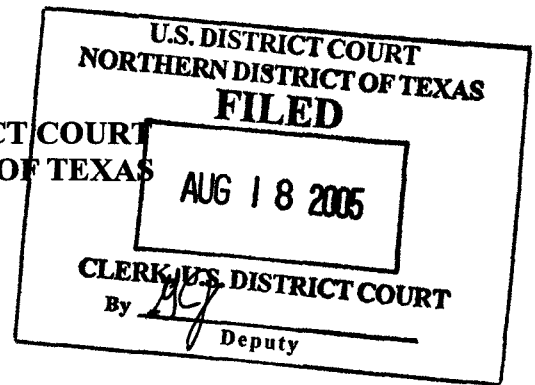


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff

vs.

24 HOUR FITNESS U.S.A., INC.,

Defendant.

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NO. 304-CV-2096-BF

AGREED PROTECTIVE ORDER

Subject to the approval of this Court, Defendant, 24 Hour Fitness U.S.A., Inc. (referred to herein as "Defendant" or "24 Hour Fitness"), through its counsel of record, and Plaintiff, Equal Employment Opportunity Commission, ("Plaintiff" or "EEOC"), through its counsel of record, hereby stipulate and agree to the following protective order (the "Order"):

1. Plaintiff and Defendant (the "Parties") have agreed that there are certain categories of documents that deserve protection from disclosure to the general public. Therefore, the Parties agree only to disclose Confidential Materials, which shall be those documents designated as "Confidential," in accordance with the terms of this Order. The Parties agree to designate as "Confidential" only the information or documents which the designating party, in good faith, believes contains confidential financial matters, employee information, or proprietary information.

The Confidential Materials shall be confidential and maintained as confidential in accordance with the terms of this Order. The aforementioned Confidential Materials include any portion of documents, discovery responses, testimony, or other discovery materials containing confidential information. If the Parties cannot agree whether particular materials should be

treated as confidential hereunder, the party seeking to declassify the materials may apply to the Court to have the confidential designation removed. If a party objects to classification of information as confidential and moves to have that information declassified, the burden of establishing that the materials are entitled to a confidential classification shall fall on the party seeking to use the designation.

2. The Confidential Materials described in paragraph one above may be used only for purposes of this litigation and all appeals and may be disclosed only to the following persons in connection with this litigation:

- (a) The Parties, including the individual on whose behalf this litigation is brought, Janet Juelfs, as well as all employees and officers of Defendant;
- (b) The Court and court personnel involved in this case (including court reporters and persons operating video recording equipment at depositions);
- (c) The Parties' outside counsel in this action, including their partners, associates, secretaries, legal assistants, clerical staff, and employees working with or under the supervision of the parties' counsel to the extent reasonably necessary to render professional services in this action;
- (d) Contract or temporary personnel engaged by and working under the supervision of the parties' counsel to the extent reasonably necessary to render professional services in this action;
- (e) Consultants or experts for each party, retained for the purpose of testifying, consulting, or assisting in the preparation of this case for trial;
- (f) Personnel of graphics or litigation support firms engaged by the parties or their attorneys;
- (g) Witnesses expected to testify at any deposition, hearing, or trial, including use during the preparation of witnesses and potential witnesses; and
- (h) Such additional persons as agreed to by the parties in writing.

3. A designation of materials as Confidential shall be made by affixing or placing the notice "Confidential" on all such materials. The designation shall be affixed in a manner

that does not interfere with the legibility or use of the materials. There shall be no such designation with respect to any materials except where the designating party or parties and their counsel of record have a reasonable, good faith belief that the materials in fact contain information subject to protection pursuant to the standards set forth in this Order.

4. Information designated as Confidential Materials pursuant to this Order shall be treated as so by all persons to whom such information may be disclosed. In addition, except for counsel representing the Parties (including counsels' partners, associates, and employees), and Court personnel (as defined in ¶ 2(b)), each person who is authorized by this Order to inspect or to have access to materials designated as Confidential and who in fact inspects any such materials shall, before conducting such inspection or having such access, be provided with a copy of this Order, execute an undertaking in the form annexed to this Order as Exhibit 1, and shall therefore be bound by this Order. These executed undertakings shall be maintained by counsel of record responsible for the disclosure and shall be available for inspection by all other counsel of record until the case has been concluded and all appeals exhausted.

5. At any time after the production of any materials designated as Confidential by one party, any other party may serve a notice of objection to such designation stating the reasons for such objection. The Parties shall make a good faith effort to confer verbally and to resolve any disagreement over any objection to a "Confidential" designation of documents or information. Should the Parties be unable to resolve the issue raised by the objection, the objecting party may thereupon seek a ruling from this Court with respect to the merits of the designation. The burden of proving the appropriateness of the designation shall be upon the party designating the materials as confidential.

