

(JUSTICE BRIAN P. STERN)

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD,
et al.,

Plaintiffs,

v.

SAMUEL LEE, et al.,

Defendants,

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C.A. NO. PC-2019-3654

MOTION FOR PROTECTIVE ORDER

Defendant JPMorgan Chase Bank, N.A. (“JPMC”) hereby respectfully requests that this Court enter a Protective Order, in the form attached hereto as **Exhibit A**, to govern the production of documents requested from JPMC by Plaintiff Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan Receiver”). In support of this Motion, JPMC states as follows:

1. The Plan Receiver has propounded certain Requests for Production of Documents upon JPMC pursuant to Rule 34. Those requests, in whole or in part, seek the production of documents containing confidential financial information, as well as other private and proprietary information regarding JPMC’s customers, its borrowers and/or guarantors, and JPMC’s business and business practices.
2. In addition to contractual obligations with regard to the non-disclosure of customer information, JPMC has certain obligations of confidentiality as a matter of law. A financial institution’s customer information is subject to significant statutory protections under Federal law. See, e.g., 15 U.S.C. § 6801 et seq. (financial institutions have an

“affirmative and continuing obligation” to protect the security, integrity, and confidentiality of customer information).

3. JPMC is prepared to produce responsive and non-privileged documents requested by the Plan Receiver, including certain documents containing such confidential, private and/or proprietary information, but, as a condition precedent to any such production, JPMC hereby requests that this Court enter an Order placing certain conditions on the subsequent use and/or disclosure of such documents by the receiving party, as set forth in the attached proposed form of Protective Order.
4. Rhode Island Superior Court Rule of Civil Procedure 26(c) allows this Court to enter the attached Protective Order, and to impose such terms and conditions governing the conduct of discovery, upon motion by any party or person from whom such discovery is sought.
5. To date, there are no such Protective Orders in place in this matter which would apply to JPMC, or to documents produced by JPMC.
6. A proposed form of Protective Order is attached hereto as **Exhibit A**. JPMC respectfully submits that the attached form of Protective Order is typical of such Orders frequently employed in this Court to address the use and disclosure of confidential materials produced in discovery.

For these reasons, JPMC respectfully requests that this Court grant this Motion for Protective Order and enter the Protective Order submitted herewith. JPMC will confer in good faith with counsel for the Plan Receiver in an effort to secure agreement on the attached form of Order prior to any hearing, but is filing this motion now in an effort to ensure full and timely protection for any requested documents containing confidential information.

JPMORGAN CHASE BANK, N.A.

By its Attorneys,

/s/ Mark W. Freel

Mark W. Freel (#4003)

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2020, I filed and served this document through the electronic filing system on all counsel of record.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Mark W. Freel

EXHIBIT A

information or communication, or any response to any discovery request, or any portion thereof, which is designated as provided herein and which contains information that a party hereto alleges is of a confidential or proprietary nature.

2. A designation of Confidential Material shall be made by placing or affixing on such material (in such manner as will not interfere with the legibility thereof) the word “CONFIDENTIAL” or otherwise designating the material or communication as Confidential Material pursuant to this Protective Order. This designation shall mean that the material so designated shall be treated as Confidential according to the terms of this Protective Order, used only in connection with the prosecution or defense of this litigation, and not be used for any business purpose or other unrelated purpose. There shall be no such designation except in the good faith belief that the document, testimony, thing or information in fact contains confidential subject matter. Disclosure of any portion of any document shall not constitute, or have the effect of, a waiver of confidentiality of the remainder of the document.

3. Confidential Material shall be retained by counsel for the Plan Receiver and shall be disclosed only to the court, in accordance with Paragraph 4; to the Plan Receiver, and to the Plan Receiver’s counsel (including such counsel’s partners, associates and employees as necessary). Confidential Material may also be disclosed to other persons requested by counsel to furnish technical or expert services, or to give expert testimony with respect to the subject matter of this litigation, but only subject to the terms hereof. Each such other person to whom disclosure is to be made shall be provided with a copy of this Protective Order and will be required as a condition precedent to disclosure to sign a confidentiality agreement in the form annexed hereto as Exhibit 1. Any executed confidentiality agreements shall be maintained by counsel of record responsible for the disclosure and shall be available for inspection by JPMC’s counsel.

4. Unless the Parties agree otherwise, and confirm such agreement in writing, no information or document designated Confidential (and no brief, memorandum, affidavit or other paper quoting from or disclosing the contents or the subject matter of such Confidential Material) shall be filed with the Court except by placing same in a sealed envelope or other appropriate sealed container bearing the caption of this action, the word “CONFIDENTIAL” and a statement substantially in the following form:

“The content hereof include confidential information in the form of [nature of items, e.g., document] produced in this case by [name of party] in accordance with a Protective Order entered in this case on [date]. This envelope [or container] is not to be opened nor are the contents thereof to be displayed or revealed or returned to [name or filing party] except by order of the Court.”

