

UNITED STATES DISTRICT COURT DISTRICT OF UTAH

NOTICE TO THE MEMBERS OF THE BAR AND THE PUBLIC



May 8, 2018

Proposed Amendments to the Local Rules of Practice Public Comment Opportunity

The Committee on the Local Rules of Practice has proposed changes to the local rules of the court.¹ The rules proposed to be amended are:

DUCivR 7-1

Motions and Memoranda

Sections (b)(3)(A) and (C) were previously modified in response to public comments received in October 2017. The modifications included a new word-count limit as an alternative to a page limit and expanded the list of sections of motions and memorandums that are now included in the word or page limit.

DUCivR 55-1

Entry of Default and Default Judgment

This new rule sets forth the proper procedure for obtaining a default certificate and default judgment in civil cases that do not involve the United States.

DUCivR 29-1

Agreements Regarding Discovery Response Deadlines

This new rule explicitly provides that parties who agree to extend the time to respond to discovery do not need Court approval, as long as the time has not yet expired and the extension will not interfere with specified deadlines.

¹In the past, the Committee has proposed rule amendments only once a year—generally in the fall—for implementation on December 1, provided that the rules are approved by the judges after public comments are considered. This year, because of an issue that arose with the changes made after the public comment period in 2017 to DUCivR 7-1(b)(3)(A) & (C), the Committee has determined that a mid-year release of proposed rules is appropriate. Accordingly, the proposed amendments listed above, will become effective on July 1, 2018, if approved after the public comment period.

DUCivR 77-2**Motions Grantable by the Clerk of Court**

The amendment to this rule brings it in line with current practice, eliminating references to outdated motions. It also clarifies the process for obtaining a one-time extension of time (for 14 days) to respond to a complaint if the time originally prescribed has not expired.

Standard Protective Order

Added language to make the Order HIPAA-compliant, adjusted dates to conform to the Federal Rules' standard 7-day increments, and updated references to the rules regarding sealed documents.

Any comments should be emailed to: Anne_Morgan@utd.uscourts.gov

Comments may also be mailed to:

Anne Morgan, Chief Deputy
United States District Court
351 South West Temple Street
Salt Lake City, Utah 84101

The comment period will end on May 31, 2018, at 5:00 p.m.

You are also encouraged to identify issues or concerns about any of the current local rules and make suggestions for amendments for committee review.

DUCivR 7-1 MOTIONS AND MEMORANDA

(b) Response and Reply Memoranda.

(3) Length of Motions.

(A) Motions Filed Pursuant to Rules 12(b), 12(c), ~~56,~~ and 65 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), ~~56,~~ and 65 must not exceed 6,500 words, or in the alternative, twenty-five (25) pages, ~~exclusive of any of.~~ If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation excludes the following items: face sheet, table of contents, ~~statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements of issues and facts, statement of elements and undisputed material fact~~table of authorities, signature block, certificate of service, and exhibits.

~~(B)~~ Length of Motions Filed Pursuant to Rule 56 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 56 are governed by DUCivR 56-1(g).

(C) All Other Motions: All motions that are not listed above must not exceed 2,500 words, or in the alternative, ten (10) pages, ~~exclusive of any of the.~~ If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation excludes the following items: face sheet, table of contents, ~~statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements~~table of issues and factsauthorities, signature block, certificate of service, and exhibits.

DUCivR 29-1 AGREEMENTS REGARDING EXTENSION OF DISCOVERY RESPONSE DEADLINES

An agreement between the parties extending the time to respond to any form of discovery request does not require court approval, and no motion, proposed order, or other document need be filed with the Court memorializing the agreement, if:

- (1) The time originally prescribed to respond has not expired, and
- (2) The extension does not modify or interfere with:
 - (i) A deadline established by the case scheduling order;
 - (ii) A filing deadline established by the Court, the Federal Rules of Civil Procedure, or these Local Rules, including a deadline established by the Short Form Discovery Rule;
 - (iii) A Court-scheduled conference;
 - (iv) A deadline for filing a proposed pretrial order;
 - (v) A trial date; or
 - (vi) Any other deadline referenced in Federal Rule of Civil Procedure 29(b).

DUCivR 55-1 DEFAULTS AND DEFAULT JUDGMENTS

The procedure for obtaining a default judgment under Fed. R. Civ. P. 55 is a two-step process:

(a) entry of default by the clerk pursuant Fed. R. Civ. P. 55(a); and (b) entry of default judgment, by the clerk when the claim is for a sum certain pursuant to Fed. R. Civ. P. 55(b)(1), and by the court in all other instances pursuant to Fed. R. Civ. P. 55(b)(2).