6. At times, witnesses at depositions may testify about documents or other

information that is designated as confidential in accordance with paragraph 2, above. In that case, at the time of the deposition any party may designate all or portions of deposition testimony by witnesses as confidential under this Order by advising the court reporter and the videographer, as applicable, and all counsel at the deposition or proceeding of such fact. The court reporter shall transcribe those portions of the testimony so designated and mark the face of each relevant page of the transcript of the testimony with the word "Confidential." Any portion of a deposition transcript not so designated at the time the testimony is given shall nevertheless be treated as confidential for a period of fourteen (14) days after the party receives the witness's transcript of the testimony so as to permit the party or witness time to designate some or all of his or her testimony as confidential. Thereafter, only such portions of the transcript as are affirmatively designated in writing by a party to be confidential shall be treated as such under this Order. Such designation may be made by marking the transcript as "Confidential" by listing the page and inclusive line numbers of the materials designated as confidential and providing such designation to the other parties, their counsel, and the court reporter. The court reporter shall thereafter mark the face of each relevant page as "Confidential" and transcribe those portions of the testimony so designated. The Parties agree that if they show any individual identified in ¶ 2(a)-(i) a deposition transcript that contains confidential testimony, they will instruct the individual that the terms of this Order applies to that testimony.

Whenever any confidential document is identified or marked as an exhibit in connection with deposition testimony given in these proceedings, it shall be kept separate from the other exhibits in an envelope marked "Confidential – Subject to Agreed Protective Order." Once the written transcript is marked and prepared in the foregoing manner, the videographer shall label

any tape which includes confidential information as “Confidential – Subject to Agreed Protective Order.” If a party shows an individual listed in ¶ 2(a)-(i) the video of a deposition containing confidential information, the party will communicate to the individual the portions of the tape which contain confidential information and instruct the individual that the terms of this Order apply to the testimony.

If a party, in good faith, believes that it is necessary to attach deposition testimony to a pleading to be filed with the Court prior to the expiration of fourteen (14) days from receipt of the deposition transcript, the party will give five (5) days’ notice to the other parties of its intent to do so by identifying the portion of the deposition transcript it intends to file with the Court. If any portion of the identified deposition transcript is designated as confidential within the five (5) days, it shall be treated as confidential under this Agreement. If any party fails to designate the identified deposition transcript as confidential, then the party wishing to attach the deposition transcript to a pleading may do so. A party may still designate any of the remaining portions of the deposition transcript as confidential within the fourteen (14) day period established above.

7. The execution of this Order by the parties’ counsel shall constitute a representation that all persons employed by the parties and the parties’ counsel shall observe this Order and that all persons to whom Confidential Materials are disclosed as set forth in paragraph 2 shall be made aware of this Order.

8. Subject to the Federal Rules of Civil Procedure and the Federal Rules of Evidence, the Confidential Materials may be offered in evidence at trial, deposition, court hearing, or in connection with any motion, response or other pleading filed with the Court, but only under the terms of this Order.

9. The filing or production of Confidential Materials under the terms of this Order shall not alter the confidentiality of the Confidential Materials or alter any existing obligation of any party.

10. If filed with the Court, the Confidential Materials, whether it be deposition testimony or confidential documents, shall be filed under seal to be reviewed by Court personnel only and not to be released to the public. The Parties will agree to confer, prior to filing a pleading or other document with the Court, as to whether any documents marked as “Confidential” can be filed without the protections of this paragraph.

11. If the case is appealed, the party designating the Confidential Materials shall agree to such orders as necessary to allow the Confidential Materials to be included in the record of appeal.

12. If another court or an administrative agency subpoenas or orders the production of Confidential Materials from any party, the party from whom the information is sought shall notify the other Parties of such subpoena or order within five (5) days of its receipt of the subpoena or order. The party from whom information is sought shall wait a minimum of ten (10) days to tender the documents to the requesting entity, unless the requesting entity asks the documents be produced in less than ten (10) days, in order to give the other parties an opportunity to review the order or subpoena and seek appropriate relief from the Court. In the event that the information ordered by the requesting entity is to be produced within ten (10) days, the party from whom the information is sought shall notify the other parties within one (1) day of its receipt of the subpoena or order and will not produce the documents until so ordered.

13. This Order is intended to facilitate efficient litigation between the Parties and is not intended to alter resolution of any substantive issues or to affect the Parties’ substantive

rights.

14. This Order may be amended by agreement of the Parties in the form of a stipulation filed with and approved by the Court.

