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The Hon. RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

ROBERT SANDERS

Plaintiff – Intervenor

v.

BIG 5 CORP.,

Defendant

Case No.
2:17-cv-01098-RSM

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable legal
2 principles, and it does not presumptively entitle parties to file confidential information
3 under seal.

4
5 **2. “CONFIDENTIAL” MATERIAL**

6 “Confidential” material shall include the following documents and tangible things
7 produced or otherwise exchanged:

- 8 a. Tax returns, including schedules, of any party, to the extent such records are
9 produced;
10
11 b. Plaintiff – Intervenor’s medical records, to the extent such records are produced;
12 and,
13
14 c. Third Party medical records and personnel files.

15 **3. SCOPE**

16 The protections conferred by this agreement cover not only confidential material
17 (as defined above), but also (1) any information copied or extracted from confidential
18 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
19 and (3) any testimony, conversations, or presentations by parties or their counsel that
20 might reveal confidential material.
21

22
23 However, the protections conferred by this agreement do not cover information
24 that is in the public domain or becomes part of the public domain through trial or
25 otherwise.
26

27 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

28 4.1 Basic Principles. A receiving party may use confidential material that is
29 disclosed or produced by another party or by a non-party in connection with this case
30

1 only for prosecuting, defending, or attempting to settle this litigation. Confidential
2 material may be disclosed only to the categories of persons and under the conditions
3 described in this agreement. Confidential material must be stored and maintained by a
4 receiving party at a location and in a secure manner that ensures that access is limited
5 to the persons authorized under this agreement.
6

7 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the designating party, a receiving party
9 may disclose any confidential material only to:
10

11 (a) the receiving party's counsel of record in this action, as well as
12 employees of counsel to whom it is reasonably necessary to disclose the information for
13 this litigation;
14

15 (b) the officers, directors, and employees (including in house counsel) of
16 the receiving party to whom disclosure is reasonably necessary for this litigation, unless
17 the parties agree that a particular document or material produced is for Attorney's Eyes
18 Only and is so designated;
19

20 (c) experts and consultants to whom disclosure is reasonably necessary
21 for this litigation and who have signed the "Acknowledgment and Agreement to Be
22 Bound" (Exhibit A);
23

24 (d) the court, court personnel, and court reporters and their staff;

25 (e) copy or imaging services retained by counsel to assist in the
26 duplication of confidential material, provided that counsel for the party retaining the copy
27 or imaging service instructs the service not to disclose any confidential material to third
28 parties and to immediately return all originals and copies of any confidential material;
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1 (f) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the "Acknowledgment and Agreement to
3 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by
4 the court. Pages of transcribed deposition testimony or exhibits to depositions that
5 reveal confidential material must be separately bound by the court reporter and may not
6 be disclosed to anyone except as permitted under this agreement;
7

8 (g) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;
10

11 (h) Any mediator that the parties have jointly designated for purposes of
12 attempting to resolve this case; and
13

14 (i) Any other individual agreed to in writing by the designating party.
15

16 4.3 Filing Confidential Material. Before filing confidential material or discussing or
17 referencing such material in court filings, the filing party shall confer with the designating
18 party to determine whether the designating party will remove the confidential
19 designation, whether the document can be redacted, or whether a motion to seal or
20 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the
21 procedures that must be followed and the standards that will be applied when a party
22 seeks permission from the court to file material under seal.
23
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25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
27 party or non-party that designates information or items for protection under this
28 agreement must take care to limit any such designation to specific material that qualifies
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1 under the appropriate standards. The designating party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that
3 qualify, so that other portions of the material, documents, items, or communications for
4 which protection is not warranted are not swept unjustifiably within the ambit of this
5 agreement.
6

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that
8 are shown to be clearly unjustified or that have been made for an improper purpose
9 (e.g., to unnecessarily encumber or delay the case development process or to impose
10 unnecessary expenses and burdens on other parties) expose the designating party to
11 sanctions.
12

13
14 If it comes to a designating party's attention that information or items that it
15 designated for protection do not qualify for protection, the designating party must
16 promptly notify all other parties that it is withdrawing the mistaken designation.
17

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, disclosure or discovery material that qualifies for protection under
21 this agreement must be clearly so designated before or when the material is disclosed
22 or produced.
23

