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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC; ROBERT J. JESENIK, BRIAN A. OLIVER; and N. SCOTT GILLIS,

Defendants.

Case No. 3:16-cv-00438-PK

INDIVIDUAL DEFENDANTS' MOTION FOR PROTECTIVE ORDER; MEMORANDUM OF LAW IN SUPPORT THEREOF; [PROPOSED] PROTECTIVE ORDER

PURSUANT TO RULE 26(c)(1)

REQUEST FOR ORAL ARGUMENT

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Attorneys for Defendant Brian A. Oliver

CERTIFICATE OF COMPLIANCE WITH LR 7-1

In compliance with LR 7-1, counsel for individual Defendants Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (the "Individuals") certify that the parties undertook extensive good faith efforts to resolve this dispute without the involvement of the Court. Through these efforts the Individuals and Plaintiff Securities and Exchange Commission ("SEC") substantially reduced the issues in dispute, but were unable to resolve this matter completely.

INDIVIDUAL DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, the Individuals request entry of the Proposed Protective Order attached as Exhibit 1, requiring that privileged communications be withheld from production to the SEC. These communications are identified in the Individuals' partial privilege logs, attached as Exhibits A, B, and C to the Declaration of Jeffrey F. Robertson in Support of Individual Defendants' Motion for Protective Order ("Robertson Decl.").

This motion is supported by the following legal memorandum, the Robertson Decl., the Declaration of Marc J. Fagel in Support of Individual Defendants' Motion for Protective Order ("Fagel Decl."), the Declaration of Jahan P. Raissi in Support of Individual Defendants' Motion for Protective Order ("Raissi Decl."), the Declaration of William Douglas Sprague in Support of Individual Defendants' Motion for Protective Order ("Sprague Decl."), documents on file with the Court, and such further evidence and argument as the Court may permit. The Individuals request oral argument on this motion.

LEGAL MEMORANDUM

I. INTRODUCTION

This dispute concerns the SEC's improper attempt to obtain privileged communications that were made in furtherance of an oral agreement among counsel for the Individuals and Aequitas[1] regarding their common interest in responding to the SEC's investigation and defending this lawsuit (the "Joint Defense Agreement"). The SEC refuses to acknowledge the existence of the Joint Defense Agreement (though it does not challenge the vast majority of the communications withheld based on joint defense privilege), and presumably will argue that, even if the Joint Defense Agreement did exist, the communications at issue are not covered by it because personal counsel were not copied. The SEC is wrong on both counts.

First, every party to the Joint Defense Agreement acknowledged its existence in the period during which they participated in it. Bob Holmen, former Aequitas general counsel, explicitly acknowledged the Joint Defense Agreement and participated in it through numerous meetings, calls, and communications.

Second, an individual's personal counsel need not be copied on communications for those communications to be protected by a joint defense privilege. Whether a communication is privileged under a joint defense agreement turns on whether it furthers the common interest underlying the agreement, not on who is copied. Moreover, one party cannot waive joint defense privilege without the consent of each party to the agreement. As the Individuals have not consented to waive their privileges, the disputed joint defense communications remain

[1] As used in this motion, "Aequitas" refers collectively to Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC.

privileged. In similar circumstances, courts routinely grant protective orders to prevent disclosure of privileged joint defense communications, which is precisely what the Court should do here.

II. BACKGROUND

Aequitas is a group of affiliated investment companies that Mr. Jesenik co-founded in 1993. Until shortly before the Receiver was appointed in this case, the Individuals were Aequitas executives. *See* Answer (ECF No. 169) ¶ 12; Answer (ECF No. 170) ¶ 13; Motion to Dismiss (ECF No. 172) at 5.

