

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Kevin Scott Karsjens, David Leroy Gamble, Jr., Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, Bradley Wayne Foster, Brian K. Hausfeld and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>Lucinda Jesson, Dennis Benson, Kevin Moser, Tom Lundquist, Nancy Johnston, Jannine Hébert, and Ann Zimmerman, in their individual and official capacities,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civ. No. 11-3659 (DWF/JJK)</p> <p style="text-align: center;">SECOND AMENDED PROTECTIVE ORDER</p>
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WHEREAS, in order to expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect non- public and/or confidential material, and ensure that protection is afforded only to material so entitled, the Court enters this Protective Order pursuant to Rule 26 of the Federal Rules of Civil Procedure. **IT IS HEREBY ORDERED** that:

1. As used in the Protective order, these terms have the following meanings:

“Action” means the action captioned *Karsjens et al. v. Lucinda Jesson, et al.*, 11-cv-03659 (DWF/JJK), which is currently pending in the United States District Court

for the District of Minnesota, and includes amended complaints in this action and all actions that may later be coordinated and/or consolidated with this matter in the future;

“Confidential” information may include any information within the ambit of Rule 26(c) of the Federal Rules of Civil Procedure, including information that, if publicly disclosed, may cause undue annoyance, embarrassment, or oppression. It may also include, but is not limited to, information classified as “private data on individuals,” “not public,” or “confidential” by the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. Ch. 13; information classified as “education records” under 20 U.S.C. § 1232g (“FERPA”); and information classified as “protected health information” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 45 C.F.R. Parts 160, 162, and 164 (“HIPAA”); and information classified as “substance abuse treatment information” under 42 U.S.C. § 290.dd-2; 42 C.F.R. § 2.1 to § 2.67.

“Confidential – Attorneys’ Eyes Only” documents are the subset of Confidential documents as may be designated herein. Such documents produced by Defendants to Plaintiffs’ counsel shall not be viewed by plaintiffs or prospective class members;

“Court” shall refer to the United States District Court for the District of Minnesota;

“Defendant” means any defendant named in the Complaint in the action or future amended complaints;

“Disclosure” means to show, give, produce, make available, reproduce, communicate, process, paraphrase, summarize, or excerpt, in whole or in part, by any means or medium;

“Document” is defined to be synonymous in meanings and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure;

“Including” means “including but not limited to;”

“Material” means information in written, oral, graphic/pictorial, audiovisual or other form, whether it be Electronically Stored Information (“ESI”) as defined in Rule 34(a) of the Federal Rules of Civil Procedure, a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise disclosed and/or any copies or reproductions, excerpts, summaries or other ESI, documents or media that excerpt, contain, or otherwise reveal the substance of such information;

“Non-parties” or “non-party” means any individual or otherwise who is not a “Party.”

“Parties” means Defendants and Plaintiffs; “Party” means any of the Parties;

“Person” means any natural person, partnership, corporation, association, or other legal entity, as well as its parents, subsidiaries, affiliates, board members, officers, employees, agents, attorneys, and representatives;

“Plaintiff” means any of the Plaintiffs identified in the Complaint in the action or future amended complaints; and

“Written Assurance” means an executed document in the form attached as Exhibit A.

2. A party may designate a document “Confidential” to protect information within the scope of Fed. R. Civ. P. 26(c). All “Confidential” documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any person or prospective class members other than those specified in paragraph 3. Any other use is prohibited.

3. Access to any “Confidential” document shall be limited to:

- (a) the Court and its staff;
- (b) attorneys for the parties, their law firms, and their outside vendors;
- (c) persons shown on the face of the document to have authored or received it;
- (d) the subject of the data if said person were otherwise entitled to access to the data under the MGDPA;
- (e) court reporters retained to transcribe testimony; and
- (f) outside independent persons who are retained by a party or its attorneys to furnish technical or expert services, and/or to give testimony in this action.

4. The parties shall have the right to further designate “Confidential” documents or portions of documents as “Confidential - Attorneys’ Eyes Only.”

Disclosure of such information shall be limited to the persons designated in paragraph 3 (a), (b), (c), (e), and (f), and shall not be disclosed to Plaintiffs or prospective class members.

Prior to the Court's final determination of class certification, including any appeals, (a) documents designated as "Confidential - Attorneys' Eyes Only" shall not be used to contact prospective class members, their families, legal guardians or conservators, and (b) any personally-identifying information contained therein shall be used only in a manner consistent with the Court's Local Rules ECF procedures.

5. Any party objecting to a designation of documents and the party which designated the documents to which objection is made shall, within 14 days of the objection, meet and confer in a good faith effort to resolve the objection by agreement prior to any court action, which can be made by motion within 45 days from service of the objection.

