IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN McFADYEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action Number
	)	1:07-cv-00953
DUKE UNIVERSITY, et al.,	)	
	)	
Defendants.	)	
	)	

BRIEF IN SUPPORT OF MOTION FOR ENTRY OF PROTECTIVE ORDER ON CONFIDENTIALITY AND PROSPECTIVE SEALING ORDER BY DUKE UNIVERSITY

Defendant Duke University ("Duke"), through counsel, submits this Brief in Support of its Motion for Entry of Protective Order on Confidentiality and Prospective Sealing Order.

NATURE OF THE CASE AND STATEMENT OF FACTS

This action arises out of the investigation of members of the 2005-2006 Duke men's lacrosse team stemming from false allegations of rape made by a stripper who performed at a private party held off-campus. None of the Plaintiffs was charged or tried for any offense resulting from those allegations. Nevertheless, Plaintiffs sued Duke, certain Duke employees, the City of Durham and various associated individuals, and a DNA laboratory for purported violations of their legal rights in connection with the investigation.

Duke and other defendants moved to dismiss the claims against them, and the Court dismissed twenty-seven counts on 31 March 2011. Order, at 2 (Mar. 31, 2011) [DE 187]. The Court stayed all proceedings with respect to twelve counts, including discovery, pending resolution of an interlocutory appeal. Order, at 9 (June 9, 2011) [DE 218]. The Court allowed discovery to proceed against Duke on the two remaining counts – Counts 21 and 24. *Id*. Count 21 alleges a claim against Duke for "breach of contract, limited to the allegation that Duke imposed disciplinary measures against Plaintiffs, specifically suspension, without providing them the process that was promised." *Id*. at 8. Count 24 alleges a claim against Duke for "fraud based on alleged fraudulent misrepresentations in letters to Plaintiffs regarding Plaintiffs' DukeCard information." *Id.*

In October 2011, Plaintiffs and Duke began negotiating a blanket protective order governing confidential information produced in this case. Plaintiffs and Duke agree that such an order is appropriate but have not agreed on its content. Duke's proposed protective order is attached as Exhibit A ("Duke Order"). Plaintiffs' responsive mark-up is attached as Exhibit B ("Plaintiffs' Order").

As set forth below, there is good cause to enter the Duke Order in its entirety. On 19 January 2012, the Court entered a protective order in *Carrington v. Duke Univ*. ("*Carrington*"), No. 1:08-cv-119, that is materially identical to the

Duke Order. *See Carrington*, Consent Protective Order On Confidentiality And Prospective Sealing Order (*"Carrington* Order) (Jan. 19, 2012) [DE 236] (attached as Ex. C). The terms that Duke proposes—which Plaintiffs reject—are the same ones approved by the Court in *Carrington*. Entry of the Duke Order is justified for that reason alone.

Moreover, there is good cause to adopt the specific terms proposed by Duke. Under the Duke Order, the information that may be designated "confidential" is demonstrably entitled to protection. *See infra* pp. 6-11. Further, Duke's suggested procedures for designating, challenging, and filing confidential material are fair and reasonable. Entry of the Duke Order is warranted.

QUESTION PRESENTED

Whether good cause exists to enter a protective order in the form proposed by Duke, which is attached as Exhibit A.

ARGUMENT

Rule 26(c) of the Federal Rules of Civil Procedure allows a court to issue a protective order for good cause. *See Longman v. Food Lion, Inc.*, 186 F.R.D. 331, 333 (M.D.N.C. 1999). "Blanket or umbrella protective orders are becoming increasingly common as large scale litigation involves more massive document exchanges. Such protective orders may be entered even without stipulation by the

parties, so long as certain conditions are met." *Parkway Gallery Furniture, Inc. v. Kittinger / Pennsylvania House Group, Inc.*, 121 F.R.D. 264, 267-68 (M.D.N.C. 1988); *see Haas v. Golding Transport, Inc.*, No. 1:09-cv-1016, 2010 WL 1257990, at *6 (M.D.N.C. Mar. 26, 2010) (approving portion of proposed blanket order upon "generalized showing of good cause"). A blanket protective order is appropriate where (i) the requesting party makes a "threshold showing of good cause to believe that discovery will involve confidential or protected information"; (ii) the proposed order requires parties to invoke confidentiality only in good faith; and (iii) the proposed order allows an opposing party to contest the designation. *Parkway*, 121 F.R.D. at 268.

