

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hicks v. Midland Credit Management, Inc.

Case No. 1:22-cv-00676-JLT-EPG (E.D. Cal. Mar. 8, 2023) · No. 1:22-cv-00676-JLT-EPG · Decided March 8, 2023

SUMMARY

This document is a stipulated protective order entered in Hicks v. Midland Credit Management, Inc., a federal Fair Debt Collection Practices Act action in the Eastern District of California. It governs the designation, use, disclosure, challenge, filing, and final disposition of confidential discovery materials, including Defendant’s business information and Plaintiff’s personal financial information.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
DECIDED	March 8, 2023
DOCKET	1:22-cv-00676-JLT-EPG
DISPOSITION	approved
PROCEDURAL POSTURE	The parties stipulated to and jointly requested entry of a protective order governing confidential discovery material. The court reviewed and approved the stipulation.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Breana Hicks v. Midland Credit Management, Inc.

TOPICS

discovery dispute civil procedure fair debt collection consumer protection sanctions

PRACTICE AREAS

civil procedure fair debt collection consumer protection

QUESTIONS PRESENTED

- Whether good cause supported entry of the parties' stipulated protective order under Federal Rule of Civil Procedure 26(c).
- What restrictions and procedures should govern the designation, use, disclosure, challenge, filing, retention, and disposition of confidential discovery material.

HOLDINGS

1. The court approved the parties' stipulation and joint request for entry of a protective order because good cause existed to protect Defendant's confidential business information and Plaintiff's personal financial information from improper disclosure and use.
2. Protected material may be used only to prosecute, defend, or attempt to settle the action; disclosure is limited to specified persons and conditions; confidentiality designations must be narrowly tailored; challenges place the burden of persuasion on the designating party; and violations may result in sanctions.

KEY QUOTATIONS

“Upon review, IT IS ORDERED that the parties’ stipulation and joint request for entry of protective order (ECF No. 21) is approved.” (at 14)

FACTUAL BACKGROUND

The action concerns Plaintiff's claims that Midland Credit Management, Inc. called her in violation of the Fair Debt Collection Practices Act. The parties anticipated discovery concerning Midland's policies and procedures for placing and stopping calls, internal compliance procedures, and related confidential business information. Discovery also could involve Plaintiff's personal financial information, leading the parties to seek protection from public disclosure and use outside the litigation.

PROCEDURAL HISTORY

Plaintiff brought claims alleging that Defendant called her in violation of the Fair Debt Collection Practices Act. During discovery, the parties submitted a stipulated protective order addressing confidential business information and Plaintiff's personal financial information. The court approved the stipulation and entered the protective order.

DISPOSITION

approved

CASES CITED

- S2 Automation LLC v. Micron Technology, Inc., 283 F.R.D. 671, 681 (D.N.M. 2012)
- Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994)
- Horowitz v. GC Services Ltd. Partnership, No. 14cv2512-MMA RBB, 2016 U.S. Dist. LEXIS 172359, at *9 (S.D. Cal. Dec. 12, 2016)

OPINION

Hicks v. Midland Credit Management, Inc.

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8 9 BREANA HICKS, Case No. 1:22-cv-00676-JLT-EPG 10 Plaintiff, STIPULATED
PROTECTIVE ORDER 11 v. (ECF No. 21). 12 MIDLAND CREDIT MANAGEMENT, INC. 13
Defendant. 14 15

1. INTRODUCTION

16 1.1 PURPOSES AND LIMITATIONS

17 Discovery in this action may involve production of confidential, proprietary, or private 18
information for which special protection from public disclosure and from use for any purpose
other 19 than prosecuting this litigation may be warranted. Accordingly, the Parties hereby
stipulate to and 20 petition the Court to enter the following Stipulated Protective Order. The
Parties acknowledge that 21 this Order does not confer blanket protections on all disclosures or
responses to discovery and that 22 the protection it affords from public disclosure and use extends
only to the limited information or 23 items that are entitled to confidential treatment under the
applicable legal principles. The Parties 24 further acknowledge, as set forth in Section 12.3 below,
that this Order does not entitle them to file 25 Confidential Information under seal; The Judge's
procedures sets forth the procedures that must be 26 followed and the standards that will be
applied when a Party seeks permission from the Court to file 27 material under seal.