In order to facilitate timely disclosure of a large number of documents that may contain confidential information, such documents may be produced for review at a party's facility prior to designation as "Confidential" or "Confidential - Attorneys' Eyes Only," after which the party seeking discovery shall specify those documents to be copied. The production of documents in this manner shall not be deemed as a waiver of any claim of confidentiality.

6. Each person appropriately designated pursuant to paragraph 3(f) to receive confidential information shall execute a "Written Assurance" in the form attached as Exhibit A.

7. Non-parties producing Documents in the course of this action may also designate Documents as “Confidential” or “Confidential – Attorneys Eyes Only,” subject to the same protections and constraints as the parties to this action. A copy of this Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such non-parties shall be treated as “Confidential - Attorneys Eyes Only” for a period of 14 days from the date of their production, and during that period any party may designate such documents as “Confidential” or “Confidential - Attorneys Eyes Only” pursuant to the terms of this Protective Order. This Protective Order specifically applies to non-party subpoena recipients. This protective order does not prohibit recipients of a subpoena from challenging the subpoena or individual documents requested in that subpoena consistent with Rule 45 of the federal rules of civil procedure.

8. All depositions or portions of depositions taken in this action that contain confidential information may be designated “Confidential” and/or “Confidential - Attorneys Eyes Only” and thereby obtain the protections accorded other “Confidential” and/or “Confidential - Attorneys Eyes Only” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 14 days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as “Confidential” during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

9. Any party or non-party who inadvertently fails to identify documents as “Confidential” or “Confidential - Attorneys Eyes Only” shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

10. Until and unless waived in writing by Plaintiffs and prospective class members or otherwise ordered by the Court, if a party or non-party files a document containing confidential information with the Court, it shall do so under seal and in compliance with the Electronic Case Filing Procedures for the District of Minnesota. Prior to disclosure at trial or a hearing of materials or information designated “Confidential,” the parties may seek further protections against public disclosure from the Court.

11. Any party or non-party may request a change in the designation of any information designated “Confidential” or “Confidential - Attorneys Eyes Only.” Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as “Confidential” or “Confidential - Attorneys Eyes Only” in the action may be affected. The party or non-party asserting that the material is “Confidential” or “Confidential - Attorneys Eyes Only” shall have the

burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

12. The Court has determined that the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action; that the benefit to the Class Counsel seeking access to the data outweighs any harm to the confidentiality interests of the Class Member who is the subject of the data; and in making this decision, the Court considered whether notice to the subject of the data is warranted and has determined that this protective order will assure proper handling of the data by the parties.

Therefore, to the extent not otherwise subject to attorney-client privilege and work product, Defendants may disclose or otherwise provide and Plaintiffs' Counsel may receive in discovery, review and use for any purpose in the Action the documents and information maintained by the MSOP in Class Members' individual treatment or medical records as well as documents and information maintained by the MSOP that discusses or otherwise addresses individual Class Members' treatment, including substance abuse treatment information, and/or other personal information otherwise protected by the MGDPA, FERPA and/or HIPAA. Such information shall be designated as "Confidential - Attorneys' Eyes Only."

The Court also specifically finds that disclosure of substance abuse treatment information is not subject to the procedures required by 42 C.F.R. § 2.64. All such information described in this paragraph may also be disclosed without advance notice to

the individual Class Member and shall also be designated as “Confidential- Attorneys’ Eyes Only.”

13. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as “Confidential” and “Confidential - Attorneys Eyes Only” and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. However, attorneys shall be entitled to retain a set of all documents filed with the Court and all correspondence generated in connection with the action.

14. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

15. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

16. The obligations imposed by the Protective Order shall survive the termination of this action.

17. In connection with any motion filed with this Court, only those portions of a party's submission (e.g., memorandum of law, affidavit, and exhibits) which meet the requirements for treatment of protection from public filing (e.g., because they are subject

to the attorney-client privilege or work product doctrine, or meet the standards articulated by Fed. R. Civ. P. 26(c)(1)(G)), shall be filed under seal. Designation of material as confidential or protected by any party pursuant to a protective order as the sole basis for filing the material under seal shall not satisfy this requirement.

With respect to any submission filed with the Court which is sealed and posted on ECF with a placeholder, the sealed submission shall be sent electronically or hand delivered to all parties and hand delivered to the Court contemporaneously with the documents being posted on ECF.

Date: July 1, 2014

s/ Jeffrey J. Keyes

JEFFREY J. KEYES

United States Magistrate Judge

EXHIBIT A
WRITTEN ASSURANCE

_____ declares that:

I reside at _____ in the City of _____, County of _____, State of _____ . My telephone number is _____.

I am currently employed by _____, located at _____, and my current job title is _____.

I have read and I understand the terms of the Protective Order dated May 31, 2012, filed in Civil No. 11cv03659 DWF/JJK, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated “Confidential” or “Confidential - Attorneys Eyes Only” obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in

my possession designated “Confidential” or “Confidential - Attorneys Eyes Only”, and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on: _____ (Date) _____
(Signature)