Here, the Duke Order requires "good faith" for confidentiality designations and establishes a process for challenging those designations. *See* Duke Order ¶¶ 6, 17 (Ex. A). There is good cause to enter the Duke Order in its entirety.

I. DISCOVERY IN THIS CASE INVOLVES CONFIDENTIAL INFORMATION.

There is good cause to find that discovery will involve confidential information. In their Breach of Contract Claim, Plaintiffs allege that Duke did not follow its procedures in disciplining them. *See supra* p. 2. This claim necessarily involves confidential information protected by the Federal Education Rights and

Privacy Act ("FERPA"), including student academic and disciplinary records of Plaintiffs (and perhaps other students). *See* Second Am. Compl. ¶¶ 706-45 (alleging that Plaintiffs "were also subject to sanctions when other, similarly situated students were not") (Feb. 23, 2010) [DE 136]. Further, although Plaintiffs have served few requests for production thus far, their sweeping allegations foretell an intent to pry into every aspect of Duke's operations, and their corresponding discovery requests may implicate other sensitive information, including confidential discussions by Duke's Board of Trustees, information relating to the hiring and retention of Duke faculty, and operational details involving the Duke police. *See id.* ¶¶ 107-33 (allegations regarding Duke police); ¶¶ 445-55 (allegations regarding Board of Trustees Chairman); ¶¶ 584-90 (allegations regarding Duke faculty). Both the prosecution and defense of Plaintiffs' claims will require discovery of confidential information.

II. THERE IS GOOD CAUSE TO APPROVE THE DUKE ORDER BECAUSE IT IS MATERIALLY IDENTICAL TO THE PROTECTIVE ORDER APPROVED IN *CARRINGTON*.

There is good cause to enter the Duke Order in this case because it already has been entered in *Carrington*. See *Carrington* Order (Ex. C). Discovery in these cases will continue to be very similar: the claims arise from the same basic facts, both sets of plaintiffs make similarly sweeping allegations and are

prosecuting identical fraud claims, and many of the same Duke personnel are involved in the defense of both cases. In fact, plaintiffs may—and often do—cross-notice and attend depositions of Duke witnesses taken for both *Carrington* and this case. *See* LR 16(c) Initial Pretrial Order ¶ 2(b)(6) (Sept. 21, 2011) [DE 244]. Given this overlap, it makes sense to provide similar protections and procedures in both cases, and information treated as confidential in *Carrington* should be treated as confidential here. As in *Carrington*, the Duke Order appropriately protects the parties' interests.

III. THERE IS GOOD CAUSE TO APPROVE DUKE'S PROPOSED DEFINITION OF "CONFIDENTIAL INFORMATION."

Much of the parties' disagreement turns on the definition of "Confidential Information." This definition is critical, as it delimits the material that may be designated "confidential" under the protective order. Duke's proposed definition of "Confidential Information" is reasonable and consistent with applicable law.[1]

A. "Personal Financial Information" Should Be Protected.

The Duke Order defines "Confidential Information" to include "personal financial information, e.g., salary information, account statements and tax returns

[1]Duke agreed to incorporate Plaintiffs' proposed references to the Health Insurance Portability and Accountability Act ("HIPAA") and Rule 26(c)(1)(G). The parties do not dispute inclusion of these provisions, nor inclusion of "education records" as defined by FERPA, and there is good cause to approve them.

and related schedules and supporting documents." *See* Duke Order ¶ 3 (Ex A). Personal financial information is "universally presumed to be private," and courts routinely allow it to be produced subject to a protective order. *See, e.g., In re Boston Herald*, 321 F.3d 174, 190-91 (1st Cir. 2003); *Donin v. McAloon*, 1:09-cv-387, 2011 WL 1897420, at *2 (W.D.N.C. May 18, 2011).

Here, Duke expects that parties may produce personal financial information, whether reflected in tax returns, contained in personnel records, or otherwise. In fact, Duke already has requested Plaintiffs' tax returns. There is good cause to protect personal financial information, in whatever form, as confidential.

