

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

John Doe MC-1,

Plaintiff,

v.

The University of Michigan,
the Regents of the University of
Michigan,

Defendants.

Case No. 2:20-cv-10568-VAR-EAS

Hon. Victoria A. Roberts
Magistrate Judge Elizabeth A. Stafford

Master Case Filing

PROTECTIVE ORDER

This Protective Order dated July 9, 2020 is between Plaintiffs with cases included in the above-captioned Master Case and plaintiffs who sue the University of Michigan and its Regents over the same or similar allegations represented by undersigned firms (collectively, “Plaintiffs”) and the University of Michigan Defendants (collectively “Defendants”) (collectively together, “Parties”).

By the consent of the Parties, it is ordered that:

1. This Protective Order shall govern the use and dissemination of all information, documents or materials that are produced in the above-captioned Master Case pending in the United States District Court for the Eastern District of Michigan and designated as Confidential.

2. The term “document” or “documents,” as used in this Protective Order, shall have the same meaning as contemplated by the Federal Rules of Civil Procedure.
3. Confidential Information includes: (1) Identifying Information of a Plaintiff who wishes to remain anonymous now and throughout the litigation, subject to Paragraph 10, which includes: name; date of birth; social security number; years attended and sports played at the University of Michigan; residence before, during, and after attending the University of Michigan; sports-related activities and accomplishments after attending the University of Michigan; involvement at the University of Michigan after graduating; familial relationships and connections; occupational information; medical and health information, including information about Plaintiff’s emotional and psychological health; scholastic information; information about Plaintiff’s interactions with Dr. Anderson; (2) Defendants’ litigation holds or preservation orders; (3) qualifying portions of Depositions, including testimony given and exhibits produced during depositions, as provided for in Paragraph 6 and Paragraph 8; (4) protected health information and medical information; (5) qualifying portions of Law enforcement and investigative files that include victims’ names or other identifying information, including documents “related to the University of Michigan Police Department

Detective Mark West’s investigation into allegations about Dr. Anderson” as provided for in Paragraph 7; (6) qualifying portions of personnel records and all other records related to the employment of Defendants’ past and present employees as provided for in Paragraph 6; (7) other proprietary or sensitive business and commercial information that is not publicly available; (8) records protected by the Family Educational Rights and Privacy Act (FERPA); (9) any other information that there is good cause for protecting under Fed. R. Civ. P. 26(c)(1).

4. In the event of inadvertent disclosure or the inadvertent failure to designate Confidential Information, the provisions set forth in Paragraph 22 shall apply.

Confidential Information

5. Any party to this action or other person or entity, including any third party, who produces or supplies information, documents or other materials used in this action (“Designating Party”) may designate as “Confidential” any such information, document or material that it reasonably and in good faith believes constitutes or contains Confidential Information or is otherwise protectable under applicable law. The designation “Confidential” shall be made by affixing on the document or material containing such information, and upon each page so designated if practicable, a legend that in substance states:

“CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

6. The Parties agree that depositions (other than depositions of Thomas Easthope, which are subject to Paragraph 8), and personnel files (other than those personnel files produced with Detective Wests' investigative files, which are subject to Paragraph 7) as those terms are used in Paragraph 3, may be temporarily designated Confidential for fifteen (15) business days from the date the documents are produced or, in the case of depositions, from the date all Parties have received the transcript and exhibits ("temporary Confidential period"). If a Party seeks to designate all or part of a deposition transcript or a personnel file as Confidential, the Designating Party shall give notice of, and good cause under Fed. R. Civ. P. 26(c)(1) for, such claim to the other Parties before the expiration of the temporary Confidential period. If no Party objects to the Confidential designation pursuant to Paragraph 21, the designated portions will be deemed Confidential. If a Party objects to the Confidential designation pursuant to Paragraph 21, the portions sought to be designated Confidential must be treated as Confidential until any dispute over the Designating Party's designation is resolved.
7. The Parties agree that law enforcement and investigative files as described in Paragraph 3, may be temporarily designated Confidential for thirty (30) days from the date the documents are produced ("temporary Confidential period"). If a Party seeks to designate all or part of an investigative file as Confidential,

the Designating Party shall give notice of such claim to the other Parties before the expiration of the temporary Confidential period. If no Party objects to the Confidential designation pursuant to Paragraph 21, the designated portions will be deemed Confidential. If a Party objects to the Confidential designation pursuant to Paragraph 21, the portions sought to be designated Confidential must be treated as Confidential until any dispute over the Designating Party's designation is resolved.

