidential Information is used in any court filing or proceeding in this action, it shall not lose its Confidential status as between the parties through such use. Confidential Information and pleadings or briefs quoting or discussing Confidential Information will not be accepted for filing “under restricted access” or otherwise kept out of the public record in this action, except by court order issued upon motion of the party seeking to file the documents under restricted access. Any motion requesting leave to file documents under restricted access shall comply with the requirements of D.C.COLO.LCivR 7.2.

13. Nothing in this Protective Order shall be construed to prevent a party from using Confidential Information during depositions, during a Court hearing, or at the trial of

this matter, provided the procedures in Paragraph 6 of this Protective Order are adhered to. Additional procedures for the protection of Confidential matters at trial, if any, may be arrived at separately by the parties or otherwise determined by the Court in advance of trial.

14. The inadvertent or unintentional disclosure by the supplying party of Confidential Information, regardless of whether the material was so designated at the time of disclosure, shall not be deemed a waiver, in whole or in part, of a Party's claim of confidentiality, either as to the specific material disclosed or as to any other material relating thereto or on the same or related subject matter.

15. Nothing in this Protective Order shall prevent or restrict a producing Party's own disclosure or use of its own Confidential Information for any purpose.

16. This Protective Order may be modified by the Court at any time for good cause shown following notice to all Parties and an opportunity for them to be heard.

ORDERED this ____ day of _____, 2019.

BY THE COURT:

United States Magistrate Judge
Scott T. Varholak

STIPULATED TO AND APPROVED AS TO FORM this 5th day of February, 2019.

APPROVED:

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