

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4:11-cv-00059-BO

Sirsi Corporation d/b/a SirsiDynix,

Plaintiff,

v.

**Craven-Pamlico-Carteret Regional
Library System,**

Defendant.

Protective Order

The Court is informed that Plaintiff Sirsi Corporation d/b/a SirsiDynix (“SirsiDynix”) and Defendant Craven-Pamlico-Carteret Regional Library System (“CPC Regional”) (SirsiDynix & CPC Regional may collectively be referred to as “Parties”) expect to produce during discovery or through agreement certain information considered to be confidential, proprietary, or containing trade secrets. The Parties desire to protect the confidential nature of these documents or information through a protective order.

The Parties agree to enter into this Order for the purpose of facilitating and expediting the discovery process (to include information discovery and production of documents by agreement) and to prevent the Court from having to conduct hearings on each document or category of documents sought to be protected.

Upon consideration of the Parties’ Motion, the Court finds good cause for a protective order to protect confidential, proprietary, or trade secret documents and information pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

THEREFORE, IT IS ORDERED that the Parties and any other third-parties involved in discovery in this matter abide by the following terms in handling the production and disclosure of confidential information:

1. Designation of Confidential Information. Confidential Information may be designated as such by placing the legend “CONFIDENTIAL” on each page of such document or on the face of such thing.

a. A document or piece of information shall only be considered by the parties or the Court as Confidential Information if, as provided in Federal Rule of Civil Procedure 26(c)(1)(G), it is a trade secret; confidential research, development, or commercial information; or personnel records.

b. A document or piece of information shall not be considered by the parties or the Court as Confidential Information if it:

i. Is or was at any time obtainable from a third-party not subject to a confidentiality agreement or restriction prohibiting the release of the document or information;

ii. Is or was at any time disclosed by the designating party to a third party not subject to a legally enforceable confidentiality agreement or order prohibiting the release of the document or information;

iii. Was previously disclosed to the receiving party by the designating party at a time when the receiving party was not subject to a confidentiality agreement or restriction prohibiting the release of the document or information;

iv. Is, was, or becomes disclosed to the receiving party from a source other than the designating party through means that do not constitute a violation of this Order or any other confidentiality agreement or restriction prohibiting the release of the document or information;

v. Is, was, or becomes available to the public or in the public domain;

vi. Is, was, or becomes subject to the federal Freedom of Information Act disclosure requirements and/or a state equivalent of said disclosure requirements; or

c. Any Party may designate Confidential Information as such under the terms of this Order if such party reasonably and in good faith believes that such information or material is entitled to confidentiality under the terms of this Order. Moreover, the Parties shall be obligated to make specific designations to the extent reasonably possible and to avoid overbroad designations.

d. Any Party may designate as Confidential Information any information or document that belongs or relates to any party; or that is in the possession, custody, or control of any professional services firm that has been or may in the future be engaged by any party to render services related to the subject matter of this litigation; or that is produced by a non-party for use in this litigation. The portions of interrogatory answers,

responses to requests for admission, deposition transcripts and exhibits, and affidavits that quote, summarize, or contain information or materials entitled to protection may be designated as Confidential Information.

2. Disclosure of Confidential Information. Information or documents designated as Confidential Information (excluding such information as is derived lawfully from an independent source without reference to or reliance on the designated information) shall not be disclosed, given, shown, made available or communicated in any way to any person or entity other than:

- a. The Parties and their respective outside and in-house counsel who are actively engaged in the conduct of this litigation, as well as their clerical, paralegal, or other support staff (including copy and electronic discovery vendors used by the Parties);
- b. The Court, Court personnel, staff, witnesses and jurors, if any, in the trial of this action;
- c. Court reporters, videographers, and members of their firms involved in depositions in connection with this litigation;
- d. Deponents and counsel for deponents;
- e. Consultants or expert witnesses, whether testifying or non-testifying, retained for the purpose of assisting with this litigation, provided that no material designated as Confidential Information shall be disclosed to any such person unless that person first reads this Protective Order, agrees to be bound thereby, and executes an

Agreement to be Bound by Protective Order in the form attached hereto as Exhibit A, which shall be maintained by the disclosing party, and subject to production only upon order of the Court;

f. Potential witnesses or persons with prior knowledge of the Confidential Information contained in the documents, to the extent reasonably necessary to conduct discovery and prepare for trial, provided that no material designated as Confidential Information shall be disclosed to any such person unless that person first reads this Protective Order, agrees to be bound thereby, and executes a Agreement to be Bound by Protective Order in the form attached hereto as Exhibit A, which shall be maintained by the disclosing party, and subject to production only upon order of the Court; and,

g. Any other person or entity agreed to in writing by the Parties or as the Court may direct.