8. The depositions of Thomas Easthope will be confidential in their entirety until the earlier of October 31, 2020 or the day of the public disclosure of the WilmerHale independent investigative report. Any victim names and identifying information will remain confidential. If a Party seeks to designate all or part of the deposition transcript other than victim names and identifying information as Confidential, the Designating Party shall give notice of, and good cause under Fed. R. Civ. P. 26(c)(1) for, such claim to the other Parties within ten (10) business days from the date all Parties have received the transcript and exhibits. The dispute resolution provisions of Paragraph 21 will then apply to allow the Court time to resolve any disputed designation prior to October 31st.
9. Except as provided for in Paragraphs 6, 7, and 8, or by written agreement of the Parties, the Designating Party shall not affix a Confidential legend as

defined above to any document produced in this litigation prior to having reviewed the document to ascertain that it, in fact, contains Confidential material.

10. The Parties agree that Plaintiffs' names and Identifying Information are Confidential Information to the extent that Plaintiff has not publicly disclosed his name or Identifying Information as an alleged victim of abuse. Plaintiffs' counsel shall provide to Defendants' outside counsel the names of all Plaintiffs who have filed complaints against the Defendants within 14 days of entry of this Order or within 14 days of filing a complaint in the United States District Court for the Eastern District of Michigan for Plaintiffs filing complaints after entry of this Order. The Parties agree any document or materials bearing Plaintiffs' names or Plaintiffs' Identifying Information or names of alleged victims of abuse are protected by this Order.
11. Confidential Information produced, may be disclosed only to:
 - a. This Court, its personnel, and any appellate court with jurisdiction over this matter.
 - b. Outside counsel representing Parties in this litigation (including staff persons employed by such counsel)
 - c. Vice President and General Counsel Timothy G. Lynch at the University of Michigan, Ann Arbor, Michigan.
 - d. The attorneys listed above in Paragraphs 11(b)-(c) may disclose Confidential Information to:

- (1) Patricia M. Petrowski, Associate Vice President and Deputy General Counsel, Office of the General Counsel, University of Michigan;
 - (2) David Masson, Senior Associate General Counsel and Chief Litigation Counsel, Office of the General Counsel, University of Michigan;
 - (3) Debra A. Kowich, Senior Associate General Counsel and Chief Counsel for Athletics, Office of the General Counsel, University of Michigan;
 - (4) Tera Jastrzewski, Lead Paralegal, Office of the General Counsel, University of Michigan;
 - (5) Kristine Snook, Lead Paralegal, Office of the General Counsel, University of Michigan;
 - (6) Elizabeth Seney, Senior Associate Director and Title IX Coordinator;
 - (7) Tami Strickman, Associate Vice President, Office of Institutional Equity, University of Michigan; and
 - (8) Kara Morgenstern, Associate Vice President and Deputy General Counsel.
 - (9) Elizabeth Humpert, Executive Assistant and Office Manager
- e. Plaintiffs, except that they may not receive Identifying Information of another Plaintiff, unless the Plaintiff with the Identifying Information agrees to it.
 - f. Any vendor, consultant, investigator, expert (collectively, “Expert”) retained by outside counsel or Expert’s staff who is assisting in the preparation and trial of this litigation.
 - g. Mediators, facilitators, arbitrators, or other third-party neutrals that are engaged by the Parties to this action to participating in a resolution of this action.
 - h. Witnesses in these cases who are likely to be called to testify about matters concerning Confidential Information except that Identifying

Information may only be shown to a witness testifying in preparation for their testimony and while testifying at their deposition or at trial. Witnesses not testifying until after the Rule 26 conference may not be shown identifying information until after the Rule 26 conference.

- i. Individuals who are alleged by a Party to know about the specific Confidential Information being disclosed to such individuals.
 - j. A court reporter, videographer or any other audio-visual technician or specialist employed/used to preserve, prepare or present testimony or other evidence.
 - k. Any individual(s) who authored, prepared, or previously reviewed or received the information.
 - l. The individuals described in (c) and (d) above may further disclose Confidential Information to Aprille McKay and Brian Williams at the Bentley Historical Library, to Paul Robinson and Brad Maki at the Registrar's Office, and to Paul Moggach and Kate Rychlinski in Risk Management to the extent necessary to obtain documents and other information about the Plaintiffs' claims. However, the identity of a Plaintiff may not be disclosed to other individuals within the University of Michigan except with the written consent of Plaintiff's counsel.
 - m. The Parties may disclose Confidential Information to counsel for plaintiffs who have not filed claims, provided no party objects. In order to be eligible to gain access to Confidential Information, in addition to signing a Confidentiality Acknowledgement, such counsel must file or have filed appearances in the Master Case and submit a Declaration stating that they (1) represent alleged victim(s) with claims related to the Master Case, and (2) agree to be bound by the terms of this Protective Order and the Court's Stipulation and Order entered June 10, 2020, ECF No. 48.
12. If a Party wishes to disclose Confidential Information to any person not described in Paragraph 11 of this Protective Order, permission to disclose must be requested from the Designating Party in writing. If the Designating Party objects to the proposed disclosure, such disclosure shall not be made

unless, upon motion by the Party requesting such permission, this Court orders otherwise. However, each Party may disclose its own Confidential Information without regard to this Protective Order, unless otherwise prohibited under an existing order or duty not to do so.

