

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

JENNIFER ECKLUND, RECEIVER,

Plaintiff,

v.

ROBERT AND SANDRA BAILEY, et al.

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§

Ancillary Civil Action No. 4:18-cv-359

**PROTECTIVE ORDER**

Before the Court is the Receiver’s Motion for Entry of Protective Order filed in this Case. The Court determines that the Motion should be and is hereby **GRANTED**. Accordingly, pursuant to Rule 26 of the Federal Rules of Civil Procedure, all Parties (individually referred to as a “**Party**” and collectively referred to as the “**Parties**”) in the above-captioned action (the “**Litigation**”) shall be governed by the following Protective Order (“**Order**”).

The Parties are engaged in discovery in the Litigation. Discovery is expected to involve the production of information and documents that a Party believes is confidential and contains sensitive personal, commercial, proprietary, financial, and/or business information. Accordingly, this Order shall govern the handling of information, documents, testimony, deposition exhibits, discovery responses, and any other information or material produced, given, or exchanged by, among, or between the Parties and any non-parties in connection with discovery in the Litigation (such information or material is hereinafter referred to as “**Discovery Material**”).

It is hereby **ORDERED** that:

**INFORMATION DESIGNATED CONFIDENTIAL**

1. For purposes of this Order, “CONFIDENTIAL INFORMATION” means all information or material produced for or disclosed to a receiving party (“**Receiving Party**”) that a

Party or non-party producing information or material voluntarily or pursuant to a subpoena or court order (“**Producing Party**”) considers to constitute or to contain sensitive personal, commercial, proprietary, financial, business information, or other sensitive materials, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the Producing Party. Any CONFIDENTIAL INFORMATION obtained by a Party pursuant to discovery in the Litigation may be used only for purposes of the Litigation and may not be disclosed publicly or to non-parties except as expressly provided herein.

2. A Producing Party may designate any document or tangible thing containing or including any CONFIDENTIAL INFORMATION as such by marking it as “CONFIDENTIAL” prior to or at the time the Producing Party furnishes copies to the Receiving Party. In the case of multi-page documents bound together by staple or other permanent binding, the word “CONFIDENTIAL” need only be stamped on the first page of the document in order for the entire document to be treated as CONFIDENTIAL INFORMATION.

3. A Party may designate portions of transcripts of depositions (and the corresponding portions of any audio and video recordings of depositions) and any exhibits to such depositions “CONFIDENTIAL,” as the case may be, by an appropriate statement at the time such testimony is given or thereafter by notifying the other Party in writing of the portions of such testimony to be so designated within twenty-one (21) calendar days after receipt of the unsigned transcript. Documents discussed during or attached as an exhibit to a deposition do not gain a designation of “CONFIDENTIAL” if the deposition transcript is designated, in whole or in part, “CONFIDENTIAL.” Similarly, documents designated as “CONFIDENTIAL” that are discussed during or attached as an exhibit to a deposition do not lose a designation of “CONFIDENTIAL” if the deposition transcript is not designated “CONFIDENTIAL.”

4. All CONFIDENTIAL INFORMATION not reduced to documentary, tangible, or physical form or which cannot be conveniently designated as set forth in paragraph 2, shall be designated by the Producing Party by informing the Receiving Party of the designation in writing.

5. Subject to paragraph 6 below, the following information is not CONFIDENTIAL INFORMATION:

- a. any information which a Party can demonstrate, by means of documents, is in the public domain at the time of disclosure to a Receiving Party;
- b. any information which, after its disclosure to a Receiving Party, becomes part of the public domain as a result of publication not through a violation of this Order or other breach of an obligation of confidentiality to the Producing Party;
- c. any information which the Receiving Party can show by written records was received by it after the disclosure from a source that obtained the information lawfully and is under no obligation of confidentiality to the Producing Party; and
- d. any information that the Receiving Party can show was independently developed by it after the time of disclosure by personnel who did not have access to the Producing Party's CONFIDENTIAL INFORMATION, and was not developed illegally or through a violation of this Order or other breach of an obligation of confidentiality to the Producing Party.