B. "Disciplinary Information" Should Be Protected.

The Duke Order defines "Confidential Information" to include "disciplinary information, e.g., information related to discipline by a school, college, athletic team, or public authority." *See* Duke Order ¶ 3 (Ex A). There is good cause to include this language. The "disciplinary information" produced in this case may involve internal Duke emails and memoranda relating to disciplinary proceedings involving specific students, including Plaintiffs. Although much of that material could also qualify as protected "education records," a separate carve-out for "disciplinary information" is appropriate. Plaintiffs' Breach of Contract Claim aims directly at Duke's disciplinary policies and its handling of Plaintiffs'

disciplinary cases, and it is highly likely that "disciplinary information" will be produced. To ensure confidential treatment of this material, it is appropriate to include an express provision in the protective order for "disciplinary information."

C. "Personnel Records" And Material Relating To "Faculty Hiring, Retention, And Compensation Issues" Should Be Protected.

The Duke Order defines "Confidential Information" to include "personnel records, e.g., performance reviews and evaluations," and material relating to "decisions involving faculty hiring, retention, and compensation issues." *See* Duke Order ¶ 3 (Ex A). Personnel records and internal employment deliberations often reflect highly personal information that, if disclosed, can both embarrass or prejudice the employee and cause competitive harm to the employer. Accordingly, in North Carolina "there is a strong public policy against the public disclosure of personnel files," which may be produced subject to an "appropriate confidentiality order." *Cason v. Builders FirstSource-Southeast Group, Inc.*, 159 F. Supp. 2d 242, 247-48 (W.D.N.C. 2001). Other courts follow this approach. *See, e.g., Jones v. Dole Food Co., Inc.,* 3:10-cv-292, 2010 WL 5395797, at *2 (W.D.N.C. Dec. 23, 2010) (ordering that plaintiff's employment records be produced where protective order in place); *Miles v. Boeing Co.*, 154 F.R.D. 112, 115 (E.D. Pa. 1994) (ordering production of individual's employment file subject to protective order,

since "personnel files are confidential and discovery should be limited").

Here, personnel records may be produced from both parties. Duke has already requested employment records from Plaintiffs, and Plaintiffs may well seek them from Duke in connection with their claims. There is good cause to shield this information from public disclosure during discovery.

D. Board Of Trustees Meeting Minutes Should Be Protected.

The Duke Order defines "Confidential Information" to include "minutes of meetings of the Duke University board of trustees," the equivalent of Duke's board of directors. *See* Duke Order ¶ 3 (Ex A). Courts recognize that minutes of board meetings may be confidential given the uniquely sensitive nature of that information and the competitive harm that may result from its disclosure. *See, e.g., Byrnes v. Empire Blue Cross Blue Shield*, No. 98 Civ. 8520, 2000 WL 60221, at *5 (S.D.N.Y. Jan. 25, 2000) (finding that minutes produced in discovery merited confidential protection based on company's "minimal" required showing); *In re Bank of Louisiana / Kenwin Shops, Inc. Contract Litig.*, No. Civ.A. MDL 1193, 1999 WL 550205, at *1 (E.D. La. July 28, 1999) (ordering that board of directors' meeting minutes be produced subject to protective order).

These holdings apply with even greater force here. Duke's Board of Trustees routinely discusses highly sensitive matters, including commercially

sensitive budgetary decisions, student enrollment projections, and high-level personnel matters. Further, given the nature of Plaintiffs' two active claims, meeting minutes subject to production here may reflect discussions of Duke's disciplinary processes and proceedings and other FERPA-protected information. There is good cause to allow Duke to produce responsive meeting minutes subject to a protective order.

E. Insurance Policies Should Be Protected.

The Duke Order defines "Confidential Information" to include insurance policies. *See* Duke Order ¶ 3 (Ex. A). Courts regularly allow parties to produce insurance agreements subject to a protective order. *See, e.g., Beasley v. Sessom & Rogers, P.A.*, No. 5:09-CV-43, at 3-4 (E.D.N.C. Jan. 20, 2010) (opinion attached as Ex. D); *see also Parsons v. Anheuser-Busch Co., Inc.*, 3:09-cv-584, 2010 WL 996520, at *2 (M.D. Fla. Mar. 17, 2010) (inviting party producing insurance policy to move for protective order); *Capozzi v. Atwood Oceanics, Inc.*, No. 08-776, 2009 WL 3055321, at *2 (W.D. La. Sept. 20, 2009) (allowing production pursuant to protective order). There is good cause to permit Duke to do the same.

