

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

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EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
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Plaintiff,)
)
v.) Civil Action No. 08-01882
)
XERXES CORPORATION,)
)
Defendant.)
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PROTECTIVE ORDER

Upon consideration of the parties' Joint Motion for Protective Order, and for good cause shown:

IT IS the 7th day of February, 2009,

Pursuant to Federal Rule of Civil Procedure 26(c), ORDERED:

1. Designation of Confidential Information. All documents produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, all responses to requests for production of documents, and all deposition testimony and deposition exhibits shall be subject to this Order concerning "Confidential Information," as set forth below.

(a) "Confidential Information" shall include information that a party in good faith believes is confidential. Such information includes:

(i) Defendant's inventions, designs, discoveries, works of authorship, improvements or ideas whether or not patentable or copyrightable, methods, processes,

techniques, shop practices, formulae, compounds, or compositions developed or otherwise possessed by Company;

(ii) the subject matter of Defendant's patents, design patents, copyrights, trade secrets, manufacturing processes, manuals, operating instructions and other industrial property to the extent that such information is unavailable to the public and/or is in incomplete stages of design or research and development;

(iii) business plans, marketing strategies, customer information and financial information including financial statements and projections, pricing information, costs, sales, budgets and profits;

(iv) Confidential or private information about any current or former employee of Defendant or members of their families, including documents in personnel files to the extent the contents thereof contain or concern information about compensation and benefits information, social security numbers, bank account numbers, medical records and information, or other personal information, family records, bills or other recordation of debts, income tax returns and/or supporting documentation.

(b) The designation of Confidential Information shall be made by placing or affixing on the document, in a manner that will not interfere with its legibility, the word "CONFIDENTIAL." One who provides material may designate it as confidential only when such person in good faith believes it contains information defined as "Confidential Information" pursuant to paragraph 1(a). The designation of Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of that information.

(c) All copies, duplicates, extracts, summaries or descriptions (hereinafter

collectively referred to as “copies”) of documents or information designated as confidential under this Order or any portion thereof, shall be immediately affixed with the word “CONFIDENTIAL” if that word does not already appear.

(d) Portions of depositions of a party’s present and former officers, directors, employees, agents, experts, and representatives, as well as deposition exhibits, shall be deemed confidential only if they are designated as such when the deposition is taken or within fourteen business days after receipt of the transcript. Any testimony which describes a document which has been designated as “CONFIDENTIAL,” shall also be deemed to be designated as “CONFIDENTIAL.”

2. Disclosure of Confidential Information. Confidential Information shall not be used or disclosed by the parties or counsel for the parties or any person identified in this paragraph for any purposes whatsoever other than preparing for and conducting the litigation in which the Confidential Information was disclosed (including appeals). The parties shall not disclose information or documents designated as confidential to a class member unless the information or documents relate directly to the class member’s individual allegations in this matter and disclosing such information or documents to the class member is necessary to conducting the litigation. The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Information under this Order to any other person or entity, except that disclosures may be made in the following circumstances:

(a) Disclosure may be made to counsel and employees of counsel for the parties, and in the case of the EEOC, to employees of the United States government, who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom

counsel for the parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the documents and information be held in confidence.

(b) Disclosure may be made only to employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed.

(c) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this Order.

(d) Disclosure may be made to consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Prior to disclosure to any expert, the expert must be informed of and agree in writing to be subject to the provisions of this Order requiring that the documents and information be held in confidence.

(e) The contents of the documents will not be shown or disclosed to any third parties other than those persons specifically listed above and further that all such persons shall be required, as a condition of disclosure, to maintain the confidentiality of such documents, including any and all copies of such documents and all information contained therein. For purposes of this stipulation, the term “third parties” shall also include any person other than: (1) employees of the EEOC at any of its offices; (2) witnesses interviewed by the EEOC; (3) persons deposed in this lawsuit; and (4) federal officials making duly authorized requests to produce copies of such documents submitted by the United States Congress or any federal agency.

3. Maintenance of Confidential Information. Except as provided herein, counsel for the parties shall keep all documents designated as confidential which are received under this Order secure within their exclusive possession and shall take reasonable efforts to place such documents in a secure area.

4. Confidential Information Filed with the Court. To the extent that any materials subject to his Order (or any pleading, motion, or memorandum referring to them) are proposed to be filed or are filed with the Court, those materials and papers, or any portion thereof which discloses Confidential Information, shall be filed under seal with the Clerk of the Court in an envelope marked "SEALED PURSUANT TO ORDER OF COURT DATED _____," together with a simultaneous motion pursuant to L.R. 10413(c) (hereinafter the "Interim Sealing Motion"). The Interim Sealing Motion shall be governed by L.R. 105.11. Even if the filing party believes that the materials subject to the Order are not properly classified as confidential, the filing party shall file the Interim Sealing Motion; provided, however, that the filing of the Interim Sealing Motion shall be wholly without prejudice to the filing party's rights under paragraph 6 of this Order.

5. Party Seeking Greater Protection Must Obtain Further Order. No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by this Order unless the party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c).

6. Challenging Confidentiality Designation. A designation of confidentiality may be challenged upon motion. The burden of proving the confidentiality of designated information remains with the party asserting such confidentiality.

7. Return of Confidential Information at Conclusion of Litigation. Upon final disposition of this action, including all appeals therefrom, counsel for EEOC shall make a good faith effort to return all the documents marked as “confidential” except: (a) such documents or copies thereof as are necessary to allow counsel for EEOC to maintain a litigation file so long as reasonable measures are taken to comply with the limitations on disclosure as provided herein, and (b) such documents or copies thereof as become part of the trial record having been filed under seal, including those appended to pleadings, briefs, motions, and depositions, or admitted into evidence at trial.

8. This protective order shall not apply to information which is available to the public.

IT IS SO ORDERED, this 7th day of February, 2009.

/s/

Andre Davis
United States District Court Judge