6. Notwithstanding paragraph 5, a Party may designate a document as "CONFIDENTIAL" where the information is part of a compilation not in the public domain.

**UNINTENTIONAL FAILURE TO DESIGNATE**

7. If, through inadvertence, a Producing Party provides any material not designated as “CONFIDENTIAL” and subsequently determines that such material should have been so designated, the Producing Party may inform the Receiving Party of the confidential nature of the undesignated disclosed material, and the Receiving Party shall treat the disclosed designated material as “CONFIDENTIAL” upon receipt of written notice from the Producing Party. Disclosure of such designated material to persons not authorized to receive that material prior to receipt of the confidentiality designation shall not be deemed a violation of this Order. However, in the event the material has been distributed in a manner inconsistent with the categorical designation, the Receiving Party will take the steps necessary to conform distribution to the categorical designation, i.e., by retrieving all copies of the designated material, or notes or extracts thereof, in the possession of the person not authorized under this Order to possess such designated material and advising the person to whom disclosure was made that the material is confidential and should be treated as provided in this Order.

**NO WAIVER OF PRIVILEGE**

8. If information subject to a claim of attorney-client privilege, attorney work product, the exemption for trial preparation material, or any other ground on which production of such information should not be made to a Party is nevertheless inadvertently produced to a Party, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product, or other ground for withholding production to which the Producing Party would otherwise be entitled, provided that, within fourteen (14) calendar days after the Producing Party actually discovers that the information was inadvertently produced, the Producing Party requests in writing (a “**Return Request**”) that the other Party return all Discovery Material as to which the claim of inadvertent production has been made and destroy all copies or

other material derived therefrom. All Discovery Material covered by a Return Request shall be returned and/or destroyed as requested within fourteen (14) calendar days of receipt of the Return Request. If a Party objects to the Return Request, that Party must file a motion challenging the protected status of the subject Discovery Material within fourteen (14) calendar days of receipt of the Return Request. Any Party so objecting shall not use the Discovery Material covered by the Return Request for any purpose other than such a motion pending the Court's resolution of the issue. Any Discovery Material covered by the Return Request submitted to the Court in support of such a motion must be filed under seal.

**DISCOVERY RULES REMAIN UNCHANGED**

9. Nothing in this Order shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure and this Court's local civil rules. Identification of any individual pursuant to this Order does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure and this Court's local civil rules.

**PERSONS AUTHORIZED TO RECEIVE CONFIDENTIAL INFORMATION**

10. CONFIDENTIAL information shall be maintained in confidence and shall not be shared by the Receiving Party with any person other than:

- a. The Parties, and their respective employees, officers, directors, and in-house counsel;
- b. Attorneys for the Parties working on the Litigation not directly employed by a Party ("**Outside Counsel**") and support personnel employed by Outside Counsel, including but not limited to paralegals, legal secretaries, legal clerks, litigation support and information technology personnel, court reporters, and translators;

- c. Subject to paragraph 15, deponents and witnesses or prospective witnesses in the Litigation, where such disclosure is reasonably necessary for the purposes of trial preparation, factual investigation, or discovery;
- d. The Court and its staff; and
- e. The following individuals, provided that they first execute the form attached hereto as **Exhibit A**<sup>1</sup>: Outside experts or outside consultants for any party, including their administrative assistants, secretaries and other members of the clerical and administrative staffs of those outside experts or outside consultants whose advice and consultation are being or will be used by such party in connection with this proceeding, including any motions in this proceeding. Outside experts or outside consultants, as used in this paragraph, shall not include any regular employee of the receiving party.

11. Any other person may have access to information designated CONFIDENTIAL provided that prior written consent of the Producing Party is obtained. The Parties may move for leave of Court to share information designated CONFIDENTIAL with any other person as reasonably necessary for the Litigation and/or upon showing good cause.

#### **CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

12. The Parties shall use reasonable care when designating documents or information as CONFIDENTIAL. Nothing in this Order shall prevent a Receiving Party from contending that documents or information designated as CONFIDENTIAL are improperly designated. A Receiving Party may at any time request that the Producing Party remove or modify the

---

<sup>1</sup> Counsel or any party making such disclosure shall retain an executed copy of Exhibit A during the pendency of this Litigation. Should an instance occur where documents subject to this order are publicly disseminated, counsel for each party or any *pro se* party shall file all executed Acknowledgements with the Court for an in camera review.