15. Willful violation of this Order may be punishable by the contempt power of the Court.

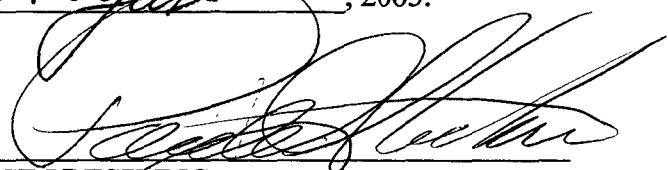
16. The Order shall survive until the final destruction of the Confidential Materials and those designated under ¶ 10,¹ and the Court shall retain jurisdiction to resolve any dispute concerning the use or disclosure of Confidential Materials. The Parties agree that, even after the conclusion of this case, they will continue to treat and retain any and all Confidential Materials as confidential and further agree not disclose Confidential Materials or confidential information to third parties, unless required to do so by law.

This provision is not intended to impose upon either party the obligation to resist a court order, government order or subpoena mandating disclosure of Confidential Materials or confidential information. However, if such confidential materials or information are intended to be offered for any purpose or pursuant to any compelled production, the party so compelled agrees to notify the other party in writing ten (10) business days in advance of the production of the materials or information so as to permit the other party to file protective motions, as necessary.

The Parties may not use Confidential Information for any reason other than for the purposes of this litigation and all appeals; provided, however, that nothing in this Order shall be read to preclude the EEOC from exercising its statutory enforcement responsibilities in the event that such information discloses violations of law not addressed by this litigation.

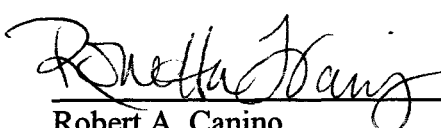
¹ The Parties recognize that Plaintiff EEOC, as a federal administrative agency, has a specific directive regarding the process for the destruction of documents. The Parties acknowledge that Plaintiff EEOC will retain and destroy documents, including any Confidential Materials, pursuant to that directive.

SO ORDERED and SIGNED this 18 day of August, 2005.


JUDGE PRESIDING

AGREED:

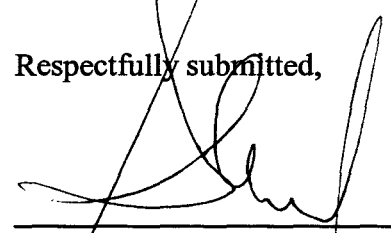
Respectfully submitted,


Robert A. Canino
Regional Attorney
Oklahoma State Bar No. 011782
Suzanne M. Anderson
Supervisory Trial Attorney
Texas State Bar No. 14009470
Ronetta J. Francis
Senior Trial Attorney
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ATTORNEYS FOR PLAINTIFF EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION

Respectfully submitted,


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Jacqueline C. Johnson
Texas State Bar No. 00790974
Scott C. Sherman
Texas State Bar No. 24041906

LITTLER MENDELSON
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214.880.8100
214.880.0181 (Fax)

ATTORNEYS FOR DEFENDANT 24 HOUR
FITNESS U.S.A., INC.

EXHIBIT 1

CONFIDENTIALITY AGREEMENT

I have read and been provided with a copy of the Agreed Protective Order, dated _____, governing the production and disclosure of certain documents and information by the parties to the lawsuit entitled *Equal Employment Opportunity Commission v. 24 Hour Fitness U.S.A., Inc.*, pending in the United States District Court for the Northern District of Texas, Dallas Division. I recognize that during my participation in this case I may have occasion to read and hear matters, which are designated "CONFIDENTIAL" under the Agreed Protective Order. I agree not to disclose any such confidential matter to any person other than the Qualified Persons identified in Paragraph 2 of the Agreed Protective Order. I agree to use any such confidential matter solely for the purposes appropriate to my participation in this case. I agree to abide by and be subject to said Agreed Protective Order in every respect. I understand I may be subject to contempt charges and civil liability if I violate the provisions of this Confidentiality Agreement.

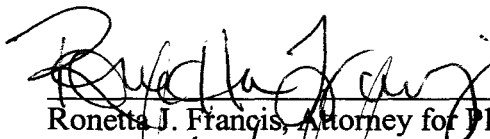
Signature: _____

Date: _____

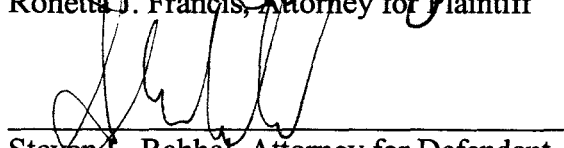
Printed Full Name: _____

Address: _____

Approved as to Form:



Ronetta J. Francis, Attorney for Plaintiff



Steven L. Rahhal, Attorney for Defendant