

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

DENNY'S, INC.,

Defendant.

CIVIL ACTION 1:06-cv-02527-AMD

AMENDED STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIALITY

THIS CAUSE came before the Court on the parties' joint motion for the entry of an amended protective order. Upon consideration of the joint motion, IT IS HEREBY ORDERED AS FOLLOWS:

I. DOCUMENTS AND INFORMATION RELATING TO DEFENDANT'S FORMER AND CURRENT EMPLOYEES:

A. For purposes of this Order, "Litigation" means the litigation between the Equal Employment Opportunity Commission and Denny's, Inc., encaptioned Equal Employment Opportunity Commission v. Denny's, Inc., Civil Action 1:06-cv-02527-AMD.

B. For purposes of this Order, "Discovery Material" means all documents, data, deposition testimony and transcripts, deposition exhibits, responses to any discovery requests, including responses to interrogatories, document requests, subpoenas *duces tecum*, and requests for admission, inspections, examinations of premises, facilities and physical evidence, and any other information or material produced pursuant to the Federal Rules of Civil Procedure or otherwise given or exchanged by or among the

parties and non-parties to this action and includes all copies of such documents or other materials, in hard copy, electronic form, or any other form or format.

C. The “Confidential” designation is intended to be applied as specified herein to Discovery Material that contains non-public, confidential personnel and medical information that is treated by the parties as confidential information, including but not limited to employees’ and former employees’ contact information, social security numbers, personnel information, medical and benefits information, financial, tax, any and all settlement and other documents produced by Paula Hart as required by the Letter Order of October 31, 2007 (Paper No. 26) in this action, or any other commercial and/or personnel information that the designating party in good faith believes requires the protections of this Order. However, the “Confidential” designation and this Order shall not be construed to include, as Confidential Discovery Material, at least the following documents and information: (a) documents or information related to Defendant's equal employment opportunity, ADA, reasonable accommodation, medical leave and other policies and procedures, and (b) documents or information regarding charges of discrimination, lawsuits, reports, complaints or other claims on public record regarding alleged disability discrimination.

D. Other than as permitted by this Order, no person other than the parties and their representatives may review, examine, or make copies of such documents or be given access to such information without the written consent of the opposing or producing party, and no one properly in possession of such documents or information may reveal the contents of the same or exhibit any document or any portion of any document to anyone other than those permitted by this Order. To obtain written consent for the disclosure of anything designated as “Confidential” to any person not specified in this Order, such party must first present a written request to opposing counsel seeking the release of the document, material, or information from the terms of this protective Order and thereafter, the party receiving such request shall have ten (10) days from receipt

thereof to respond to said request. If the parties do not reach an agreement, then the requesting party may move this Court for relief from this Order.

E. Any Discovery Material claimed to be “Confidential” prior to production may be clearly marked by the producing party as such, or designated as such if material is imaged or provided on electronic disc format. In the case of a thing, the legend “Confidential” shall be securely affixed in a prominent location. With regard to marking documents with the appropriate confidentiality classification, each page of the document that contains confidential information shall be so marked in a prominent location. Copies, extracts, summaries, notes, and other derivatives of “Confidential” Discovery Material shall also be deemed “Confidential” and shall be subject to the provisions of this Order. Notwithstanding the foregoing, the parties may also designate Discovery Material as "Confidential" by providing to the opposing party, in writing, a description of the Bates numbers or range of documents to be so designated, even if not marked with the confidentiality classification.

F. Any party objecting to the designation of any particular Discovery Material as “Confidential” or believing that any such designation is not made in good faith (collectively referred to as “objections”) shall attempt to resolve the matter by setting forth in writing to the other party the objections and reason(s) therefore. The other party shall then, within seven days of receiving objections, set forth in writing a response to the objections and reasons believed to support the designation. Any objections that counsel are unable to resolve within fourteen (14) days of the receipt of the objection may be raised with the Court by the party challenging confidentiality. The burden of demonstrating the appropriateness of designating Discovery Material as "Confidential" shall be upon the party making the designation. Pending the determination by the Court, the Discovery Material shall retain its protected status.

