

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

PROTECTIVE ORDER

To expedite the flow of discovery materials, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties (as defined below as to both “Parties” and “Party”) are entitled to keep confidential which should not be generally available to the public, to ensure that only materials the Parties are entitled to keep confidential are subject to such treatment, and to ensure that the Parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of these proceedings, it is HEREBY ORDERED THAT:

I. INFORMATION SUBJECT TO THIS ORDER

This Protective Order governs all “Confidential Information” produced in this litigation, including all copies, excerpts or notes thereof whether produced by the Parties or by non-Parties. Discovery materials produced in this case may be designated as CONFIDENTIAL, as set forth in Section A below, and/or may be redacted as set forth in Section B below. Any documents derived from or containing CONFIDENTIAL documents or information must also be designated CONFIDENTIAL in accordance with the terms of this Order. All CONFIDENTIAL information shall be used only for purposes of this litigation and not for any other purpose and shall be disclosed only in accordance with the terms of this Protective Order.

A. Information Designated as Confidential

1. For purposes of this Order, “CONFIDENTIAL” information shall mean all documents, materials, items, deposition testimony or information produced for or disclosed to a receiving Party that consist of or include any of the following: (i) personally identifying information, including but not limited to contact information, addresses, phone numbers, email addresses, social security numbers, identification card numbers, driver’s license numbers, passport numbers, or other government identification numbers, and any other similar information, but excluding Financial Information (as defined in Section I.B below); (ii) medical records, including documents containing medical and/or psychological conditions, diagnoses, or treatment, communications with health care providers and their staff (including any doctor, surgeon, psychiatrist, dentist, nurse, psychologist, therapist, counselor, medical advisor, mental health provider, or specialist), and any information that would be protected under The Health Insurance Portability and Accountability Act of 1996 (“HIPPA”); and (iii) information in the nature of private journals or journal entries.

2. Any document or tangible thing consisting of or including any “CONFIDENTIAL” information may be designated as such by the producing Party by marking it “CONFIDENTIAL” prior to or at the time copies are furnished to the receiving Party. All “CONFIDENTIAL” information not reduced to documentary, tangible, or physical form, or which cannot be conveniently designated by marking it shall be designated by the producing Party informing the receiving Party of the designation in writing.

3. Information designated “CONFIDENTIAL” and information contained therein shall be available only to:

a. The Plaintiff and Defendant (collectively “Parties” and at times referred to individually as a “Party”);

b. Counsel and supporting personnel employed in or by the law firm(s) of counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks, paralegals, litigation support personnel, and third-party vendors retained by the Parties or law firm(s) to assist in connection with this litigation;

c. experts and/or consultants retained to furnish expert and/or professional services specifically for this litigation or to give testimony in connection with this litigation, including independent experts hired specifically for this litigation, and employees of such experts and consultants hired specifically for this litigation and performing work in connection with this litigation;

d. judges and court personnel; the jury and alternates for any trial of this cause; certified court reporters acting as such; and to the extent necessary to prosecute any appeals of this action, the judges and court personnel of appellate courts (under seal or with other suitable precautions determined by the Court);

e. court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary in this action, including independent legal translators retained to translate in connection with this action and independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action;

f. graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, hearing, trial, or other court proceedings in this action;

g. non-technical jury or trial consulting services;

h. mock jurors retained to prepare for trial or other court proceedings in this action;

- i. external vendors retained by counsel for purposes of this action;
- j. trial and deposition witnesses (including their attorneys) during the course of or in preparation for depositions or testimony in this lawsuit, to the extent reasonably necessary;
- k. representatives of any insurer providing a defense to any of the Parties.
- l. any person who is (i) identified on the face of the document as an author or recipient, or (ii) has been identified or designated to testify regarding a topic of the document; and
- m. any other person with the prior written consent of the producing Party or by agreement of the Parties.

4. Before disclosing documents pursuant to this Section (I)(A), and/or any information contained or reflected in the documents, designated as Confidential Information to any persons enumerated in paragraph 3 (c), (f)-(i), (k)-(l) above, Counsel must first inform each such person that the Confidential Information to be disclosed is confidential, to be held in confidence, to be used solely for the purpose of this litigation, and further, that these restrictions are imposed by a court order and obtain the person's signature on Attachment A hereto.

B. Information Subject to Redaction

5. A producing Party must redact unique identifiers pertaining to financial records, including bank account numbers, credit card numbers, usernames and passwords ("Financial Information"). Documents containing Financial Information shall be redacted but shall not be designated as CONFIDENTIAL in full solely on the grounds that they contain Financial Information.

II. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS AND REDACTIONS

1. Nothing in this Order shall prevent a receiving Party from contending that any documents or information designated as Confidential Information or redacted have been improperly designated and/or redacted. A receiving Party may at any time request that the producing Party remove or modify the Confidential Information designation or redaction with respect to any document or information contained therein.