3. Designation of Attorneys' Eyes Only Information. Attorneys' Eyes Only Information may be designated as such by placing the legend "ATTORNEYS' EYES ONLY" on each page of such document or on the face of such thing.

a. A designation of Attorneys' Eyes Only Information indicates that the document contains the disclosing party's trade secrets or confidential business information and that the disclosure of the document or information beyond the individuals listed in Paragraph 4 below would cause material harm to the designating party.

b. Any Party may designate Attorneys' Eyes Only Information as such under the terms of this Order if such party reasonably and in good faith believes that such information or material is entitled to confidentiality under the terms of this Order. Moreover, the Parties shall be obligated to make specific designations to the extent reasonably possible and to avoid overbroad designations.

c. Any Party may designate as Attorneys' Eyes Only Information any information or document that belongs or relates to any party; or that is in the possession, custody, or control of any professional services firm that has been or may in the future be engaged by any party to render services related to the subject matter of this litigation; or that is produced by a non-party for use in this litigation. The portions of interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, and affidavits that quote, summarize, or contain information or materials entitled to protection may be designated as Attorneys Eyes Only Information.

4. Disclosure of Attorneys' Eyes Only Information. Information or documents designated as Attorneys' Eyes Only Information (excluding such information as is derived lawfully from an independent source without reference to or reliance on the designated information) shall not be disclosed, given, shown, made available or communicated in any way to any person or entity other than:

a. Counsel for the parties to this action as well as their clerical, paralegal, or other support staff (including copy and electronic discovery vendors used by the Parties);

b. The Court, Court personnel, staff, witnesses and jurors, if any, in the trial of this action;

c. Court reporters, videographers, and members of their firms involved in this litigation;

d. Deponents and the deponent's counsel;

e. Consultants or expert witnesses, whether testifying or non-testifying, retained for the purpose of assisting with this litigation, provided that no material designated as Attorneys' Eyes Only Information shall be disclosed to any such person unless that person first reads this Protective Order, agrees to be bound thereby, and executes a Agreement to be Bound by Protective Order in the form attached hereto as Exhibit A, which shall be maintained by the disclosing party, and subject to production only upon order of the Court;

f. Potential witnesses or persons with prior knowledge of the Attorneys Eyes Only Information contained in the documents, to the extent reasonably necessary to conduct discovery and prepare for trial, provided that no material designated as Attorneys Eyes Only Information shall be disclosed to any such person unless that person first reads this Protective Order and executes an Agreement to be Bound by Protective Order in the form attached hereto as Exhibit A, which shall be maintained by the disclosing party, and subject to production only upon order of the Court; and,

g. Any other person or entity agreed to in writing by the Parties or as the Court may direct.

5. Declassification. After consulting with the designating party in an effort to resolve any disagreement, a party (or aggrieved entity permitted by the Court to intervene for such purpose) may apply to the Court at any time for a ruling that information designated as Confidential Information or Attorneys' Eyes Only Information is not entitled to such status and protection. The designating party shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentiality must show that there is good cause for the information to have such protection. No Party shall be obligated to challenge the propriety of any designation of information as confidential and a failure to do so shall not preclude a subsequent attack on the propriety of such designation.

6. Confidential Information in Depositions.

a. Should counsel of record for any Party introduce or use any Confidential Information or Attorneys Eyes Only Information in a deposition, or believe that any question to a witness at deposition upon oral examination will disclose Confidential Information or Attorneys Eyes Only Information, or that answers to any question will require such disclosure, or if documents designated as containing Confidential Information or Attorneys Eyes Only Information will be used as exhibits during examination, counsel of record introducing or using such Confidential Information or Attorneys Eyes Only Information shall have a duty to identify on the record that he or she is asking questions concerning designated Confidential Information or Attorneys' Eyes Only Information, and any related testimony shall be equally subject to this Stipulated Protective Order, and subject to disclosure only under the terms and provisions set forth in this Protective Order. Unless otherwise ordered by this Court, the designating party or

the receiving party shall have the right to have all persons, except the person testifying in the deposition and his or her counsel, counsel of record for the Parties, the court reporter, and such other persons as are permitted under the terms of this Order to have access to Confidential Information or Attorneys' Eyes Only Information, excluded from a deposition during the taking of the portion of the testimony involving documents or information subject to this Order.

b. Deponents shall not retain or copy portions of the transcript of their depositions that contain Confidential Information or Attorneys' Eyes Only Information not provided by them or the entities they represent unless they sign the Agreement to Be Bound by Protective Order attached hereto as Exhibit A. A deponent who is not a party or a representative of a party shall be furnished a copy of this Order before being asked to review potentially confidential documents.

