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January 26, 2020

VIA ECF:

Judge George C. Hanks, Jr.
U.S. District Judge
601 Rosenberg, 6th Floor
Galveston, Texas

RE: *Tamika Craft-Demming v. MD Anderson Cancer Center*
Civil Action No. 4:18-cv-003296
In the United States District Court, Southern District of Texas, Houston Division

Dear Hon. George C. Hanks, Jr:

Pursuant to your request, please accept the following as Defendant The University of Texas MD Anderson Cancer Center's ("Defendant" or "MD Anderson") status letter regarding the disposition of the EEO HR Regulations Open Case Log Reports.

Counsel for MD Anderson attempted to confer with counsel for Plaintiff Tamika Craft-Demming regarding the disposition of the EEO HR Regulations Open Case Log Reports on January 22-23, 24, 2020. On January 24, 2020, counsel for both parties reached a tentative solution regarding the disposition of the reports, but they were not able to finalize an agreement due to the unavailability of counsel for Plaintiff. Accordingly, counsel for the undersigned will be required to travel from Austin to Houston to attend the hearing scheduled for Monday, January 27, 2020, at an unnecessary expense to the State. Since an agreement has not been finalized, the undersigned counsel will not include it herein.

Plaintiff's contention: Plaintiff's prior position on the disposition of the reports was that Plaintiff's counsel has a duty to retain court documents pursuant to the State Bar (Dkt. 27). Plaintiff's counsel contended that she would retain any such documents for a period of years and ultimately have them destroyed in the ordinary course of business (Dkt. 27).

Defendant's contention: MD Anderson respectfully requests the Court to order counsel for Plaintiff to destroy all originals and copies of the EEO HR Regulations Open Case Log Reports that Plaintiff unlawfully took from MD Anderson beyond the scope and duration of her employment. These reports were produced by Plaintiff in discovery as bates-numbered documents "CRAFT DEMMING 000149-213." These reports were designated as "CONFIDENTIAL" under the Joint Protective Order (Dkt. 33). The reports contain the names of MD Anderson employees, the status and details of their EEO case, and work to be performed on the case. *See* Exhibit A (copy of EEO HR Regulations Open Case Log Reports filed under seal).

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Pursuant to paragraph 6 of the Joint Protective Order, “[d]esignated material shall not be used or disclosed for any purpose other than the litigation of this action.” The Parties have since settled all issues and the Court has granted the Order to dismiss the lawsuit with prejudice (Dkt. 45). Pursuant to paragraph 17 of the Joint Protective Order, “[u]pon termination of this action, all Designated Material and copies thereof shall be returned promptly (and in no event later than forty-five (45) days after entry of final judgment, returned to the producing party, or certified as destroyed to counsel of record for the party that produced the Designated Material, or, in the case of deposition testimony regarding designated exhibits, counsel of record for the Designating Person. Alternatively, the receiving party shall provide to the Designating Person a certification that all such materials have been destroyed.” Although Plaintiff produced the EEO HR Regulations Open Case Log Reports to MD Anderson, the confidential reports are the property of MD Anderson and similar to paragraph 17, the Court should order that all originals and copies shall be (1) promptly returned to MD Anderson no later than 45 days after entry of final judgment; or (2) counsel for Plaintiff shall certify that all originals and copies have been destroyed.

MD Anderson contends that Plaintiff engaged in self-help discovery by unlawfully taking the EEO HR Regulations Open Case Log Reports in order to use them in her discrimination litigation against MD Anderson. Plaintiff had no reason to have personal possession of these reports outside her official duties as an EEO and HR Regulations Specialist. Nor possession of reports that were produced after she had already gone on leave on July 15, 2016. Yet, Plaintiff was in possession of reports dated as recently as March 29, 2017. *See* Exhibit A. The reports were taken in violation of MD Anderson’s confidentiality policies. Specifically, MD Anderson Institutional Policy #ADM0264 and #ADM0389. *See* Exhibit B (MD Anderson policies). Pursuant to policy, it is a violation to possess employee data outside the completion of official duties. Such information may only be removed from MD Anderson facilities as required for official duties. All such material or reproductions must be immediately returned when the task requiring removal from MD Anderson is completed or upon termination of employment. Plaintiff was notified that her position had been selected for elimination under a reduction in workforce on January 5, 2017, with an effective date of March 6, 2017.

Additionally, MD Anderson contends that some of the individuals identified in the reports may also be patients at MD Anderson. It is a violation of policy for unauthorized persons to possess protected health information, which is regarded as confidential information. The reports also contain the referral notification numbers, case id numbers, report numbers, and EEOC charge numbers that can be linked with each of the individuals identified within the reports, which is considered confidential information. Moreover, the reports contain sensitive information regarding the names of complainants, respondents, and witnesses regarding employment matters, which MD Anderson policy requires special precautions to prevent disclosure that might harm or embarrass a patient, employee, or the institution. MD Anderson policy requires all workforce members to conform to the Disposal of Confidential and/or Sensitive Information Policy (UTMDACC Institutional Policy #ADM0389) to avoid disciplinary action up to and including dismissal (Disciplinary Action Policy (UTMDACC Institutional Policy # ADM0256)).

The confidential information contained in the reports can only be released with approval through the Public Information Act governance process or through MD Anderson’s Human Resources Operations Department. Plaintiff did not obtain approval prior to taking personal

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possession of the reports. Plaintiff's counsel is under no obligation to retain these confidential reports that Plaintiff unlawfully took from MD Anderson. MD Anderson policy provides that such information should be disclosed only to individuals who have a business need to know. Plaintiff's counsel is not one of these individuals. This matter is further complicated by the fact that Plaintiff's counsel now has access to personal information regarding potential clients that she could use for her own business purposes. Should Plaintiff's counsel need to retain anything for compliance with the State Bar, which she has not shown, she may retain an inventory generally identifying the documents returned with no personal identifiable information.

Respectfully submitted,

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/s/ Summer R. Lee

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ATTORNEYS FOR DEFENDANT

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CERTIFICATE OF CONFERENCE

The undersigned counsel attempted to confer with counsel for Plaintiff on January 22-23, 24, 2020, regarding the disposition of the EEO HR Regulations Open Case Log Reports. Counsel for the parties discussed the disposition of the reports on January 24, 2020, but an agreement was not reached due to the unavailability of counsel for Plaintiff.

/s/ Summer R. Lee
SUMMER R. LEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served through CM/ECF filing, on this the 26th day of January, 2020, upon the following individuals,

Ellen Sprovach
ROSENBERG & SPROVACH
ellen@rosenberglaw.com
Attorney for Plaintiff

/s/ Summer R. Lee
SUMMER R. LEE
Assistant Attorney General