Throughout 2015 and through early 2016, Sidley Austin LLP ("Sidley") represented Aequitas in an SEC investigation (together with this litigation, the "SEC Matter"). *See* Robertson Decl. ¶ 10. In late 2015 and early 2016, Sidley and Mr. Holmen, as general counsel for Aequitas, recommended that the Individuals retain personal counsel for the SEC Matter. *See, e.g., id.* Exs. D, E. As they retained personal counsel, the Individuals entered into the Joint Defense Agreement regarding the SEC Matter with counsel for Aequitas, including Sidley as outside counsel and Mr. Holmen as in-house counsel. *See* Fagel Decl. ¶ 7; Raissi Decl. ¶ 7; Sprague Decl. ¶¶ 5-6. In February 2016, Pepper Hamilton LLP ("Pepper") replaced Sidley as counsel for Aequitas, and took its place as a party to the Joint Defense Agreement. *See* Fagel Decl. ¶ 8.

In March 2016, the SEC filed this action. At that time, Aequitas agreed to resolve the SEC's claims, including consenting to the Receiver's appointment and agreeing to cooperate with the SEC in the pending litigation. *See* Notice of Acceptance of Offer of Judgment As to Aequitas Entities (ECF No. 188). The Receiver subsequently agreed to produce additional materials that the SEC had requested during its investigation. In August 2016, the Receiver

informed Mr. Jesenik's counsel that he planned to waive all *corporate* attorney-client privileges. *See* Fagel Decl. ¶ 11. Counsel for the Individuals objected to the planned waiver, advised the Receiver that he was not authorized to waive the Individuals' *personal* privileges, and requested the opportunity to review all documents that could implicate the Individuals' personal privileges before they were produced to the SEC. *See id.* The Receiver agreed to permit the Individuals to review documents that potentially were subject to the Individuals' privilege claims. Robertson Decl. ¶ 4. Following their review, the Individuals submitted privilege logs to the Receiver and the SEC identifying the documents that they assert are privileged. *Id.* ¶ 5.

Subsequently, the Individuals and the SEC held several meet and confer conferences regarding the Individuals' personal privilege assertions. The SEC asserted that the Individuals had no personal attorney-client privilege with Mr. Holmen due to Aequitas' waiver of *corporate* privileges. *Id.* ¶ 4. The Individuals informed the SEC that counsel for the Individuals and Aequitas were parties to a joint defense agreement regarding their common interests in the SEC Matter. They substantiated this position through proffers that included redacted communications demonstrating the existence and scope of the Joint Defense Agreement. *See id.* Ex. F. During the meet and confer sessions, the SEC stated that Mr. Holmen does not recall agreeing to be part of a joint defense agreement. *See id.* ¶ 12.

Apparently based on Mr. Holmen's contention, and notwithstanding extensive contrary evidence, the SEC does not concede that the Joint Defense Agreement existed among counsel for the Individuals and Aequitas. *Id.* Nonetheless, the SEC has agreed not to challenge the Individuals' privilege assertions regarding joint defense communications concerning the SEC Matter on which the Individuals' personal attorneys were copied. *See id.* Despite evidence that Aequitas' outside and internal counsel acknowledged the Joint Defense Agreement and

participated in communications in furtherance of it, the SEC disputes the Individuals' privilege claims concerning joint defense communications on which the Individuals' personal counsel were not copied, even where other Joint Defense Agreement parties—including Aequitas through its counsel Mr. Holmen, Sidley, or Pepper—were copied.

III. LEGAL STANDARD

A court "may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." FED. R. CIV. P. 26(c)(1). Good cause exists where "specific prejudice or harm will result if no protective order is granted." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002). "[C]ourts have consistently granted protective orders that prevent disclosure of . . . [documents] protected under attorney-client privilege." *Id*. at 1212; *see also Anderson v. Country Mut. Ins. Co.*, 2014 WL 4187205, at *2 (W.D. Wash. Aug. 25, 2014) ("A protective order is appropriate for documents that are protected by the attorney-client privilege"); *In re Grand Jury Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992) (a privilege log is "sufficient to establish the attorney-client privilege"). "The court may issue protective orders that protect classes of documents upon a threshold showing of appropriate circumstances warranting such umbrella protection." *Gwerder v. Besner*, No. CIV.07-335-HA, 2007 WL 2916513, at *2 (D. Or. Oct. 5, 2007).

