

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

- against -

THE SILVERCREST CENTER FOR NURSING AND  
REHABILITATION, a/k/a SILVERCREST EXTENDED  
CARE FACILITY,

Defendant.

~~PROPOSED~~  
PROTECTIVE ORDER



12-CV-4808  
(NG) (RLM)

**IT IS HEREBY ORDERED THAT:**

1. This Protective Order shall govern the use of all transcripts of depositions, answers to interrogatories, responses to requests for admissions, and all documents that may be produced in response to the parties' discovery requests, marked as exhibits during depositions or used at other times in this litigation to the extent such documents are ~~deemed~~ *designated in good faith as* "Confidential" pursuant to this Protective Order.



2. The term "Confidential Information" is defined as any of the following types of information:

(a) personal or private information concerning present or former employees of The Silvercrest Center for Nursing and Rehabilitation ("Silvercrest") including: driver's license numbers or state identification numbers; social security and taxpayer-identification numbers; tax forms; financial account numbers; credit card numbers; employment-compensation amounts; personnel information reflecting the evaluation of job performance; passwords; mother's maiden name; dates of birth; home address and personal telephone numbers; immigration status; names of minor children; and medical, physical, mental, or health condition or limitation, including

symptoms or manifestations of any condition or limitation, and any treatment requested, recommended, prescribed, or provided for such condition or limitation;

(b) private, financial, proprietary, or trade secret information as to which Silvercrest has maintained confidentiality, including non-public information relating to Silvercrest's revenues, profits and expenses; and

(c) information relating to Silvercrest's residents/patients.

3. A document or portion of a document that a party determines in good faith to contain Confidential Information as defined above may be designated as Confidential by stamping the word "CONFIDENTIAL" on the document.

4. A party may, on the record of a deposition or oral hearing, or by written notice to the opposing counsel not later than fourteen (14) days after receipt of the transcript of such deposition or oral hearing, designate any portion(s) of the transcript as confidential if the party determines in good faith that the designated portion(s) contain Confidential Information as defined above. Until expiration of the fourteen (14) day period, all transcripts will be deemed Confidential Information under this Protective Order and information therein will be deemed Confidential Information under this Protective Order unless otherwise agreed to in writing by the parties. After expiration of this period, any portion of a transcript that has not been designated as Confidential shall not be subject to this Protective Order.

5. If a party inadvertently fails to designate discovery material as Confidential Information, it may make the designation belatedly so long as it does so promptly after learning of the oversight.

6. The portion of all deposition exhibits, pleadings, discovery responses, transcripts, and other writings filed with the Court in this litigation that contain Confidential Information will be

*Plm*

*filed under seal via ECF, with access restricted to case participants only; the filing party shall simultaneously publicly file via ECF a copy of the document that has been redacted to omit portions*

~~filed in a sealed envelope labeled "CONFIDENTIAL. FILED UNDER SEAL PURSUANT TO~~

~~PROTECTIVE ORDER.~~ If the party filing under seal believes that some or all of the documents or information filed under seal should not be sealed, the party shall include a statement identifying such documents or information. The other party will be given the opportunity to respond to the filing party's statement prior to a Court ruling on whether, and what portion of, the filed documents or information shall remain under seal. The burden will be on the party seeking confidentiality. A party receiving a filing under seal may object to the filing of some or all of such documents or information under seal by submitting a similar statement. The filing party will be given the same opportunity to respond prior to a Court ruling.

*that, contain or reflect Confidential Information.*

*Plm*

7. All Confidential information and materials shall be treated confidentially and shall be used by counsel and the parties solely for the purposes of and in connection with this litigation (including any appeals), except as otherwise provided herein.

8. Subject to the requirements of paragraphs "7" and "9" of this Protective Order, Confidential information or documents may only be disclosed to:

- (a) The Court and Court personnel, as well as court reporters and videographers involved in recording depositions and proceedings in this litigation;
- (b) Attorneys representing any party to this proceeding, and employees or agents of such attorneys or law firms / agencies with which such attorneys are associated, but only for purposes of this litigation;
- (c) Consultants, advisors, and experts (testifying and consulting), as well as their employees, retained or consulted by any party or counsel, but only for purposes of this litigation;
- (d) The parties or any officers, directors, or managers thereof who have a need to know the information for purposes of this litigation;
- (e) Witnesses or potential witnesses contacted by counsel in good faith, but only for the purpose of obtaining evidence or

testimony for any deposition, hearing, trial or other proceeding  
in this litigation

9. All Confidential material produced in this action shall remain in the custody of the attorneys for the parties, unless otherwise authorized by this Protective Order.

10. Prior to providing any party, witness, potential witness, advisor, expert or consultant retained by a party or counsel with access to Confidential information which is not otherwise available to such person, that person shall have agreed, in writing, to abide by the terms of this Protective Order. Written agreement is not required for court personnel, court reporters, or deponents during depositions.

11. Within ninety (90) days of the termination of this action by entry of a final judgment that has become non-appealable, an order of discontinuance, or otherwise, counsel for the parties shall return to each other or (upon request) destroy all copies of Confidential information in their possession, control or custody, except as required by applicable law or regulations. All retained documents will remain subject to this Protective Order.

12. The issue of confidentiality of evidence at trial is specifically reserved for subsequent action by the Court.

13. Any dispute arising under this Protective Order shall be submitted to the Court for resolution. Moreover, the execution of this Protective Order is without prejudice to the right of any party to apply to the Court at any time for additional protections or exceptions, or such other additional relief as may be necessary or appropriate.

14. Nothing contained in this Protective Order shall be deemed a waiver by any party of its right to object to the production and/or admissibility of any records on the grounds of relevance, materiality, privilege or otherwise.

*after the parties have attempted in good faith to resolve their dispute without judicial involvement.*

*(rlw)*

15. This Protective Order, and the obligations of all persons set forth herein, shall survive the termination of this action and shall continue in full force and effect. This Order is subject to modification at any time by written agreement of all parties to this lawsuit and upon Court Order.

Dated: \_\_\_\_\_, 2013

**SO ORDERED:**

**SO ORDERED:**  
/s/  
Roanne L. Mann  
U.S. Magistrate Judge  
Dated: 8/12/13

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Roanne L. Mann, United States Magistrate Judge