2. A Party shall not be obligated to challenge the propriety of a designation of any category of Confidential Information, or redaction of Financial Information, at the time of production, and a failure to do so shall not preclude a subsequent challenge thereto. Any challenge to the propriety of a designation of any category of Confidential Information, or redaction of Financial Information, shall be written, shall be served on counsel for the producing Party, and shall particularly identify the documents or information that the receiving Party contends should be differently designated or unredacted. The Parties shall use their best efforts to confer to resolve promptly and informally such disputes. If an agreement cannot be reached, the receiving Party may request that the Court remove or modify a designation or redaction. The burden of demonstrating the confidential nature of any information shall at all times be and remain on the designating Party.

3. Until a determination is made by the Court, the information in issue shall be treated as having been properly designated and/or redacted and subject to the terms of this Order.

III. NONPARTY USE OF THIS PROTECTIVE ORDER

1. A non-Party producing information or material voluntarily or pursuant to a subpoena or a court order may designate such material or information as Confidential Information, or may redact Financial Information, pursuant to the terms of this Protective Order.

2. A non-Party's use of this Protective Order to protect its Confidential Information and/or Financial Information does not entitle that non-Party access to the Confidential Information and/or Financial Information produced by any Party in this case.

IV. NO WAIVER OF PRIVILEGE

1. Nothing in this Protective Order shall require production of information that a Party contends is protected from disclosure by the attorney-client privilege, the work-product immunity, or other privilege, doctrine, right, or immunity. Moreover, if information subject to a claim of attorney-client privilege, work-product immunity, or other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right, or immunity.

2. If any Party inadvertently or unintentionally produces materials protected under the attorney-client privilege, work-product immunity, or other privilege, doctrine, right, or immunity, any holder of that privilege, right, or immunity may obtain the return of those materials by notifying the recipient(s) promptly after the discovery of the inadvertent or unintentional production and providing a privilege log for the inadvertently or unintentionally produced materials. The recipient(s) shall (i) refrain from any further examination or disclosure of the claimed inadvertent or unintentional production material; (ii) if requested, promptly make a good-faith effort to return the claimed inadvertent or unintentional production material and all

copies thereof (including summaries and excerpts) to counsel for the producing Party, or destroy all such claimed inadvertent or unintentional production material (including summaries and excerpts) and all copies thereof, and certify in writing to that fact; and (iii) not use the inadvertent or unintentional production material for any purpose absent further order of the Court. Notwithstanding this provision, no person is required to delete information that may reside on the respective person's electronic back-up systems that are over-written in the normal course of business, provided such back-ups are not used to access or copy the inadvertently or unintentionally produced materials. Nothing herein shall preclude a party from moving for an order compelling production of the claimed inadvertent or unintentional production material, or requesting that the court review such inadvertent or unintentional production material in an in camera hearing to determine whether such material is subject to a claim of attorney-client privilege, attorney work product, or any other applicable privilege, or immunity.

V. PROVISIONS APPLICABLE TO ALL PROTECTED INFORMATION

1. No document or materials containing the "CONFIDENTIAL" stamp shall be copied in whole or in part without the "CONFIDENTIAL" designation and the identifying bates number appearing on the copy.

2. All Confidential Information shall be held in confidence by each person to whom it is disclosed, shall be used only for purposes of this litigation, and shall not be disclosed to any person who is not entitled to receive such information as herein provided. All produced Confidential Information shall be maintained with reasonable care taken to preclude access by persons who are not entitled to receive such information.

3. Except as may be otherwise ordered by the Court, any person may be examined as a witness at deposition, hearing, and trial and may testify concerning all Confidential Information of which such person is reasonably believed to have prior knowledge.

4. Any Party may designate as Confidential Information all or portions of transcripts of depositions, or exhibits thereto, containing Confidential Information, by making such designation either by statement of Counsel on the record at the deposition itself or by written notice, sent by Counsel to all Parties within twenty (20) days after receipt of the deposition transcript or other pretrial testimony and, in no event later than thirty (30) days after the date on which the deposition or other pretrial testimony is given, provided that only those portions of the transcripts designated as “CONFIDENTIAL” shall be deemed Confidential Information . The transcripts of any such deposition or exhibit shall be marked by the court reporter as “CONFIDENTIAL.”

5. Any documents or materials that reveal Confidential Information that are to be filed with the Court shall initially be filed under seal. The Court hereby finds that, under the specific facts of this case, the categories of documents and information encompassed by this Order cannot be protected reasonably by some measure other than a protective order, and, thus restricting public access thereto is warranted. *See, e.g., Perreault v. The Free Lance-Star*, 276 Va. 375, 389–390 (2008).