F. "Information Related To Police Investigations" Should Be Protected.

The Duke Order defines "Confidential Information" to include "information

related to police investigations that is ordinarily maintained in confidence." *See* Duke Order ¶ 3 (Ex. A). Courts recognize a strong general presumption that law enforcement records should be produced, if at all, subject to a protective order. *See Wolfe v. Green*, 257 F.R.D. 109, 113 (S.D. W. Va. Apr. 2, 2009); *McDonald v. Suggs*, No. 5:07-cv-339, 2009 WL 864759, at *3 (E.D.N.C. Mar. 30, 2009); *Spell v. McDaniel*, 591 F. Supp. 1090, 1117 (E.D.N.C. 1984). Notably, some federal courts recognize a "law enforcement privilege" to prevent any disclosure – even ***with*** a protective order – of police records that reflect "law enforcement techniques and procedures." *See Floyd v. City of New York*, 739 F. Supp. 2d 376, 379 (S.D.N.Y. 2010).

Similarly, Duke may be required to produce records reflecting the investigations, practices, and methods used by the Duke police to provide security on campus. *See* N.C. Gen. Stat. § 74G-1, *et seq.* (authorizing university campus police agencies). This information is ordinarily kept confidential, and its disclosure could compromise the effectiveness of these practices and methods. There is good cause for Duke to produce this material subject to a protective order.

IV. THERE IS GOOD CAUSE TO APPROVE THE PROCEDURES SET FORTH IN THE DUKE ORDER.

The parties also dispute various procedural aspects of a protective order. As

demonstrated below, there is good cause to approve Duke's proposal.

A. Duke's Prospective Sealing Provisions Are Proper.

Duke's proposal regarding the filing of "Confidential Information" is consistent with this Court's directives. Specifically, the Duke Order provides that for dispositive and substantive motions, "Confidential Information" may be filed under seal only with the Court's approval (or provisionally if the Court has not yet ruled on a motion seeking that approval). *See* Duke Order ¶ 21 (Ex. A). By contrast, Plaintiffs would allow a party to do so without seeking Court approval. *See* Plaintiffs' Order ¶ 21 (Ex. B).

Duke's provision is consistent with this Court's requirements. Indeed, this Court consistently rejects protective orders that prospectively authorize the automatic filing of confidential information under seal for dispositive motions. *See Haas*, 2010 WL 1257990 at *8-9.[2]

B. "Confidential Information" Should Not Be Released To Non-Parties.

The Duke Order prohibits parties and "signatories"[3] from using "Confidential Information" in other litigation, including *Carrington*, and expressly

[2]A party may file confidential information under seal with a discovery-related motion without first obtaining court approval. *See Haas*, 2010 WL 1257990, at *9 n.8.

[3]"Signatories" are those who have executed the confidentiality agreement attached as Exhibit A to the Duke Order.

prohibits counsel from disclosing "Confidential Information" to anyone who has not read and agreed to abide by the order. *See* Duke Order ¶ 5 (Ex. A). Plaintiffs disagree with this approach. *See* Plaintiffs' Order ¶ 5 (Ex. B).

The point of a protective order is to limit the circumstances in which confidential information can be used *(i.e.*, limited to this lawsuit) and to restrict its dissemination. Plaintiffs' suggestion undermines this fundamental purpose. Paragraph 5 of the Duke Order should be adopted.

C. Those Who Access "Confidential Information" Should Be Required To Sign The Confidentiality Agreement.

Duke proposes that persons other than counsel of record who access "Confidential Information" should first execute the confidentiality agreement attached as Exhibit A to the Duke Order, which requires the signatory to acknowledge that he has read, understood, and will obey the protective order. *See* Duke Order ¶ 1 (Ex. A). Plaintiffs object and suggest that "verbal assurances on the record" or a "written acknowledgment" in some other form should suffice. *See* Plaintiffs' Order ¶ 1 (Ex. B).

Plaintiffs' proposal is unsatisfactory. Everyone who accesses "Confidential Information" should agree to the same terms of access in the same manner. The alternative—whereby some individuals sign the agreement, some agree verbally in

a deposition, and some send separate emails or sign other documents—will unnecessarily complicate the task of determining who has or has not agreed to keep information confidential, and on what terms.