IV. ARGUMENT

Contemporaneous communications and declarations from counsel for each Individual prove the existence of an oral joint defense agreement between counsel for the Individuals and in-house and outside counsel for Aequitas. Moreover, the existence of the Joint Defense Agreement was *explicitly acknowledged* by Mr. Holmen, the person on whom the SEC now relies to dispute the Individuals' privilege assertions. The communications on the Individuals'

privilege logs are central to the Joint Defense Agreement, as they concern how to handle complicated legal issues that were at the core of the SEC's active investigation and subsequent lawsuit. Because the Individuals have not waived or otherwise consented to production of the documents identified on their privilege logs, there is good cause to enter the Proposed Order.

A. A Joint Defense Agreement Existed Between Aequitas and the Individuals.

The joint defense privilege applies when "(1) the communications were made in the course of a joint defense effort, (2) the statements were designed to further the joint defense effort, and (3) the privilege has not been waived." *U.S. ex rel. Burroughs v. DeNardi Corp.*, 167 F.R.D. 680, 685 (S.D. Cal. 1996). The joint defense privilege "serves to protect the confidentiality of communications passing from one party to the attorney for another party" in order to coordinate strategies among clients that share a common interest about a legal matter. *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989). Entering into a joint defense agreement therefore allows attorneys "to share documents, litigation strategies, and other information without waiving attorney-client privilege." *United States v. Flood*, 713 F.3d 1281, 1284 (10th Cir. 2013). "[T]he case law is clear that one party to a [joint defense agreement] cannot unilaterally waive the privilege for other holders." *United States v. Gonzalez*, 669 F.3d 974, 982 (9th Cir. 2012) (citing *United States v. BDO Seidman, LLP*, 492 F.3d 806, 817 (7th Cir. 2007)).

The Ninth Circuit recognizes that "no written agreement is required [for a joint defense agreement to exist], and that a [joint defense agreement] may be implied from conduct and situation, such as attorneys exchanging confidential communications from clients who are or potentially may be codefendants or have common interests in litigation." *See Gonzalez*, 669 F.3d at 979. The existence of the Joint Defense Agreement among counsel for the Individuals and

Aequitas is demonstrated by the Joint Defense Agreement parties' conduct, including contemporaneous communications referencing and sharing information pursuant to the Joint Defense Agreement.

First, counsel for each Individual attests to the existence of the Joint Defense Agreement regarding the SEC Matter. In his declaration, Marc J. Fagel of Gibson, Dunn & Crutcher LLP, former counsel to Mr. Jesenik, swears that "in connection with the SEC Matter, Gibson, as counsel to Mr. Jesenik, reached a joint defense and common interest agreement (the "Joint Defense Agreement") between and among counsel for Aequitas. Specifically, Gibson entered a Joint Defense Agreement with [Sidley], outside counsel for Aequitas for the SEC Investigation, and with in-house counsel for Aequitas, including Mr. Holmen as general counsel." Fagel Decl. ¶ 7. Likewise, counsel for Messrs. Oliver and Gillis affirm the existence of, and participation in, a Joint Defense Agreement regarding the SEC Matter. Raissi Decl. ¶¶ 4-8; Sprague Decl. ¶¶ 6-8. These declarants also confirm that the Individuals' Joint Defense Agreement continued with Pepper once it replaced Sidley as outside counsel for Aequitas. *See* Fagel Decl. ¶ 8; Raissi Decl. ¶ 7; Sprague Decl. ¶ 6.

Second, contemporaneous communications involving *every* Joint Defense Agreement party—including Aequitas' counsel, Mr. Holmen, Sidley, and Pepper—confirm the existence and scope of the Joint Defense Agreement. For example:

- Mr. Holmen advised the lead lawyer at Sidley that "[Aequitas] consents with you/Sidley sharing information [with counsel to one of the Individuals for the SEC Matter] … *pursuant to the joint defense arrangement.*" Sprague Decl. Ex. A (emphasis added).