24 (a) Information in documentary form: (e.g., paper or electronic documents
25 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page
27 that contains confidential material. If only a portion or portions of the material on a page
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1 qualifies for protection, the producing party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the
4 parties and any participating non-parties must identify on the record, during the
5 deposition or other pretrial proceeding, all protected testimony, without prejudice to their
6 right to so designate other testimony after reviewing the transcript. Any party or non-
7 party may, within fifteen days after receiving the transcript of the deposition or other
8 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
9 confidential. If a party or non-party desires to protect confidential information at trial, the
10 issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent
12 place on the exterior of the container or containers in which the information or item is
13 stored the word "CONFIDENTIAL." If only a portion or portions of the information or item
14 warrant protection, the producing party, to the extent practicable, shall identify the
15 protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the designating
18 party's right to secure protection under this agreement for such material. Upon timely
19 correction of a designation, the receiving party must make reasonable efforts to ensure
20 that the material is treated in accordance with the provisions of this agreement.

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a designating party's
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1 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
2 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
3 party does not waive its right to challenge a confidentiality designation by electing not to
4 mount a challenge promptly after the original designation is disclosed.

6 6.2 Meet and Confer. The parties must make every attempt to resolve any
7 dispute regarding confidential designations without court involvement. Any motion
8 regarding confidential designations or for a protective order must include a certification,
9 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
10 meet and confer conference with other affected parties in an effort to resolve the dispute
11 without court action. The certification must list the date, manner, and participants to the
12 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
13 conference.
14 conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
17 intervention, the designating party may file and serve a motion to retain confidentiality
18 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
19 burden of persuasion in any such motion shall be on the designating party. Frivolous
20 challenges, and those made for an improper purpose (e.g., to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the challenging party
22 to sanctions. All parties shall continue to maintain the material in question as
23 confidential until the court rules on the challenge.
24 confidential until the court rules on the challenge.

27 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
28 **OTHER LITIGATION**

1 If a party is served with a subpoena or a court order issued in other litigation that
2 compels disclosure of any information or items designated in this action as
3 “CONFIDENTIAL,” that party must:

4 (a) promptly notify the designating party in writing and include a copy of the
5 subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to issue
7 in the other litigation that some or all of the material covered by the subpoena or order is
8 subject to this agreement. Such notification shall include a copy of this agreement; and
9

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by
11 the designating party whose confidential material may be affected.
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14 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this
17 agreement, the receiving party must immediately:

18 (a) notify in writing the designating party of the unauthorized disclosures;

19 (b) use its best efforts to retrieve all unauthorized copies of the protected
20 material;
21

22 (c) inform the person or persons to whom unauthorized disclosures were made of
23 all the terms of this agreement; and
24

25 (d) request that such person or persons execute the “Acknowledgment and
26 Agreement to Be Bound” that is attached hereto as Exhibit A.
27

28 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
29 **PROTECTED MATERIAL**
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1 When a producing party gives notice to receiving parties that certain
2 inadvertently produced material is subject to a claim of privilege or other protection, the
3 obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure
4 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
5 established in an e-discovery order or agreement that provides for production without
6 prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R.
7 Evid. 502(d) as set forth herein.
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10 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

11 Within 60 days after the termination of this action, including all appeals, each
12 receiving party must return all confidential material to the producing party, including all
13 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
14 appropriate methods of destruction.
15

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of
17 all documents filed with the court, trial, deposition, and hearing transcripts,
18 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
19 consultant and expert work product, even if such materials contain confidential material.
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22 The confidentiality obligations imposed by this agreement shall remain in effect
23 until a designating party agrees otherwise in writing or a court orders otherwise. Nothing
24 in this Protective Order shall be interpreted as limiting or overriding the EEOC's obligation
25 to maintain copies of files pursuant to the Federal Records Act.
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27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: November 17, 2017 /s/ Carmen Flores
Carmen Flores
Attorney for Plaintiff EEOC

DATED: November 17, 2017 /s/ Scott Thomas
Scott G. Thomas, WSBA #23079
Attorney for Plaintiff – Intervenor Robert Sanders

DATED: November 14, 2017 /s/ Megan L. Starich
Megan L. Starich, WSBA #47520

/s/ Francis L. Van Dusen, Jr.
Francis L. Van Dusen, Jr., WSBA #13669
Attorneys for Defendant Big 5 Corp.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-
6 product protection, or any other privilege or protection recognized by law.
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8 DATED: 11/27/2017
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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under

penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of Equal Employment Opportunity Commission v. Big 5 Corp., Case No. 2:17-cv-01098. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: