

**IN THE DISTRICT COURT OF PONTOTOC COUNTY
STATE OF OKLAHOMA**

PRE-PAID LEGAL SERVICES, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. Cj-2014-96
JOHN FRASER,)	Judge Thomas S. Landrith
)	
Defendant,)	
)	
BRIAN CARRUTHERS, d/b/a BRIAN)	
CARRUTHERS, LLC)	
)	
Third Party Defendant.)	

AGREED PROTECTIVE ORDER

Discovery in this action may involve information and documents that the Parties hereto, or other persons or entities, regard as confidential and proprietary, but that they are willing to provide after entry of a Protective Order limiting the use of the information and documents to this case and protecting against unnecessary disclosure. In the interests of justice, to facilitate discovery in this case, and to prevent unnecessary disclosure of personal and proprietary information and documents, the Court enters this Protective Order, to which the Parties in this case have agreed, pursuant to 12 O.S. § 3226(C).

The Parties agree, and the Court finds as follows:

1. Because this action involves discovery and production of documents and testimony that the parties hereto or other persons and entities regard as confidential, proprietary, and trade secret information which, if disclosed to persons other than those specified herein, would pose a significant risk of injury to the legitimate business interests of the disclosing person or entity, such materials may be designated as confidential by any person or entity. Such information may be so designated whether the information is produced voluntarily or pursuant to a

discovery request, court order, or subpoena, or contained in deposition testimony, pleadings, or briefs. However, as specifically enumerated in paragraph 13, a party may object to the designation of material as confidential, but a party's designation of material or failure to object under the provisions of this Protective Order cannot and will not be used as substantive evidence that any particular information constitutes a trade secret or is otherwise confidential or proprietary. Should a party so object and an agreement cannot be reached between the producing person and the objecting party as to the proper designation or status of materials and/or information, the procedure and provisions contained in paragraph 13 shall apply in determining the proper designation or status of the disputed material and information.

2. Confidential Documents. Any person or entity may explicitly designate as "confidential" information produced herein, whether produced voluntarily or otherwise. If the designation of confidentiality is being made by the party producing the information, designation shall be made by affixing thereon a notice containing the word "CONFIDENTIAL" along with the case name and number (*Pre-Paid v. Fraser et al.*, CJ-2014-96, Pontotoc County, OK). All copies of any such documents shall be clearly marked as "CONFIDENTIAL" along with the case name and number. In the case of multi-page documents, the notice designating the document as confidential must be prominently placed on the first page of each document that is deemed to contain confidential material. If the designation of confidentiality is being made by a party other than the one producing the information, designation shall be made by letter addressed to counsel of record in the case, within 15 days after the documents were received by the designating person or entity.

3. Confidential Testimony. Discovery material furnished by any person or entity in the form of testimony may be designated as confidential either at the time any such testimony is

taken or in writing within 15 days after the transcript of the testimony has been received by the designating person or entity. The court reporter for any such testimony shall be informed of this Order by the person or entity making the confidential designation. The court reporter shall comply with and be bound by this Order. In the event the person or entity furnishing deposition testimony designates portions or all of that testimony as confidential, the court reporter shall separately transcribe and submit under seal to counsel for the parties and/or witnesses transcriptions of the testimony designated as confidential. Such confidential transcripts of deposition testimony shall be treated the same and afforded the same protections as other material designated confidential under this Order.

4. Except as otherwise provided herein, confidential materials shall be made available only to the named parties, the attorneys of record in this action, their clerical, secretarial and support staff, outside consultants or experts retained by the attorneys of record to assist in the prosecution or defense of this action, subject to Paragraph 5 below, and the Court and its staff as required for handling the case.

5. Prior to being allowed access to confidential material, any outside consultant or expert shall have read a copy of this Order and shall have executed an affidavit, in the form attached hereto, stating that he or she has read this Order and has agreed to be bound by the Order's terms. Counsel making disclosure of designated confidential material shall maintain a file of the affidavits signed by such persons for the purpose of insuring compliance with this Order.

6. No person to whom confidential material is made available shall make use of such material for any purpose other than the prosecution or defense of this action, including without limitation any other litigation or for any other business or competitive purpose. No person to whom confidential material is made available shall disclose the contents of such material to any

other person or entity, except as permitted by this Order. This Agreed Protective Order has no effect upon and shall not apply to a party's use of its own confidential information for any purpose.

7. In the event a party should conclude that for purposes of this action, it needs to disclose any confidential materials to person(s) not specified in Paragraph 4, the party shall request the producing counsel to grant permission to do so for specified documents or information. To be effective, such consent must be granted in writing and must be specific as to documents or information which may be disclosed. Permission granted under this section obviates the need to request permission of the Court to disclose confidential information pursuant to Paragraph 12.