c. Parties and deponents may, within thirty calendar days after receiving a deposition transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information or Attorneys' Eyes Only Information. Confidential Information or Attorneys' Eyes Only Information within the deposition transcript may be designated by: underlining the portions of the pages that are confidential; marking such pages with the following legend: "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER" or "ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER"; and serving a copy of the marked deposition transcript on all other Parties to the litigation, the deponent, and the court reporter. Until expiration of the thirty day period, the entire deposition will be treated as subject to protection against

disclosure under this Order. If no party or deponent timely designates Confidential Information or Attorneys Eyes Only Information in a deposition, then none of the transcript or its exhibits will be treated as Confidential Information or Attorneys Eyes Only Information; if a timely designation is made, the confidential portions and exhibits shall be retained by the court reporter under seal separate from the portions and exhibits not so marked.

d. This Order shall not require any party to notify or obtain permission from another party before examining witnesses about materials designated Confidential Information or Attorneys Eyes Only Information during depositions, beyond the notice required by the Federal Rules of Civil Procedure, local court rules, or order of the Court.

7. Filing. If documents containing Confidential Information or Attorneys Eyes Only Information are filed with the Court, such documents or excerpts thereof shall be filed with the Court under seal and shall remain sealed while in the office of the clerk so long as they retain their status as confidential documents. If motions, briefs, or other pleadings contain Confidential Information or Attorneys Eyes Only Information, one copy of the complete pleading shall be filed under seal and a separate copy of the pleading with the Confidential Information or Attorneys Eyes Only Information redacted shall be filed unsealed.

8. Confidential Information or Attorneys Eyes Only Information at Trial. Confidential Information or Attorneys Eyes Only Information may be offered in evidence at trial and/or any court hearing, subject to such restrictions as the Court may apply to protect the confidential nature of such information or document(s). This Order shall not require any party to notify or obtain permission from any other party before introducing materials designated

Confidential Information or Attorneys Eyes Only Information at trial or examining witnesses about materials designated Confidential Information or Attorneys Eyes Only Information during trial, beyond the notice required by the Federal Rules of Civil Procedure, local court rules, or order of the Court.

9. Subpoena by Other Courts or Agencies. If another court, regulatory body, or an administrative agency subpoenas or orders production of Confidential Information or Attorneys Eyes Only Information or document(s) that a party has obtained under the terms of this Order, such party shall promptly notify the party who designated the information or document(s) as Confidential Information or Attorneys Eyes Only Information of the pendency of such subpoena or order.

10. Conclusion of Action. At the conclusion of this action, including any appeals, the ultimate disposition of all Confidential Information or Attorneys Eyes Only Information furnished pursuant to this Order, and all copies thereof, is subject to a final order of the Court. In the event the Court does not issue an order regarding the ultimate disposition of materials furnished pursuant to this Order, within 120 days after final conclusion of all aspects of this litigation, including appeals, Confidential Information or Attorneys Eyes Only Information and all copies of same (other than exhibits of record) shall be returned to the party that produced such documents or, at the option of the producing party, destroyed by counsel of the receiving party. This paragraph shall not be construed to require the return or destruction of any regularly maintained litigation files held by the attorneys for each party as archival records or other attorney work-product created for any party, but each attorney shall continue to treat the material as Confidential Information or Attorneys Eyes Only Information. Each counsel shall be

responsible for retrieving all copies of Confidential Information or Attorneys Eyes Only Information which it provided to experts. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the documents and not more than 150 days after final termination of this litigation. The provisions of this Order insofar as it restricts the disclosure, communication of and use of Confidential Information and Attorneys' Eyes Only Information produced hereunder shall continue to be binding after the conclusion of this action.

11. Modification Permitted. Nothing in this Order shall prevent any party from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

12. No Waiver.

a. Review of the Confidential Information or Attorneys Eyes Only Information by those so authorized pursuant to Paragraph 2 or 4, respectively, shall not waive the confidentiality of the documents or objections to production.

b. The inadvertent, unintentional, or in camera disclosure of Confidential Information or Attorneys Eyes Only Information or failure to designate as such, shall not, under any circumstances, be deemed a waiver, in whole or in part, of any party's claims of confidentiality. If the foregoing occurs, the disclosing party may provide notice to the receiving party that the document or information does not, but should, bear such designation, and the documents or information in question shall thereafter be treated as if they carried such designation and, if requested, replacement copies stamped Confidential

Information or Attorneys Eyes Only Information shall be provided at the expense of the disclosing party.

c. Nothing contained in this Order and no action taken pursuant to it shall waive or prejudice the right of any party to contest the alleged relevancy, admissibility, or discoverability of the Confidential Information or Attorneys Eyes Only Information sought or provided in discovery.