D. The Modification Provision Contained In The Duke Order Should Be Adopted.

The parties disagree as to how the protective order may be modified. Duke proposes that it be modified only "by the Court upon showing of good cause"; Plaintiffs propose modification upon either Court order or "written agreement of the parties." *See* Duke Order ¶ 26 (Ex. A); Plaintiffs' Order ¶ 26 (Ex. B).

Rule 26(c) contemplates only court orders, not side agreements between the parties. *See* Fed. R. Civ. P. 26(c)(1) (authorizing parties to move for protective orders and authorizing courts to enter them). Further, such side agreements may be unenforceable by the Court, leaving the parties in an uncertain position. Paragraph 26 of the Duke Order should be adopted.[4]

E. Other Procedures In The Duke Order Should Be Approved.

[4]Plaintiffs also suggest that modifications be made for good cause "or as the ends of justice require." *See* Plaintiffs' Order ¶ 26 (Ex. B). There is no basis for this additional language—Rule 26 refers only to "good cause."

1. Parties should not be required to identify their non-testimonial outside contractors.

Both Duke and Plaintiffs propose a list of "Authorized Persons" to whom confidential material may be provided, subject to certain conditions. *See* Duke Order ¶ 13 (Ex. A); Plaintiffs' Order ¶ 13 (Ex. B). The parties disagree as to the conditions applicable to document management contractors. Duke proposes that such contractors may access "Confidential Information" after signing the confidentiality agreement. *See* Duke Order ¶ 13(e). Plaintiffs agree, but add that a party must disclose the identity of its document management contractors to the producing party. *See* Plaintiffs' Order ¶ 13(e).

Parties should not be forced to disclose the identities of their outside contractors. No party will be prejudiced by the limited disclosure of "Confidential Information" to document management vendors who agree to follow the protective order. Further, these contractors are consulting experts under Rule 26(b)(4), whose identities are protected attorney work product not subject to disclosure absent "exceptional circumstances." *See* Fed. R. Civ. P. 26(b)(4) (trial preparation expert is one who "has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial"); *see also, e.g., Jentz v. Conagra Foods*, No. 10-cv-474, 2011

WL 5325669, at *6 (S.D. Ill. Nov. 3, 2011); *Hajek v. Kumho Tire Co., Inc.*, No. 4:08-cv-3157, 2009 WL 2229902, at *6 (D. Neb. July 23, 2009). Plaintiffs' indirect attempt to compel discovery of consulting experts is improper. The Court should adopt paragraph 13 of the Duke Order.

2. Parties should be allowed to redact irrelevant confidential information from discovery materials.

Duke proposes that a party be allowed to redact irrelevant confidential information from documents it produces in discovery, so long as it serves a log describing the nature of redacted information upon request of counsel. *See* Duke Order ¶ 8 (Ex. A). For example, Duke believes that some of its responsive documents may contain confidential, FERPA-protected information associated with students who are not relevant in this case and that this information must be redacted. Plaintiffs disagree with this approach. See Plaintiffs' Order ¶ 8 (Ex. B).

Where portions of responsive documents contain irrelevant confidential information, courts allow the producing party to redact that information even where a protective order is in place. *See Delanda v. Cnty. of Fresno*, No. 1:10-cv-1857, 2012 WL 201727, at *3-4 (E.D. Cal. Jan. 23, 2012) (allowing redaction of names of third parties); *In re Heraeus Kulzer GmbH*, No. 09-MC-17, 2011 WL 3330307, at *3 (E.D. Pa. Aug. 2, 2011) (allowing redaction of irrelevant

information in commercial dispute); *Spano v. Boeing Co.*, No. 3:06-cv-743, 2008 WL 1774460, at *2-3 (S.D. Ill. Apr. 16, 2008) (allowing redaction of information related to employee benefit plans not at issue in case).

Here, there is no reason why Plaintiffs should be allowed to access, for example, confidential health or education information associated with individuals not involved in this case just because that information appears on the same page as relevant information. Under Duke's proposal, if Plaintiffs question a redaction, they can request that Duke provide a log that describes the nature of the redacted material. Duke's approach is reasonable and workable.