13. Individuals to whom Confidential Information is disclosed shall not further disclose that information to any other person not listed in Paragraph 11.
14. Under no circumstances shall any person disclose Confidential Information to the media.
15. Prior to obtaining access to Confidential Information, any person to whom Confidential Information may be disclosed pursuant to Paragraphs 11 thereof, except this Court and its personnel, shall be shown and shall read a copy of this Protective Order and shall agree in writing to be bound by its terms by signing a copy of the Confidentiality Acknowledgment attached as Exhibit A (“Confidentiality Acknowledgment A”) or the Confidentiality Acknowledgement attached as Exhibit B (“Confidentiality Acknowledgement B”) for Experts. Counsel for the Party obtaining a person’s signature on the Confidentiality Acknowledgment shall retain the original signed acknowledgment, and, if the Court so orders, shall provide a copy of the signed acknowledgment to all counsel of record.

16. If a Party wishes to file Confidential Information with the Court or disclose such Information in Court, the party shall comply with Local Rule 5.3(b) and other applicable rules. All parties governed by this Order acknowledge documents designated as Confidential Information will not be automatically sealed upon filing with the Court and that the Court decides whether to seal a document under Fed. R. Civ. P. 26(c).
17. Confidential Information produced by Plaintiffs to Defendants are not “public records” under Michigan’s Freedom of Information Act, M.C.L. 15.231 et seq., and not “public information” under the Freedom of Information Act, 5 U.S.C. § 552, et seq.

General Provisions

18. Except to the extent expressly authorized in this Protective Order, Confidential Information shall not be used or disclosed for any purpose other than mediation, the preparation and trial of the instant case, and/or any appeal therefrom.
19. No document produced in this case shall be assigned a Confidential designation if it was previously produced in any litigation without a Confidential designation except in the event that it is discovered that a document was wrongly designated. Parties will make a good faith effort to notify each other of decisions issued by other courts that order the

inapplicability of a Confidentiality designation for any document a party lists or uses as an exhibit in this litigation.

20. Any summary, compilation, notes, copy, electronic image or database containing Confidential Information shall be subject to the terms of the Protective Order to the same extent as the material or information from which such summary, compilation, notes, copy, electronic image or database is made or derived.
21. A Party may object to a Confidential designation by notifying the Designating Party in writing of that objection and specifying the designated material to which the objection is made. The Parties shall, within ten (10) business days of service of the written objection, confer concerning the objection. If the objection is not resolved, the Designating Party shall, within ten (10) business days of the conference, file and serve a motion to resolve the dispute over the designation of the material and shall bear the burden of proof on the issue. If no such motion is filed within the stated time period, the material will be redesignated as appropriate. If a motion is filed, information subject to dispute shall, until further order of the Court, be treated consistently with its designation. The Designating Party shall, at its expense, provide to a requesting party copies of any material redesignated or that is no longer subject to the protection of this Protective Order.

22. Nothing in this Protective Order shall be deemed to modify any party's right to withhold or redact information protected by the attorney-client privilege or attorney work-product protection. Inadvertent failure to designate any information as privileged or Confidential pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within thirty (30) days of the discovery of the inadvertent failure. At such time, arrangements shall be made for the return to the Designating Party of all copies of the inadvertently misdesignated documents and for the substitution, where appropriate, of properly labeled copies. Disclosure of information protected by the attorney-client, work product, or other applicable privilege or protection ("a privilege") in this litigation shall not constitute a waiver of any otherwise valid claim of privilege. Additionally, failure to assert a privilege in this litigation shall not constitute a waiver of any otherwise valid claim of privilege, and failure to assert a privilege in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication allegedly so protected, even involving the same subject matter. A party that discovers that it has inadvertently produced privileged information or Confidential Information without designation shall notify the other parties within thirty (30) days of the discovery of such production. The

privileged documents together with all copies thereof and any notes made therefrom shall be destroyed by the Receiving Parties. For Confidential documents, the Designating Party will affix the proper Confidentiality legend and reproduce the documents within seven (7) days.