G. Discovery Material designated “Confidential,” copies thereof, and any confidential information contained therein shall not be disclosed to any person except:

- (1) the Court and its officers;
- (2) court reporters, videographers, and interpreters engaged in this Litigation;
- (3) counsel of record in this Litigation and personnel of counsels' respective law firms or government agency, including but not limited to other counsel, paralegals, legal assistants, litigation support services, other employees, and outside copy services utilized by each firm or government agency;
- (4) independent consultants or non-party experts retained by a party or counsel to a party to assist counsel in the preparation and trial of this Litigation. Any party so retaining such a consultant or expert shall have such consultant or expert execute the Agreement attached to this Order and shall keep a copy of such Agreement on file;
- (5) persons regarding whom the Discovery Material pertains;
- (6) persons who in good faith a party believes authored the Discovery Material or already have knowledge of its contents;
- (7) persons who are testifying at a hearing, deposition or trial in this action; and
- (8) persons to whom disclosure is required by federal law.

H. So long as this Order is enforced as to any Discovery Material, or portion thereof designated "Confidential," no use shall be made of the Discovery Material, any copies thereof, or the contents of such Discovery Material or copies, by persons authorized pursuant to this Order, except for the purposes of this Litigation.

Notwithstanding anything to the contrary hereinabove, nothing in this Order shall restrict a party's or third party's ability to use or disclose its own documents or proprietary information. In addition, notwithstanding any other provision in this Order, EEOC shall not be restricted in its ability to use or disclose Discovery Material designated as "Confidential" by Defendant but that pertains to EEOC's claimants in this case.

I. Discovery Material designated as “Confidential” pursuant to this Order may only be reviewed by or disclosed or otherwise revealed to those persons specified in this Order, respectively. Moreover, the information contained in such Discovery Material cannot be revealed to any person not specified in this Order.

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

II. CONCLUSION OF LITIGATION:

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

III. EXCEPTIONS TO PROTECTIVE ORDER:

There are no exceptions except as may be provided by Order of the Court following notice to all the parties, pursuant to the procedure as outlined above. This Order shall be without prejudice to the right of any party to bring to the Court at any time the question of whether any particular document or information is “Confidential” or whether its use should be restricted.

Notwithstanding the foregoing, any party may at any time remove its previous "Confidential" designation regarding any Discovery Material.

IV. FILING OF CONFIDENTIAL INFORMATION UNDER SEAL:

All Discovery Material designated as “Confidential” that is filed with the Court, and all pleadings, motions, or other papers filed with the Court that contain or disclose such Discovery Material, shall be filed in accordance with the procedures set forth in the Local Rules and CM/ECF procedures of this Court for filing of documents under seal, including the filing of a Motion to Seal. Given that in this circumstance the Motion to Seal will be filed by the non-designating party, it need only reference this Order and need not set forth the reasons for sealing, as the burden of demonstrating the propriety of sealing shall be upon the designating party. Thereafter, within the time frame permitted under the Local Rules of this Court for filing a Response to the Motion to Seal, the designating party shall file a pleading specifically identifying the Discovery Material that it will consent to have filed not under seal (if any), the Discovery Material it believes should remain "Confidential" and be filed under seal (if any), and the reasons why the latter Discovery Material should be filed under seal. Such pleading shall apply controlling law regarding the First Amendment and common law rights of access to judicial records. Thereafter, within the time frame permitted under the Local Rules of this Court for filing a Reply regarding the Motion to Seal, the non-designating party shall file a pleading identifying which Discovery Material (if any) that the designating party seeks to have filed under seal but that the non-designating party believes should not be filed under seal and the reasons why that Discovery Material should not be filed under seal (again, applying controlling law regarding the First Amendment and common law rights of access to judicial records).

V. MISCELLANEOUS

This Order shall not govern use of "Confidential" Discovery Material regarding any hearing or trial in this action.

This Order, being an order of the Court, is enforceable by all lawful and appropriate means. However, neither this Order nor any provision thereof shall be

construed to create or give rise to any claim or cause of action against the parties, their counsel, or any employees of the parties or counsel.

So ORDERED this 5th day of November, 2007.

/s/
Honorable Andre M. Davis
United States District Judge

Agreed to by:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FORD & HARRISON LLP

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Counsel for Plaintiff

AGREEMENT

I, _____, declare under penalty of perjury that the following is true and correct: I reside at _____ in the City of _____ and State of _____; I have read the Stipulated Protective Order concerning Confidential Information entered on _____ (the "Protective Order"); I am (state relationship to litigation) _____ regarding the litigation between the Equal Employment Opportunity Commission on the one hand and Denny's, Inc. on the other, the same being Civil Action No. 1:06-cv-02527-AMD in the United States District Court for Maryland; that I am fully familiar with and agree to comply with and be bound by the provisions of said Protective Order; and that I will not divulge to persons other than those specifically authorized by said Protective Order, and will not copy or use except solely for the purposes of this litigation, any information constituting Confidential Information under the Protective Order except as provided therein.

Dated: _____

Signature