8. Attorneys' Eyes Only. A party may further designate documents, testimony, and other information furnished or disclosed to another party or its counsel during discovery or the trial of this matter as for attorneys' eyes only by labeling the documents, at the time of production: "CONFIDENTIAL – ATTORNEYS' EYES ONLY." The party designating information as for attorneys' eyes only shall make such a designation only as to information that it reasonably and in good faith believes is proprietary and trade secret. Review of documents which have been designated as for attorneys' eyes only is restricted to counsel of record and their support staff, and, if submitted at trial or other hearing or briefing, to the Court and its support staff. A witness questioned about such a document may review it for purposes of testimony but may not retain copies or divulge its contents.

9. In the event a party or counsel for a party receives a subpoena issued in another lawsuit for confidential documents produced in this action, the party receiving such subpoena shall give prompt notice to the party herein who originally disclosed documents in this lawsuit.

The parties, or any such person or entity who originally disclosed the documents in this lawsuit, shall then have 15 days to move to quash the subpoena or take other lawful action to prevent disclosure of the documents. The party receiving such subpoena agrees not to produce documents during this 14-day period. Further, if a motion to quash or other lawful action is taken, the party receiving such subpoena agrees not to produce any such documents until a final order is entered resolving the motion to quash or the other lawful action taken.

10. Prior to filing any document with the Court that appends or references information designated “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order, the filing party shall first seek leave to file the document under seal pursuant to 12 O.S. § 3226(C)(2) and 51 O.S. § 24A.30. Upon approval by the Court, any material designated as confidential which is filed with the Court (in any form whatsoever) shall be submitted in accordance with 12 O.S. § 3226(C). Thus, it shall be submitted to the Court Clerk’s office in a sealed manila envelope clearly marked with the caption and case number and the word “CONFIDENTIAL” and shall state the date this Agreed Protective Order was entered and the name of the judge entering the order.

11. Nothing in this Order shall be construed to preclude counsel from showing confidential material to any witnesses during depositions in this action, hearings conducted in this action, or at trial of this action. Any counsel showing such confidential material shall have a good-faith basis for making the disclosure and shall act in good faith. In the event any confidential material is shown to a witness, it shall not lose its confidential status. Counsel for each party shall show confidential information to a witness in a manner that will protect the confidential material from further disclosure. Any witness shown confidential material shall state under oath on the record that he or she has read this Order and has agreed to be bound thereto or

shall execute an Affidavit of Compliance with Protective Order in the form attached hereto. Counsel making such disclosure of designated confidential material shall maintain a file of the affidavits signed by such persons for the purpose of insuring compliance with this Order.

12. Other than as provided herein, no disclosure of confidential material may be made except pursuant to an order of the Court or pursuant to a modification of this Order agreed to by written stipulations and signed by counsel for all parties.

13. A party may object to the designation of materials as confidential and/or for attorneys' eyes only. If any Party disagrees at any stage of the proceedings with the designation of any discovery materials as confidential and/or for attorneys' eyes only, the objecting party may so notify the producing person or entity in writing and state the specific document objected to and the specific basis for that objection. The parties or third persons or entities involved shall first try to resolve such disagreement in good faith and on an informal basis, such as production by redacted copies, within five business days after receipt of a specific written objection. If the disagreement cannot be resolved on an informal basis, the party seeking to have the documents maintained as confidential and/or for attorneys' eyes only shall move the Court for an Order relative to determine the designated status of such material within 30 days of notice of the objection. Pending the Court's ruling on any such motion, the objecting party shall treat the disputed documents as confidential and/or for attorneys' eyes only.

14. Inadvertent production of any information which does not contain a confidential designation will not waive a party's or third person's or entity's claim that this information is confidential or estop a party or third person from designating this information as confidential at a later date. Disclosure of this information by any other party or third person or entity prior to such later designation is not a violation of this Order.

15. Within 30 days after the termination of this action, whether by judgment, settlement or otherwise, all documents designated as confidential pursuant to this Agreed Protective Order (and all copies thereof) shall be returned to the party or third person or entity who produced the documents or otherwise destroyed entirely, with written confirmation to the producing party of the destruction.

16. In the event documents are produced prior to the time this Court acts upon the request of the parties for the entry of this Order, the parties stipulate and agree to comply with the provisions hereof until such time.

17. The provisions of this Order shall survive the termination of this action.

IT IS SO ORDERED.

DATED this _____ day of _____, 2019.

JUDGE OF THE DISTRICT COURT

AGREED BY:

BROOKE S. MURPHY, OBA # 6524
TIMILA S. ROTHER, OBA # 14310

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**ATTORNEYS FOR THIRD PARTY DEFENDANT
BRIAN CARRUTHERS**

(signature of Affiant)

Subscribed and sworn to before me this ____ day of _____, 201__.

Notary Public

My Commission Expires:

(SEAL)