(a) Entry of Default

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), a party shall file a “motion for entry of default” and a proposed order. The motion shall describe with specificity the method by which each allegedly defaulting party was served with process in a manner authorized by Fed. R. Civ. P. 4, and the date of such service. The clerk will independently determine whether service has been effected, that the time for response has expired, and that party against whom default is sought has failed to plead or otherwise defend. Should the clerk determine that entry of default is not appropriate for any reason, the clerk will issue an order denying entry of default. An order denying entry of default is reviewable by the court upon motion.

(b) Default Judgment

No motion for default judgment shall be filed unless a certificate of default has been entered by the clerk. If a party obtains a certificate of default but does not, within a reasonable time thereafter, file a motion for default judgment, the court may direct the party to show cause why the claims upon which default was entered should not be dismissed for failure to prosecute.

(1) By the Clerk.

(A) In cases where a claim is for a sum certain or a sum that can be made certain by computation, a party may request the clerk enter a default judgment against any party other than the United States, its officers, or its agencies, by filing a motion for default judgment under Fed. R. Civ. P. 55(b)(1). The motion must clearly identify that the party is seeking default judgment from the clerk under Fed. R. Civ. P. 55(b)(1). The motion must be accompanied by a concise brief, a form of judgment, and an affidavit stating: (i) the amount due; (ii) that the defendant has failed to appear; and (iii) that the defendant is not a minor or an incompetent

person.

- (B) If the clerk determines that it may not be appropriate to enter a default judgment under Fed. R. Civ. P. 55(b)(1), the clerk may confer with the presiding judge. The presiding judge will advise the clerk whether default judgment by the clerk is appropriate. If such a judgment is not appropriate, the motion for default judgment will be addressed by the presiding judge.
- (2) By the Court. In all cases not falling under DUCivR 55-1(b)(1), a party must apply to the court for a default judgment in accordance with Fed. R. Civ. P. 55(b)(2). The motion for default judgment must include the clerk's certificate of default and a proposed form of default judgment. In cases against the United States, its officers, or its agencies, the claimant must establish a claim or right to relief by evidence that satisfies the court in compliance with Fed. R. Civ. P. 55(d). Upon receipt of the motion, the court may conduct further proceedings to enter or effectuate judgment as it deems necessary.
- (3) Affidavit Required by Servicemembers Civil Relief Act. All motions for default judgment must be accompanied by an affidavit: (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

DUCivR 77-2 ~~ORDERS AND JUDGMENTS~~ MOTIONS GRANTABLE BY THE
CLERK

~~_____~~ OF COURT

~~(a) — Orders and Judgments.~~

~~(a) Motions Grantable by the Clerk of Court .~~

The clerk of court is authorized to grant ~~and enter~~ the following ~~orders and judgments~~ motions without a response from any opposing party and without direction by the court:

- ~~(1) — orders specifically appointing a person to serve process under Fed. R. Civ. P. 4(e);~~
- ~~(2) — orders (1) motions extending once for fourteen (14) days the time within which to answer, reply, or otherwise plead to a complaint, crossclaim, or counterclaim if the time originally prescribed to plead has not expired;~~
- ~~(3) — orders for the payment of money on consent of all parties interested therein;~~
- ~~(4) — if the time originally prescribed has not expired, orders to which all parties stipulate in civil actions extending once for not more than thirty (30) days the time within which to answer or otherwise plead, to answer interrogatories, to respond to requests for production of documents, to respond to requests for admission, or to respond to (2) motions;~~
- ~~(5) — orders to which all parties stipulate dismissing an action, except in cases governed by Fed. R. Civ. P. 23 or 66;~~
- ~~(6) — for entry of default and motions for default judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1); and).~~
- ~~(7) — any other orders which, under Fed. R. Civ. P. 77(c), do not require leave or order of the court.~~

~~Any proposed order submitted to the clerk under this rule must be signed by the party or attorney submitting it and will be subject to the provisions of Fed. R. Civ. P. 11. In addition, with the exception of proposed orders for extensions of time, all other proposed orders under this rule are subject to the requirements of DUCivR 54-1. Any proposed order submitted to the clerk for an extension of time under subsections (2) or (4) of section (a) of this rule must state (i) the date when the time for the act sought to be~~

~~extended is due; (ii) the specific date to which the allowable time for the act is to be extended; and (iii) that the time originally prescribed has not expired. Second and successive requests for extensions of time must be by motion and proposed order to the court and must include a statement of the unusual or exceptional circumstances that warrant the request for an additional extension. In addition to the requirements (i) through (iii), above, such motions and proposed orders must specify the previous extensions granted.~~

A motion must be filed in the docket, along with a proposed order. In addition, a proposed order in editable format must be emailed to utdecf_clerk@utd.uscourts.gov.

(b) Clerk's Action Reviewable.

The actions of the clerk of court under this rule may be reviewed, suspended, altered, or rescinded by the court upon good cause shown.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____,
Plaintiffs,
vs.
_____,
Defendants.