3. The Court should adopt certain timing provisions contained in the Duke Order.

Duke proposes that (i) parties have until 30 days after a deposition to designate all or portions of the transcript as confidential; and (ii) parties have until 30 days after a document production to "claw back" "Confidential Information" that is inadvertently produced. *See* Duke Order ¶¶ 9, 11, 15 (Ex. A). As to the first, Plaintiffs propose a shorter time—that parties have until 10 days after a deposition to designate confidentiality. But as to the second, Plaintiffs propose a much longer time—that parties retain a "claw-back" right ***indefinitely***.

The 30-day window for deposition designations is identical to that in

Carrington and gives the parties a reasonable time to review and designate transcripts. Under Plaintiffs' version, there would be two designation periods: 30 days in *Carrington* and 10 days in this case. Given that depositions are often cross-noticed in both cases, Plaintiffs' proposal adds an unnecessary complication. Further, Duke's proposed 30-day "claw-back" period encourages parties to review promptly their productions to identify confidential information. Plaintiffs' proposal gives no such incentive, and under it a party could "claw-back" a document literally on the eve of summary judgment or trial. This is unreasonable, and Duke's proposal should be adopted instead.

4. Parties should not be forced to scrutinize the history of a publicly-available document to determine whether it was disclosed "in violation of law."

Duke proposes that no publicly-available document can be considered "Confidential Information" unless it was disclosed in violation of the protective order. *See* Duke Order ¶ 4 (Ex. A). Plaintiffs propose that publicly-available documents should remain confidential where they were disclosed "through a violation of law." *See* Plaintiffs' Order ¶ 4 (Ex. B).

Plaintiffs' proposal is unreasonable. Under Plaintiffs' version, a party seeking to use or file ***any*** publicly-available document would be forced to investigate the circumstances under which it became public—which may have

been years earlier—in order to determine whether it was disclosed "in violation of law." This unreasonably burdens the parties' right to use information that is public. Further, it invites needless evidentiary detours into the history of a particular document and the propriety of its disclosure.

5. Parties should not be required to preemptively itemize the "Confidential Information" contained in a given document.

Duke anticipates that in rare instances, a party may produce a document stamped "Confidential" where the reason for the designation is not apparent. Accordingly, upon the request of counsel, the producing party should identify the particular "Confidential Information"—*i.e.*, the basis for the "Confidential" stamp. Duke Order ¶ 6 (Ex. A). Plaintiffs, however, would require a producing party do so automatically, for ***every*** "Confidential" document. *See* Plaintiffs' Order ¶ 6.

Where a document is stamped "Confidential," the basis of the designation will almost always be readily apparent (*e.g.*, document reflects an individual's salary information, health records, or academic or disciplinary record). In those instances, there is no reason to state the obvious basis of confidentiality, and Plaintiffs' approach would do nothing but require hours of needless work. Duke's proposal is much more efficient: in the rare instance when the basis is not apparent, an opposing party can seek clarification. That approach is reasonable

and consistent with the purposes of umbrella or blanket protective orders.

6. The Duke Order properly accounts for documents produced for inspection.

Where documents are made available for inspection rather than served in a document production (*see* Fed. R. Civ. P. 34), the usual method of stamping documents "Confidential" can be impractical, since the documents made available usually are originals and the requesting party often copies only a portion of those made available. To address this scenario, Duke proposes that the producing party be allowed to designate "Confidential Information" after the requesting party has selected certain documents for copying. *See* Duke Order ¶ 7 (Ex. A). In response, Plaintiffs simply deleted this provision without suggesting an alternative. *See* Plaintiffs' Order ¶ 7 (Ex. B). Duke's proposal is more efficient and will spare the parties from making unnecessary designations of documents that may never be disclosed.

CONCLUSION

For the foregoing reasons, Duke respectfully requests that the Court grant its Motion for Entry of Protective Order on Confidentiality and Prospective Sealing Order and enter a protective order in the form attached as Exhibit A.

This the 26th day of March, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on 26 March 2012, I electronically filed the foregoing **Brief in Support of Motion for Entry of Protective Order on Confidentiality and Prospective Sealing Order** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and to Mr. Linwood Wilson, who is also registered to use the CM/ECF system.

This the 26th day of March, 2012.

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