CONFIDENTIAL designation with respect to any document or information contained in a document.

13. A Party shall not be obligated to challenge the propriety of a CONFIDENTIAL designation at the time made, and a failure to do so shall not preclude a subsequent challenge. Such a challenge shall be in writing and served on Counsel for the Producing Party, and it shall particularly identify the documents or information that the Receiving Party contends should be differently designated. The Parties shall use their best efforts to resolve promptly and informally such disputes. If an agreement cannot be reached, the Receiving Party may file an appropriate motion requesting that the Court cancel or modify a challenged CONFIDENTIAL designation.

**LIMITATIONS ON THE USE OF CONFIDENTIAL INFORMATION**

14. Information designated CONFIDENTIAL shall be held in confidence by each person to whom disclosed, shall be used only for purposes of the Litigation, shall not be used for any business purpose, and shall not be disclosed publicly or to any person who is not entitled to receive such information as herein provided. All information designated CONFIDENTIAL shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

15. Except as may be otherwise ordered by the Court, a Receiving Party may show to a witness at depositions and trial, and the witness may testify concerning, information designated CONFIDENTIAL of which such person has prior knowledge. A Receiving Party may also show information designated CONFIDENTIAL to the following individuals:

- a. A Receiving Party may show a present director, officer, and/or employee of a Producing Party all information designated CONFIDENTIAL which has been produced by that Producing Party;

- b. A Receiving Party may show a former director, officer, agent and/or employee of a Producing Party all information designated CONFIDENTIAL of which he or she has prior knowledge, including any information designated CONFIDENTIAL that refers to matters of which the witness has personal knowledge, which has been produced by that Party and which pertains to the period or periods of his or her employment;
- c. A non-party may be examined or testify concerning any document containing information designated CONFIDENTIAL which appears on its face or from other documents or testimony to have been received from or communicated to the non-party as a result of any contact or relationship with the Producing Party or a representative of the Producing Party; and
- d. The Parties may move for leave of Court to share information designated CONFIDENTIAL with any other witness as reasonably necessary for the Litigation and/or upon showing good cause.

Any person other than the witness, his or her attorney(s), or any person qualified to receive information designated CONFIDENTIAL under this Order shall be excluded from the portion of the examination concerning such information, unless the Producing Party consents to persons other than qualified recipients being present at the examination.

16. All portions of transcripts of depositions, exhibits, discovery responses, pleadings, briefs, and other documents submitted to the Court which have been designated as CONFIDENTIAL or which contain information so designated, shall be filed under seal.

17. Except as provided in paragraph 10, nothing in this Order shall prohibit the transmission or communication of information designated CONFIDENTIAL between or among qualified recipients in such a way as to preserve the confidentiality of the designated materials.

18. Information designated CONFIDENTIAL may be copied or reproduced only by a qualified Receiving Party and solely for the purposes of transmission to other qualified parties, or the making of working copies, abstracts, digests and analyses of information designated CONFIDENTIAL for use in connection with the Litigation and such working copies, abstracts, digests and analyses shall be deemed information designated CONFIDENTIAL under the terms of this Order. Nothing herein shall restrict a qualified recipient from converting or translating information designated CONFIDENTIAL into machine-readable form for incorporation into a data retrieval system used in connection with the Litigation, provided that access to information designated CONFIDENTIAL, in whatever form stored or reproduced, shall be limited to qualified recipients.

19. A Receiving Party shall not under any circumstances sell, offer for sale, advertise, or publicize information designated CONFIDENTIAL.

#### **NON-PARTY USE OF THIS ORDER**

20. 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 pursuant to this Order.

21. A non-party's use of this Order to protect its information does not entitle that non-party to access information designated CONFIDENTIAL produced by any Party or other non-party.