STANDARD PROTECTIVE ORDER

Civil No.
Honorable
Magistrate

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause,
IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) ~~For purposes of entities covered by the Health Insurance Portability~~

and Accountability Act of 1996 (“HIPAA”), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information, ~~and be shall constitute a subset of CONFIDENTIAL INFORMATION, and shall be designated as “CONFIDENTIAL INFORMATION” and subject to all other terms and conditions governing the treatment of Confidential Information.~~ Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes ~~shall include, but is not limited to,~~ claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

- (1) names;
- (2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;
- (3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;
- (4) telephone numbers;
- (5) fax numbers;

- (6) electronic mail addresses;
- (7) social security numbers;
- (8) medical record numbers;
- (9) health plan beneficiary numbers;
- (10) account numbers;
- (11) certificate/license numbers;
- (12) vehicle identifiers and serial numbers, including license plate numbers;
- (13) device identifiers and serial numbers;
- (14) web universal resource locators (“URLs”);
- (15) internet protocol (“IP”) address numbers;
- (16) biometric identifiers, including finger and voice prints;
- (17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party’s PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party’s TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party’s counsel, are reasonably necessary for development and presentation of that party’s case. These persons include outside

experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("~~the Disclosure Agreement~~"). Copies of ~~the Disclosure Agreement in the form of Exhibit A~~ signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR ~~until for a period of five (5) business~~ ~~seven (7) -days~~ after the ~~executed Disclosure Agreement~~ is ~~provided to~~ ~~reserved on~~ the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than ~~five (5) business~~ ~~seven (7)~~ days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within ~~five (5) business~~ ~~seven (7)~~ days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within ~~five (5) business~~ ~~seven (7)~~ days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any

objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within ~~five (5) business~~ ~~seven (7)~~ days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within ~~five (5) business~~ ~~seven (7)~~ days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the ~~Disclosure Agreement of Exhibit A~~ or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-

engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, ~~including Confidential Health Information,~~ by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to

opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

~~In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission or other papers of any kind which are served or filed shall include another party's CONFIDENTIAL INFORMATION, the papers shall be appropriately designated and shall be treated accordingly.~~

~~All documents, including attorney notes and abstracts, which contain another party's CONFIDENTIAL INFORMATION, shall be handled as if they were designated pursuant to paragraph 3.~~

~~Documents, papers and transcripts filed with the court that contain any other party's CONFIDENTIAL INFORMATION shall be filed under seal.~~

6. Qualified Recipients

For purposes of this Order, "Qualified Recipient" means

(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES

ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above; ~~and~~

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the

witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and-

(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, pursuant to the Disclosure Agreement form attached at ~~Appendix A~~, to be bound by the terms of this Order.

(b) FOR CONFIDENTIAL INFORMATION:

- (1) Those persons listed in paragraph 6(a);
- (2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;
- (3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Representatives, officers, or employees of a party as necessary to assist outside counsel with this litigation. ~~in the preparation and trial of this action~~ ~~Employees of the parties.~~

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind ~~that which~~ are served or filed ~~shall~~ include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers ~~must shall~~ be appropriately designated pursuant to paragraphs 4(a) and (b); and ~~governed pursuant to by~~ DUCivR 5-3.2, ~~and shall be treated accordingly.~~

(b) All documents, including attorney notes and abstracts, ~~that which~~ contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers, and transcripts ~~that are~~ filed with the court ~~and which~~ contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed in sealed envelopes and ~~filed in accordance with DUCivR 5-3. labeled according to DUCivR 5-2.~~

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but

not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the

receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) ~~Notwithstanding anything set forth in paragraph 2(a) and (b) herein,~~ Any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation ~~of a document or documents~~, stating ~~the~~ with particularity the reasons ~~for it~~ that request, and specifying ~~the category to which the challenged document(s) should be de-designated.~~ The producing party shall then have ~~five (5) business~~seven (7) days from the date of ~~receipt~~service of the ~~notification request~~ to:

- (i) advise the receiving parties whether or not it persists in such designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within ~~five (5) business~~ seven (7) days after receipt of the request under subparagraph (b), the information will be de-designated to the category requested by the receiving party. If, however, the request under subparagraph (b) above is ~~turned down~~ responded to under subparagraph (b)(i) and (ii), ~~or if no response is made within five (5) business~~ seven (7) days after receipt of notification, ~~any~~ the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within ~~five (5) business~~ seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

- (i) the information in question has become available to the public through no violation of this Order; or
- (ii) the information was known to any receiving party prior to its receipt from the producing party; or
- (iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Produced Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction

shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION –

ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

18. Confidentiality of Party's Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO DUCivR 26-2
EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____,
Plaintiffs,
vs.
_____,
Defendant.

DISCLOSURE AGREEMENT
Honorable
Magistrate Judge

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Protective Order)

(Describe: _____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to

any person not entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

Signed by Recipient

Name (printed)

Date: _____