Alternatively, the Parties may, with leave of Court, provide any such Confidential Material to the Judge presiding over this matter, for review in chambers.

5. The inadvertent or unintentional production or disclosure of documents containing confidential, proprietary, or private information, without being designated Confidential at the time of production or disclosure, shall not be deemed a waiver in whole or in part of JPMC’s claims of confidentiality, provided JPMC gives reasonably prompt notice of any such inadvertent disclosure after discovering same. In addition, the inadvertent or unintentional production of documents containing information or communications subject to the attorney-client privilege, or the attorney work product doctrine, shall not be deemed a waiver in whole or in part of JPMC’s right to claim such privilege or work product protection, either as to the specific information disclosed or as to any other information relating thereto. JPMC shall notify the Plan Receiver in writing within five (5) business days after any inadvertent production of such material covered by the attorney-client privilege or the work product doctrine is discovered. Upon receiving written notice from JPMC that protected information has been inadvertently produced, the Plan Receiver shall return all such

privileged information, and all copies thereof, to JPMC within five (5) business days. Such return shall be without prejudice to, and does not waive, any claim by the returning Party that the returned document(s) are not protected by a claim of privilege or work product protection.

6. Any Party to this Protective Order may agree in writing or on the record during any deposition or testimony to waive this Protective Order with respect to any materials it has designated as Confidential. No waiver pursuant to this paragraph shall constitute, or have the effect of, a waiver of the confidentiality or privilege of any material other than specifically identified therein.

7. The restrictions provided in this Protective Order shall not terminate with this litigation but shall continue until further Order of the Court; provided, however, that this Protective Order shall not be construed (a) to prevent any Party or its respective counsel, or any person receiving Confidential Material pursuant to this Protective Order, from making use of information which, as evidenced by written records or other convincing evidence, was lawfully in the possession of such party prior to the date of this Protective Order; (b) to apply to information which, as evidenced by written records or other convincing evidence, is or was public knowledge at the time of or prior to disclosure in this litigation, or which, after such disclosure, becomes public knowledge other than by violation of this Protective Order; or (c) to apply to information which, as evidenced by written records or other convincing evidence, any party of its counsel has lawfully obtained or shall hereafter lawfully obtain from a nonparty to this litigation having the right to disclose such information. The burden of establishing the application any of the foregoing exceptions shall be upon the Party seeking to invoke such exception.

8. This Protective Order shall not prejudice the right of any Party to seek relief from the Court at any time from any of the provisions hereof, or to bring before the Court at any time

the question of whether or not any particular document or information was in fact properly designated as Confidential Material, or whether its use should be restricted in any way. Upon the assertion of any such objection by the Plan Receiver, JPMC shall have the burden of establishing the basis for such designation of Confidential Material. Any failure of the Plan Receiver to challenge such an initial designation shall not constitute acquiescence in or a waiver of the right to contest any such designation if a question of compliance with this Protective Order is subsequently raised.

9. This Protective Order may be amended by the mutual consent and agreement of counsel, without prior leave of the Court, or by leave of Court on motion, with written notice to the other Party, and this Protective Order shall not be deemed to prejudice either party in any way in any future application for modification of this Protective Order.

10. Upon final termination of this litigation, each Party and person subject to this Order shall assemble and return to the supplier all documents or information previously designated Confidential Material (including all copies or duplications thereof), exclusive of any notes or other work product that may have been placed thereon by counsel for the receiving party. Receipt of the Confidential Material to JPMC shall be acknowledged in writing. Alternatively, JPMC can elect to accept certification by the Plan Receiver, through counsel, that all such Confidential Materials have been destroyed and deleted.

11. This Protective Order is entered solely for the purpose of facilitating the exchange of documents and information between the Parties hereto in connection with discovery in this action. Nothing in this Protective Order, nor the production of any information or document under the terms of this Protective Order, shall be deemed to have the effect of an admission or waiver of any fact, claim or defense by any Party, nor shall it alter any other obligations of any Party. This

Protective Order shall not govern the use of any Confidential Material at trial, which shall be governed by the evidentiary rulings and other decisions of this Court.

ENTERED AS AN ORDER of this Court this _____ day of _____, 2020.

ENTER:

PER ORDER:

Respectfully submitted,

JPMORGAN CHASE BANK, N.A.

By its Attorneys,

/s/ Mark W. Freel

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