- Regarding Mr. Holmen's agreement to share notes he took during SEC testimony with Mr. Fagel (counsel to Mr. Jesenik), Mr. Fagel confirmed that "[w]e have a *joint defense privilege*" that protected sharing of such privileged information. *See* Robertson Decl. Ex. I (February 17, 2016 email from Marc Fagel to, *inter alia*, Mr. Holmen) (emphasis added).

- When Sidley provided Mr. Fagel with privileged legal analysis prepared by Mr. Holmen regarding the SEC Matter, Sidley noted that it did so pursuant to a "Common Interest Privilege," and Mr. Fagel advised Mr. Holmen that Sidley had shared the analysis and would provide additional information to Mr. Fagel "subject to joint defense privilege." *See id*. Ex. G (January 8, 2016 email from W. Hardy Callcott to Marc Fagel) (emphasis added); *see also id*. Ex. H (January 8, 2016 email).

- Pepper, Sidley's replacement as counsel to Aequitas for the SEC Matter, likewise shared joint defense privileged information with the Individuals' counsel "pursuant to *our common interest privilege*." *See* Sprague Decl. Ex. B (March 17, 2016 email from Brian Nichilo to counsel for Individuals) (emphasis added); *see also* Robertson Decl. Ex. J (March 9, 2016 email from Ivan Knauer circulating draft documents concerning the SEC Matter to, *inter alia*, counsel for the Individuals, marked "Privileged and Confidential Common Interest Material").

These are only a handful of numerous contemporaneous communications involving parties to the Joint Defense Agreement that confirm both the existence and scope of the agreement. *See also* Fagel Decl. ¶ 10 (counsel for the Individuals and Aequitas regularly exchanged "confidential information, privileged legal analysis, attorney-work product, and documents related to the SEC Investigation and, in the case of Messrs. Jesenik, Oliver, and Gillis, the SEC Litigation.").

Although the SEC has indicated it is relying on Mr. Holmen for its contention that there was no joint defense agreement, Mr. Holmen's own conduct and communications undermine that claim. As noted, Mr. Holmen explicitly authorized Sidley to share information "pursuant to the joint defense arrangement" with counsel for one Individual. *See* Sprague Decl. Ex. A. Additional communications identified on the Individuals' privilege logs reflect that Mr. Holmen advised the Individuals regarding the SEC Matter and related issues of potential individual liability, and also exchanged confidential information with the Individuals' counsel—all conduct demonstrating the existence of the Joint Defense Agreement. *Gonzalez*, 669 F.3d at 979.

Finally, Mr. Holmen's plans to leave Aequitas further evince the existence of the Joint Defense Agreement regarding the SEC Matter. After he secured other employment, Mr. Holmen

urged that Aequitas retain him as a part-time employee so that he would be able to "help on…the SEC investigation (helping both company counsel *and counsel for the individuals*)" while maintaining attorney-client privilege. *See* Robertson Decl. Ex. L (emphasis added). Even earlier, Mr. Holmen had identified the SEC Matter as "the primary reason I should stay on part time" to preserve privilege over his communications with the Individuals' counsel regarding the SEC Matter. *See id.* Ex. K. These comments by Mr. Holmen prove his contemporaneous agreement to the Joint Defense Agreement. If there were no Joint Defense Agreement, none of the communications between him and the Individuals' counsel would have been privileged once his employment ended.

In short, the conduct of the parties who agreed to maintain a joint defense in their common interest unequivocally supports the existence and scope of the Joint Defense Agreement concerning the SEC Matter.

B. The Communications at Issue Are Privileged

The SEC's position during the meet and confer process—that only the Joint Defense Agreement communications on which the Individuals' counsel were copied may be withheld from production—is untenable. There is no legal support for this position. The purpose of the communication, not who was copied, determines whether it is part of a joint defense agreement. *See Ohio-Sealy Mattress Mfg. Co. v. Kaplan*, 90 F.R.D. 21, 29 (N.D. Ill. 1980) (where a joint defense agreement exists, "[t]he question in determining whether a document is part of the joint defense effort is not the party to whom the document was directed, but rather whether the document reflects material [that] is part of the joint defense effort.")

