

From: "[REDACTED]" >
To: "[REDACTED]" >, "[REDACTED]" >

Subject: FW: Protective Order

Date: Fri, 17 Jul 2020 18:59:49 +0000

Attachments: 2020.07.16_GM_protective_order_for_discovery_(AJN)_-_Def._edits.docx;
2020.07.16_GM_protective_order_for_discovery_(AJN)_-_Def._edits.pdf

Inline-Images: image001.jpg; image002.png; image005.jpg

[Happy to discuss a response to this if it would be useful.](#)

From: Christian Everdell <[REDACTED]>
Sent: Friday, July 17, 2020 12:11 AM
To: [REDACTED]; [REDACTED]; [REDACTED]
Cc: Mark S. Cohen <[REDACTED]>; Jeff Pagliuca <[REDACTED]>; 'Laura Menninger' <[REDACTED]>
Subject: Protective Order

[REDACTED] and [REDACTED] –

Laura Menninger tried sending the below message to you earlier this evening on behalf of defense counsel, but it seems that it has not been delivered yet due to technical problems. I am forwarding it on to you myself. Please confirm receipt.

Thanks,

Chris

Counsel:

Attached please find our proposed Protective Order, with a redline and a clean copy.

As a prefatory note, it is equally in our client's interest as much as in yours to have this matter tried before a jury of impartial peers. We have no desire to try this case in the press. Unfortunately, however, some of your prospective witnesses and their counsel have repeatedly and persistently violated Local Rule 23.1 and ethics standards pertaining to pretrial publicity. Defense witnesses should be afforded the same protections from harassment and intimidation as are government witnesses. Government witnesses should be on the same footing as both the Defendant and defense witnesses in terms of access to and use of discovery.

Regarding public filings, because each document filed in this case redacted or under seal will be subject to a press request to unseal it, we need to ensure at the outset that we only mark things as confidential that the Court (and Second Circuit) will view as such when making an unsealing determination, so we included a definition of "Confidential" consistent with the case law. *See, e.g., Brown v. Maxwell.*

A few notes to explain specific changes.

1. We have clarified treatment of non-confidential discovery materials from confidential discovery materials. We have modified the access restrictions for non-confidential materials because we did not believe them necessary or appropriate.

2. We have fine-tuned the definition of what constitutes "Confidential" consistent with prior decisions in the Second Circuit and common law privacy rights of individuals. This language has been adopted by magistrates in this Circuit for civil cases.
3. We have removed the category of "Highly Confidential." If there is a category of documents that think warrants separate treatment, we should discuss what types of evidence you believe should fall into such category or and why they merit separate treatment from "confidential information." We cannot imagine, for example, that discovery contains child pornography, which counsel will not possess in any event.
4. With respect to our client's access to the Discovery and Confidential information, your proposal would not allow any means for her to review any Confidential information because you required she review it in the presence of counsel and we are not allowed in-person visits with her. We propose that, consistent with numerous other federal pretrial detainees, the Government shall make available a laptop containing all of the Discovery (including any Confidential Information) for her to review while in custody. She would have regular access to the laptop consistent with MDC regulations.
5. We deleted language regarding designation of Confidential documents simply by virtue of their contents or a cover letter. For tracking and clarity, each document or item you believe should be designated Confidential should be marked as such, because cover letters or other indexes may be separated from their contents.
6. We allow for the party's designation to be controlling but we believe (consistent with the law) that a party who disputes the designation can seek relief from the Court.

Please let us know if our proposal is agreeable to you and we can file it with the Court as unopposed.

-Laura



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Christian Everdell

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