13. Claw-Back Agreement. In order to facilitate discovery, the inadvertent disclosure of documents or other information subject to a privilege or other immunity from production shall be handled as follows:

a. From time to time during the course of discovery, one or more of the Parties may inadvertently disclose documents or other information subject to a privilege or other immunity from production. Any such disclosure shall not be deemed a waiver of the privileged or immune nature of that document or information, or of any related subject matter.

b. To that end, if a producing party, through inadvertence, error or oversight, produces any document(s) or information that it believes is immune from discovery pursuant to any attorney-client privilege, attorney work product immunity or any other privilege or immunity, such production shall not be deemed a waiver, and the producing party may give written notice to the receiving party that the document(s) or information so produced is deemed privileged and that the return of the document(s) or information is requested. Upon receipt of such written notice, the receiving party shall immediately

undertake to gather the original and all such copies to the producing party, and shall promptly destroy any newly created derivative document such as a summary of or comment on the inadvertently produced information. Return of such document(s) or information to the producing party shall not preclude the receiving party from later moving to compel production of the returned document(s) or information, but the motion shall not assert as a ground for production the fact of or circumstances surrounding the inadvertent production.

c. In addition, if a party concludes that any document(s) or information that it has received from another party is immune from discovery pursuant to any attorney-client privilege, attorney work product immunity or any other privilege or immunity from production, that party shall promptly bring the potentially privileged document(s) or information to the attention of the producing party. The producing party then may give written notice to the receiving party that the document(s) or information so produced is deemed privileged and that the return of the document(s) or information is requested. Upon receipt of such written notice, the receiving party shall immediately undertake to gather the original and all such copies to the producing party, and shall promptly destroy any newly created derivative document such as a summary of or comment on the inadvertently produced information. Return of such document(s) or information to the producing party shall not preclude the receiving party from later moving to compel production of the returned document(s) or information, but the motion shall not assert as a ground for production the fact of or circumstances surrounding the inadvertent production.

14. No Effect on Disclosing Party. Nothing in this Order shall be deemed to restrict in any way any party, non-party, or their attorneys from handling or disclosing that party's or non-party's own documents, materials, or information.

15. No Effect on Admissibility. Neither this Order nor the designation of any items as Confidential Information or Attorneys Eyes Only Information shall be construed as an admission that such material, or any testimony in respect to such material in a deposition or otherwise, would be admissible in evidence in this litigation or in any other proceeding. In addition, this Order does not, of itself, require the production of any information or documents.

16. Applicability to Subpoenaed Documents. Third-parties required to produce documents in response to a subpoena issued under Rule 45 of the Federal Rules of Civil Procedure may designate documents as Confidential Information or Attorneys Eyes Only Information in the same manner as a party to this action. Any Party to this action may challenge a designation by a third-party pursuant to the procedure outlined in Paragraph 5.

Dated: January 10, 2012

Hon. Terrence W. Boyle
United States District Judge

Agreed to:

/s/ Robert T. Numbers II
ROBERT T. NUMBERS, II (Bar No. 34134)
Womble Carlyle Sandridge & Rice, PLLC
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27602
(919) 755-2100
(919) 755-6067 (facsimile)
RNumbers@wcsr.com
Attorney for Plaintiff

/s/ Lee W. Bettis, Jr.
Lee W. Bettis, Jr. (Bar No. 32214)
The Bettis Law Firm
P. O. Box 848
New Bern, NC 28560
252-649-1710
252-649-1711
Email: lwbettis@hotmail.com
Attorney for Defendant

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4:11-cv-00059-BO

Sirsi Corporation d/b/a SirsiDynix,

Plaintiff,

v.

**Craven-Pamlico-Carteret Regional
Library System,**

Defendant.

**Agreement to Be Bound By Protective Order
and Confidentiality Agreement**

The undersigned hereby acknowledges that he/she has read the Protective Order entered in this action (a copy of which is attached hereto) and that he/she agrees to be bound by the terms of the Protective Order and submits to the jurisdiction of the United States District Court for the Eastern District of North Carolina for all matters related to the interpretation and enforcement of the terms of this agreement.

The undersigned understands the Order obligates him/her to use documents designated Confidential Information or Attorneys Eyes Only Information solely for purposes related to the above-captioned action and not to disclose any such Confidential Information or Attorneys Eyes Only Information to any other person, firm or concern.

Signature

Date

Printed Name, Job Title and Address