23. Nothing in this Protective Order shall be deemed to restrict in any manner the use or disclosure by any Designating Party of any information in its own Confidential Information.
24. If counsel for any Party receives notices of any subpoena or other compulsory process commanding production of Confidential Information that a Party has obtained under the terms of this Protective Order, counsel for such Party shall, if there are fewer than ten (10) days to comply, within two (2), or if more than ten (10) business days, at least seven (7) business days prior to the due date of compliance, notify the Designating Party in writing, and shall not produce the Confidential Information, until the Designating Party has had reasonable time to take appropriate steps to protect the material. It shall be the responsibility of the Designating Party to obtain relief from the subpoena or order prior to the due date of compliance, and, to give the Designating Party an opportunity to obtain such relief, the party from whom such information is sought shall not make the disclosure before the actual due date of compliance set forth in the subpoena or order.

25. This Protective Order shall not prevent any of the Parties from moving this Court for an order that Confidential Information may be disclosed other than in accordance with this Protective Order. This Protective Order is without prejudice to the right of any Party to seek modification of it from the Court. It shall remain in effect until such time as it is modified, amended, or rescinded by the Court.
26. No Confidential Information shall be produced in any format which is specially treated in any manner so as to prevent the receiving person from creating a readable copy or image of the Confidential material or information.
27. This Protective Order is not intended to govern the use of Confidential Information at trial. Questions of the protection of Confidential Information during trial will be presented to the Court and the Designating Party prior to or during trial as each Party deems appropriate.
28. This Order shall continue in effect unless otherwise ordered by the Court. This Order shall not prevent any Party from applying to the Court for further or additional protective orders or from the Parties agreeing to modify this Order, subject to the approval of the Court. This Court shall have continuing jurisdiction to modify, enforce, interpret, or rescind this Protective Order, notwithstanding the termination of the case.

29. Within two (2) years after the conclusion of the case, including the exhaustion of all appeals, counsel for all parties shall return all Confidential Information produced (other than exhibits at the official court of record) to the Designating Party or shall, at the sole option of the Designating Party, destroy such information. Counsel for all parties will ensure all Confidential Information they produced to any other person has been destroyed within sixty (60) days from the conclusion of the case, including the exhaustion of all appeals.
30. This order shall also apply to all future plaintiffs who file cases against Defendants over the same or similar allegations.

Dated: July 8, 2020

Respectfully submitted,

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*Counsel for Plaintiff Christian & John
Doe RS Plaintiffs*

s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

SO ORDERED this 9th day of July, 2020

Copies to all Counsel of Record

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

John Doe MC-1,

Plaintiff,

v.

The University of Michigan,
the Regents of the University of
Michigan,

Defendants.

Case No. 2:20-cv-10568-VAR-EAS

Hon. Victoria A. Roberts
Magistrate Judge Elizabeth A. Stafford

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CONFIDENTIALITY ACKNOWLEDGMENT A

I, _____, being duly sworn on oath, state the following:

1. I have read and understand the Protective Order to which this Exhibit A is annexed, and I attest to my understanding that access to information designated Confidential may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Protective Order. I agree to be bound by the terms of the Protective Order. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of this Confidentiality Acknowledgment and the Protective Order.

2. I shall not use or disclose to others, except in accordance with the Protective Order, any Confidential Information. I shall also return all Confidential Information provided to me in this litigation to case counsel for the party I represent within sixty (60) days after the conclusions of the cases included in the above-captioned Master Cases, including the exhaustion of all appeals. If I fail to abide by the terms of this Confidentiality Acknowledgment or the Protective Order, I understand that I may be subject to sanctions under the contempt power of this Court, which includes the power to impose compensatory damages to remedy contemptuous conduct.

Dated: _____

Signature

Printed Name

Address

Individual or Entity Represented

EXHIBIT B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

John Doe MC-1,

Plaintiff,

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The University of Michigan,
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Case No. 2:20-cv-10568-VAR-EAS

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CONFIDENTIALITY ACKNOWLEDGMENT B

I, _____, being duly sworn on oath, state the following:

1. I have been retained by _____ to serve as an Expert in this action.

2. I have read and understand the Protective Order to which this Exhibit B is annexed, and I attest to my understanding that access to information designated Confidential may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Protective Order. I agree to be bound by the terms of the Protective Order. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of this Confidentiality Acknowledgment and the Protective Order.

3. I shall not use or disclose to others, except in accordance with the Protective Order, any Confidential Information. I shall also return all Confidential Information provided to me in this litigation to case counsel for the party I represent within sixty (60) days after the conclusion of the cases included in the above-captioned Master Cases, including the exhaustion of all appeals. If I fail to abide by the terms of this Confidentiality Acknowledgment or the Protective Order, I understand that I may be subject to sanctions under the contempt power of this Court, which includes the power to impose compensatory damages to remedy contemptuous conduct.

Dated: _____

Signature

Printed Name

Address

Individual or Entity Represented

