

information. In the event that documents are produced for inspection at the party's facilities, such documents may be produced for inspection before being marked confidential. Once specific documents have been designated for copying, any documents containing confidential information will then be marked confidential after copying but before delivery to the party who inspected and designated the documents. There will be no waiver of confidentiality by the inspection of confidential documents before they are copied and marked confidential pursuant to this procedure.

(b) Portions of depositions of a party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed confidential only if they are designated as such when the deposition is taken or within seven business days after receipt of the transcript. Any testimony which describes a document which has been designated as "CONFIDENTIAL," as described above, shall also be deemed to be designated as "CONFIDENTIAL."

(c) Information or documents designated as confidential under this Order shall not be used or disclosed by the parties or counsel for the parties or any persons identified in subparagraph below for any purposes whatsoever other than preparing for and conducting the litigation in which the information or documents were disclosed (including appeals).

(d) The parties and counsel for the parties shall not disclose or permit the disclosure of any documents or information designated as confidential under this Order to any other person or entity, except that disclosures may be made in the following circumstances:

- (1) the Court and its officers;
- (2) court reporters, videographers, and interpreters engaged in this
Litigation;

- (3) counsel of record in this Litigation and personnel of counsels' respective law firms or government agency, including but not limited to other counsel, paralegals, legal assistants, litigation support services, other employees, and outside copy services utilized by each firm;
- (4) independent consultants or non-party experts retained by a party or counsel to a party to assist counsel in the preparation and trial of this Litigation. Any party so retaining such a consultant or expert shall have such consultant or expert execute an agreement to not disclose confidential material pursuant to this Order;
- (5) persons regarding whom the confidential material pertains;
- (6) persons who in good faith a party believes authored the confidential material or already have knowledge of its contents;
- (7) persons who are testifying at a hearing, deposition or trial in this action; and
- (8) persons to whom disclosure is required by federal law.
- (9) solely with respect to Defendant's handbook, policy and training documents (if designated as confidential), any persons who previously performed work at the Defendant facility referenced in the Complaint in this action.

(e) Notwithstanding anything to the contrary herein, nothing in this Order shall restrict a party's or third party's ability to use or disclose its own documents or proprietary information. In addition, notwithstanding any other provision in this Order, EEOC shall not be restricted in its ability to use or disclose information designated as "Confidential" by

Defendant if that information pertains to an EEOC class member in this case and that class member has granted his or her consent to the use and/or disclosure.

(f) Except as provided in subparagraph (d) above, counsel for the parties shall keep all documents designated as confidential which are received under this Order secure within their exclusive possession and shall take reasonable efforts to place such documents in a secure area.

(g) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of documents or information designated as confidential under this Order or any portion thereof, shall be immediately affixed with the word “CONFIDENTIAL” if that word does not already appear.

2. Confidential Information Filed with Court.

(a) To the extent that any materials subject to this Confidentiality Order (or any pleading, motion or memorandum referring to them) are proposed to be filed or are filed with the Court, those materials and papers, or any portion thereof which discloses confidential information, shall be filed under seal (by the filing party) with the Clerk of the Court in an envelope marked “SEALED PURSUANT TO ORDER OF COURT DATED _____,” together with a simultaneous motion pursuant to L.R.

104.13(c)(hereinafter the “Interim Sealing Motion”). The Interim Sealing Motion shall be governed by L.R. 105.11. Even if the filing party believes that the materials subject to the Confidentiality Order are not properly classified as confidential, the filing party shall file the Interim Sealing Motion; provided, however, that the filing of the Interim Sealing Motion shall be wholly without prejudice to the filing party’s rights under paragraph 4 of this Confidentiality Order.

(b) In the event that the Interim Sealing Motion is filed by a party that did not designate the materials as confidential ("non-designating party"), it need only reference this Order and need not set forth the reasons for sealing or discussion of alternatives, as the burden of demonstrating the propriety of sealing shall be upon the party that designated the material as confidential ("designating party"). Thereafter, within the time frame permitted under the Local Rules of this Court for filing a Response to the Motion to Seal, the designating party shall file a pleading specifically identifying the confidential material that it will consent to have filed not under seal (if any), the confidential material it believes should remain "Confidential" and be filed under seal (if any), and the reasons why the latter confidential material should be filed under seal, and the reasons why alternatives to sealing would not provide sufficient protection. Such pleading shall apply controlling law regarding the First Amendment and common law rights of access to judicial records. Thereafter, within the time frame permitted under the Local Rules of this Court for filing a Reply regarding the Motion to Seal, the non-designating party shall file a pleading identifying which confidential material (if any) that the designating party seeks to have filed under seal but that the non-designating party believes should not be filed under seal and the reasons why that confidential material should not be filed under seal (again, applying controlling law regarding the First Amendment and common law rights of access to judicial records).

(c) Upon termination of the action, the District Clerk shall be permitted to return or destroy any confidential materials permitted to be filed under seal.

3. Party Seeking Greater Protection Must Obtain Further Order. No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by paragraph 1 of this Order unless the party claiming a need for

greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c).

4. Challenging Designation of Confidentiality. A designation of confidentiality may be challenged upon motion or in a brief regarding an Interim Sealing Motion. The burden of proving the confidentiality of designated information remains with the party asserting such confidentiality.

5. If discovery is sought from non-parties or third parties that would require such non-parties or third parties to produce and/or disclose confidential information, they may gain the protection of this Order by agreeing in writing to produce documents pursuant to this Order and to be bound by it.

6. After the conclusion of this litigation, this Order shall continue to remain in full force and effect, and the Court shall retain jurisdiction to enforce its provisions.

7. The restrictions and obligations regarding information or documents designated as "Confidential" shall apply only to documents and information produced in this Litigation. This Order shall not apply to materials already contained in the EEOC's administrative files. In addition, the restrictions and obligations regarding information or documents designated as "Confidential" shall not apply to information or documents that is already public knowledge at the time of production or that becomes public knowledge subsequent to production unless it becomes public knowledge because of a violation of this Order. Moreover, if a party files with the Court any information or documents that it previously designated as "Confidential" and such filing is not made under seal, such information or documents shall no longer be considered "Confidential" within the meaning of this Order, as it will be a matter of public record.