### MISCELLANEOUS PROVISIONS

22. Nothing in this Order shall prevent a Party from using or disclosing its own documents and information.

23. All documents and information exchanged by the Parties, or collected from non-parties, in this Litigation — regardless of any designation that may be placed on such information or documents pursuant to this Order — shall be used solely for the purpose of preparation, trial, and appeal of the Litigation, and shall not be used for any other purpose.

24. If a Party has in its possession a non-party's CONFIDENTIAL information, and (a) this information would be subject to disclosure in the Litigation, and (b) a duty of confidentiality prevents such information from being disclosed, then the Party possessing this information shall notify the non-party. The Party possessing the information and/or the non-party shall have twenty-one (21) calendar days from the date of such notice to file a motion for a protective order seeking to prohibit disclosure of the information. If no motion for a protective order is filed within such time period, the Party in possession of the non-party's CONFIDENTIAL information shall promptly produce such information with an appropriate confidentiality designation. If a motion for a protective order is filed within such time period, the Party opposing such motion may seek leave of court for access to the non-party's CONFIDENTIAL information pending the Court's ruling on the motion if such access is deemed necessary to oppose the motion for a protective order.

25. If any person receiving documents covered by this Order (the "**Recipient**") is subpoenaed in another action or proceeding, or served with a document demand or other similar legal process in another proceeding (including any proceeding before any other court, arbitral panel, regulatory agency, law enforcement or administrative body), and such subpoena or

document demand seeks CONFIDENTIAL information that was produced by a person or entity other than the Recipient, the Recipient shall give written notice, as promptly as reasonably practicable, to counsel for the person or entity that designated the Discovery Material as CONFIDENTIAL. The Producing Party shall bear all responsibility for any objection to the production of such Discovery Material, except that the Recipient shall not voluntarily make any production of another's Discovery Material until resolution of any objections raised by the Producing Party.

26. Any of the notice requirements herein may be waived, in whole or in part, but only by a writing signed by, or an email sent by, an attorney of record for the Party against whom such waiver will be effective.

27. Within sixty (60) calendar days after the entry of a final non-appealable judgment or order, or the complete settlement of all claims asserted in the Litigation, each Party shall, at its option, either return to the Producing Party or destroy all physical objects and documents which embody information designated CONFIDENTIAL which were received from the Producing Party, and shall destroy in whatever form stored or reproduced, all other physical objects and documents, or if possible, the portion of any such object or document containing CONFIDENTIAL material. Notwithstanding the foregoing, Outside Counsel shall be entitled to maintain a copy of all pleadings and other documents filed with the Court, discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial transcripts, exhibits offered or introduced into evidence at any hearing or trial, privileged communications, and attorney work product; provided that Outside Counsel maintains all such materials in accordance with the terms of this Order.

28. This Order is entered without prejudice to the right of any Party to apply to the Court at any time for additional protection, or to relax or rescind the restrictions of this Order intended to protect the rescinding Party, when convenience or necessity requires.

29. The U.S. District Court for the Eastern District of Texas (“**Court**”) is responsible for the interpretation and enforcement of this Order. All disputes concerning information designated CONFIDENTIAL produced under the protection of this Order shall be resolved by the Court.

30. This Order shall remain in full force and effect after the termination of the Litigation or until cancelled or otherwise modified by order of the Court.

**THE COURT SO ORDERS.**

**SIGNED this 16th day of January, 2019.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

JENNIFER ECKLUND, RECEIVER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Ancillary Civil Action No. 4:18-cv-359
	§	
ROBERT AND SANDRA BAILEY, et al.	§	
	§	
Defendants.	§	

I hereby certify (i) my understanding that Discovery Material is being provided to me pursuant to the terms and restrictions of the Protective Order (the “**Order**”) entered by the United States District Court, Eastern District of Texas; (ii) that I have read and understand the terms of the Order; (iii) that I agree to be fully bound by the terms of the Order; (iv) that I agree to submit to the jurisdiction of this Court for adjudication of any dispute regarding my compliance with the terms of the Order; and (v) that, upon the conclusion of the Litigation and any appeals related thereto, or when I no longer have any reason to possess the designated CONFIDENTIAL material, whichever shall occur first, I agree to return all copies of the designated material to the Party who furnished the same to me or certify that the same has been destroyed.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_