6. Nothing in this Protective Order shall prevent any Party from seeking further protection with respect to the use of any such Confidential Information in connection with the trial, a hearing, or other proceeding in this litigation.

7. The provision of this Protective Order may be modified as to specified documents or other information by written agreement between counsel for the Parties. If counsel cannot

agree as to the disposition of such a request, any of them may apply to the Court for a ruling thereon after using their best efforts to confer to resolve promptly and informally such disputes.

8. Nothing in this Order shall restrict any Party or its counsel from disclosing or using, in any manner and for any purpose, its own Confidential Information .

9. Any of the notice requirements herein may be waived, in whole or in part in writing signed by counsel of record for the Party against whom such waiver will be effective.

10. Inadvertent or unintentional production of documents or things containing Confidential Information that are not designated Confidential Information, and/or inadvertent or unintentional production of documents or things containing Financial Information that are not redacted, at the time of production shall not be deemed a waiver in whole or in part of a claim for confidential treatment and/or redaction. The producing Party shall notify the receiving Party promptly after the discovery of the error in writing and, with respect to documents, provide replacement pages bearing the appropriate confidentiality legend. In the event of any unintentional or inadvertent disclosure of Confidential Information, or Financial Information, other than in a manner authorized by this Protective Order, counsel for the Party responsible for the disclosure shall immediately notify opposing counsel of all of the pertinent facts, and make every effort to further prevent unauthorized disclosure, including retrieving all copies of the Confidential Information or Financial Information from the recipient(s) thereof and securing the agreement of the recipients not to further disseminate the Confidential Information or Financial Information in any form. Compliance with the foregoing shall not prevent the producing Party from seeking further relief from the Court.

11. Within sixty (60) days after the entry of a final non-appealable judgment or order, or the complete settlement of all claims asserted against all Parties in this action, each Party

shall, at the option of the receiving Party, either return or destroy all physical objects and documents that embody Confidential Information it has received, and shall destroy, in whatever form stored or reproduced, all physical objects and documents, including but not limited to correspondence, memoranda, notes, and other work product materials that contain or refer to any category of Confidential Information. All Confidential Information not embodied in physical objects and documents shall remain subject to this Order. Notwithstanding this provision, no person is required to delete information that may reside on the respective person's electronic back-up systems that are over-written in the normal course of business, provided the files containing such Confidential Information are not accessed or copied from such back-ups. If a Party destroys Confidential Information, the destruction must be by means satisfactory to the producing Party, and the Party must provide to the producing Party a Certificate of Destruction swearing to compliance with this provision. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts, and deposition and trial exhibits.

12. If at any time documents containing Confidential Information are subpoenaed by any court, arbitration tribunal, or administrative/legislative body, the person to whom the subpoena or other request is directed shall (a) give written notice thereof to every Party who has produced such documents and to its counsel by overnight mail and either email or facsimile within five business days of receipt of such subpoena, and (b) shall make a reasonable effort to provide each Party with five business days to object to the production of such documents. If a producing Party does not take steps to prevent disclosure of such documents within five business days of the date written notice is given, the Party to whom the referenced subpoena is directed

may produce such documents in response thereto. For the avoidance of doubt, nothing in this paragraph shall be construed as requiring any Party to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, arbitration tribunal, or administrative/legislative body.

13. The Circuit Court of Fairfax County in Fairfax, Virginia is responsible for the interpretation and enforcement of this Protective Order. After termination of this litigation, the provisions of this Protective Order shall continue to be binding except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the Parties and recipients of the Confidential Information for enforcement of the provision of this Protective Order following termination of this litigation. All disputes concerning Confidential Information produced under the protection of this Protective Order shall be resolved by the Circuit Court of Fairfax County.

14. Execution of this Protective Order shall not constitute a waiver of the right of any Party to claim in this action or otherwise that any Confidential Information, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in this action or any other proceeding.

15. This Protective Order shall not apply to any document or information that is publicly available, or was, or is, independently acquired from a source other than the Parties or a non-party providing materials under this Protective Order.

16. This Protective Order shall become effective as between the Parties immediately upon submission to the Court for approval, notwithstanding the pendency of approval by the Court. If approval by the Court is ultimately denied, withheld, or made conditional, no Party shall treat any designated Confidential Information produced prior to that time in a manner

inconsistent with this Protective Order without giving the producing Party sufficient advance notice to allow for application to the Court for additional relief.

17. This Protective Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.


ENTERED this 25th day of September, 2019.



The Honorable Bruce D. White
Chief Judge – Circuit Court for Fairfax County

Bruce D. White

WE ASK FOR THIS:


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SEEN AND AGREED:



by Joshua Treece with permission from Ben Chew

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