So long as communications among joint defense parties are intended to further the parties' common objective, they are privileged, even if they do not include the Individuals'

personal counsel, since a "joint defense agreement establishes an implied attorney-client relationship" among the members to the agreement. *United States v. Henke*, 222 F.3d 633, 637 (9th Cir. 2000). Thus, the "joint defense privilege…protects not only the confidentiality of communications passing from a party to his…attorney *but also from one party to the attorney for another party*." *United States v. Austin*, 416 F.3d 1016, 1021 (9th Cir. 2005) (emphasis added) (internal quotation marks omitted); *see also Schwimmer*, 892 F.2d at 244 ("Neither is it necessary for the attorney representing the communicating party to be present when the communication is made to the other party's attorney."); *cf.* Or. Rev. Stat. Ann. § 40.225(2) ("A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client . . . by the client *or* the client's lawyer *to a lawyer representing another in a matter of common interest*." (emphasis added)).

Here, the disputed communications are subject to the Joint Defense Agreement because they concern the common interest that the Joint Defense Agreement sought to further: the manner in which Aequitas and its key officers should conduct themselves to minimize personal liability in the SEC Matter. As Mr. Holmen acknowledged when he and Sidley recommended that the Individuals retain personal counsel to work with company counsel on the SEC Matter: "the interests of the individuals and Aequitas are…*very much aligned*"; "charges *against individuals* are tantamount to charges against Aequitas, and vice versa." *See* Robertson Decl. Ex. E (emphasis added). Aequitas and the Individuals pursued this common interest until Aequitas (then under a receivership) sought to waive not only its own privilege, but also what all parties had previously treated as a joint privilege.

As general counsel for Aequitas when the Individuals were senior executives, Mr. Holmen was at the center of the Joint Defense Agreement until his departure shortly before this litigation began. He regularly communicated with the Individuals about the focus of the SEC investigation—and their potential individual liability for ongoing conduct at Aequitas—*without* including their respective individual counsel on these communications. *See* Robertson Decl. ¶ 16. Mr. Holmen also prepared memoranda that were provided to the Individuals' counsel, and facilitated the flow of information within the Joint Defense Agreement. *See id*. These communications, in furtherance of the parties' joint strategy, are subject to the Joint Defense Agreement. That Mr. Holmen served as in-house counsel for Aequitas does not alter the privileged nature of these communications. In-house counsel routinely enter into joint defense agreements barring disclosure of confidential communications with company executives under similar circumstances. *See, e.g.*, *In re Imperial Corp. of Am.*, 167 F.R.D. 447, 450 (S.D. Cal. 1995), *aff'd*, 92 F.3d 1503 (9th Cir. 1996).

The communications sought by the SEC are subject to the joint defense privilege. Every document on the Individuals' privilege logs concerns either legal advice related to how to minimize exposure on issues central to the SEC investigation, or how to respond to the SEC lawsuit. For example, the SEC alleges that the Individuals failed to adequately disclose material facts to investors. *See, e.g.*, SEC's Complaint (ECF No. 1) ¶¶ 5, 46, 57. After the parties entered into the Joint Defense Agreement, the Individuals sought from Mr. Holmen, and Mr. Holmen provided, legal advice concerning how to minimize exposure on this precise issue. Such communications were therefore in furtherance of the joint defense strategy, and are thus subject to the Joint Defense Agreement.

The SEC's contention that it should be permitted access to communications made pursuant to the Joint Defense Agreement based on an arbitrary decision by Mr. Holmen whether to include the Individuals' personal counsel lacks merit. It is counter to "the rationale for the joint defense rule…: persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims." *Gonzalez*, 669 F.3d at 978 (quoting *In re Grand Jury Subpoenas*, 902 F.2d 244, 249 (4th Cir. 1990)). The Individuals' pursuit of an effective defense will be prejudiced if communications made in furtherance of that purpose are disclosed over their objections.

V. CONCLUSION

The evidence here clearly demonstrates the existence of a joint defense agreement among counsel for the Individuals and Aequitas regarding the SEC Matter. Because the Individuals have not consented to disclosure of communications made pursuant to the Joint Defense Agreement, they remain privileged. The Individuals would suffer harm if the joint defense communications were produced without their authorization. Based on their showing of good cause, the Individuals respectfully request that this Court enter the Proposed Protective Order attached hereto as Exhibit 1.

DATED: April 26, 2017

SCHULTE ROTH & ZABEL LLP

By: */s/ Peter H. White*
PETER H. WHITE (*Pro Hac Vice*)

Attorneys for Defendant Robert J. Jesenik

DATED: April 26, 2017

COVINGTON & BURLING LLP

By: */s/ W. Douglas Sprague*
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Attorneys for Defendant N. Scott Gillis

DATED: April 26, 2017

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By: */s/ Jahan P. Raissi*
JAHAN P. RAISSI (*Pro Hac Vice*)

Attorneys for Defendant Brian A. Oliver

LR 11-1(D)(2) CERTIFICATION

I hereby attest that all other signatories listed, on whose behalf this filing is submitted, concur in the filing's content and have authorized this filing.

/s/ Peter H. White
PETER H. WHITE (*Pro Hac Vice*)

Exhibit 1

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC; ROBERT J. JESENIK, BRIAN A. OLIVER; and N. SCOTT GILLIS,

Defendants.

Case No. 3:16-cv-00438-PK

[PROPOSED] PROTECTIVE ORDER

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Attorneys for Defendant Brian A. Oliver

PAPAK, Judge:

This matter is before the Court on the Motion for Protective Order filed by Defendants Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (the "Individuals"). Having fully considered the Individual Defendants' Motion for Protective Order, being duly advised as to the merits, and for good cause shown,

THE COURT DOES HEREBY ORDER THAT:

1. Discovery of the communications identified in the partial privilege logs submitted to the Court by the Individuals on April 26, 2017 is prohibited, as those communications reflect privileged attorney-client communications and/or protected work product and were in furtherance of a joint defense agreement, the parties to which include counsel for the Individuals and in-house and outside counsel for Aequitas.[1]

2. This Protective Order shall not constitute an abrogation, limitation, or waiver of the Individuals' right to oppose any discovery request or object to the admissibility of any document, testimony or other information, including documents not identified in the privilege logs.

3. Nothing herein shall create a presumption or implication that a party is entitled to the production of documents or materials by virtue of the existence of this Order, or prevent the Individuals from seeking relief from the Court on discovery-related matters.

4. The prohibition on disclosure of these communications shall survive the conclusion of this action and this Court shall retain jurisdiction of this action after its conclusion for the purpose of enforcing the terms of this Protective Order.

[1] As used herein, "Aequitas" refers collectively to Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC.

5. The Court has reviewed the evidence offered in support of entry of this Protective Order and finds that there is good cause to protect these communications from disclosure, as the Individuals would suffer harm if these privileged communications were produced without their authorization. Accordingly, the Court adopts the above Protective Order in this action.

IT IS SO ORDERED.

DATED this ____ day of _____, 2017

_____
THE HONORABLE JUDGE PAUL PAPAK

SUBMITTED BY:

DATED: April 26, 2017

SCHULTE ROTH & ZABEL LLP

By: */s/ Peter H. White*
PETER H. WHITE (*Pro Hac Vice*)

Attorneys for Defendant Robert J. Jesenik

DATED: April 26, 2017

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By: */s/ W. Douglas Sprague*
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DATED: April 26, 2017

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By: */s/ Jahan P. Raissi*
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Attorneys for Defendant Brian A. Oliver

LR 11-1(d)(2) Certification

I hereby attest that all other signatories listed, on whose behalf this filing is submitted, concur in the filing's content and have authorized this filing.

/s/ Peter H. White
PETER H. WHITE (*Pro Hac Vice*)