1 1.2 GOOD CAUSE STATEMENT

2 Good cause exists for the parties to enter into this stipulated protective order to prevent the 3
public dissemination of Defendant's confidential business information, and the personal financial
4 information of the Plaintiff. The stipulated protective order is necessary to allow the parties to 5
exchange information for the purposes of this litigation regarding Plaintiff's claims that Defendant
6 called Plaintiff in violation of the Fair Debt Collection Practices Act. 7 Parties anticipate that
current written discovery and future discovery will involve inquiry 8 into Defendant's policies and
procedures concerning its processes for placing and stopping phone 9 calls to individuals, its own
internal compliance procedures related to the Fair Debt Collection 10 Practices Act, and related
statutes, and other confidential business information. The before 11 mentioned confidential
business information is the appropriate subject of a protective order. (See S2 12 Automation LLC
v. Micron Tech., Inc., 283 F.R.D. 671, 681 (D.N.M. 2012) (The disclosure of trade 13 secrets,
sensitive commercial information, and information that gives a competitive advantage are 14
proper subjects of a protective order.); Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994)
15 (The subject matter of confidential business information is broad, including a wide variety of
16 business information.)) If forced to reveal the aforementioned information, Defendant will be
17 subjected to a competitive disadvantage by being forced to reveal its compliance procedures
which 18 give it a marked competitive advantage to its competitors as well as other confidential
information 19 vital to its operation. 20 Additionally, the protective order is necessary to allow for
the personal financial information 21 of the Plaintiff to be disclosed and discussed without harm to

the Plaintiff. The protection of the 22 personal financial information of a Plaintiff constitutes good cause. (Horowitz v. GC Servs. Ltd. 23 P'ship, No. 14cv2512-MMA RBB, 2016 U.S. Dist. LEXIS 172359, at *9 (S.D. Cal. Dec. 12, 2016).) 24 For the forgoing reasons, good cause exists for this protective order.

25 2. DEFINITIONS

26 2.1 Action: this pending federal lawsuit. 27 1 2.2 Challenging Party: a Party or Nonparty that challenges the designation of 2 information or items under this Order. 3 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is 4 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule 5 of Civil Procedure 26(c) and as specified above in the Good Cause Statement. 6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support 7 staff). 8 2.5 Designating Party: a Party or Nonparty that designates information or items that it 9 produces in disclosures or in responses to discovery as "CONFIDENTIAL." 10 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium 11 or manner in which it is generated, stored, or maintained (including, among other things, testimony, 12 transcripts, and tangible things), that are produced or generated in disclosures or responses to 13 discovery in this matter. 14 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to 15 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a 16 consultant in this action. 17 2.8 House Counsel: attorneys who are employees of a Party to this Action. House 18 Counsel does not include Outside Counsel of Record or any other outside counsel. 19 2.9 Nonparty: any natural person, partnership, corporation, association, or other legal 20 entity not named as a Party to this action. 21 2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this 22 Action but are retained to represent or advise a Party and have appeared in this Action on behalf of 23 that Party or are affiliated with a law firm that has appeared on behalf of that Party, including support 24 staff. 25 2.11 Party: any Party to this Action, including all of its officers, directors, employees, 26 consultants, retained experts, and Outside Counsel of Record (and their support staffs). 27 1 2.12 Producing Party: a Party or Nonparty that produces Disclosure or Discovery 2 Material in this Action. 3 2.13 Professional Vendors: persons or entities that provide litigation support services (for 4 example, photocopying, videotaping, translating, preparing exhibits or demonstrations, and 5 organizing, storing, or retrieving data in any form or medium) and their employees and 6 subcontractors. 7 2.14 Protected Material: any Disclosure or Discovery Material that is designated as

8 "CONFIDENTIAL."

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a 10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material 13 (as defined above) but also any information copied or extracted from Protected Material; all

copies, 14 excerpts, summaries, or compilations of Protected Material; and any testimony, conversations, or 15 presentations by Parties or their Counsel that might reveal Protected Material. 16 Any use of Protected Material at trial will be governed by the orders of the trial judge. This 17 Order does not govern the use of Protected Material at trial.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations imposed by this 20 Order will remain in effect until a Designating Party agrees otherwise in writing or a court order 21 otherwise directs. Final disposition is the later of (1) dismissal of all claims and defenses in this 22 Action, with or without prejudice, or (2) final judgment after the completion and exhaustion of all 23 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing 24 any motions or applications for extension of time under applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Each Party or Nonparty that designates information or items for protection under this 27 Order must take care to limit any such designation to specific material that qualifies under the 1 appropriate standards. The Designating Party must designate for protection only those parts of 2 material, documents, items, or oral or written communications that qualify so that other portions of 3 the material, documents, items, or communications for which protection is not warranted are not 4 swept unjustifiably within the ambit of this Order. 5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown 6 to be clearly unjustified or that have been made for an improper purpose (for example, to 7 unnecessarily encumber the case-development process or to impose unnecessary expenses and 8 burdens on other parties) may expose the Designating Party to sanctions. 9 If it comes to a Designating Party's attention that information or items it designated for 10 protection do not qualify for that level of protection, that Designating Party must promptly notify 11 all other Parties that it is withdrawing the inapplicable designation. 12 5.2 Except as otherwise provided in this Order, Disclosure or Discovery Material that 13 qualifies for protection under this Order must be clearly so designated before the material is 14 disclosed or produced. 15 Designation in conformity with this Order requires the following: 16 (a) for information in documentary form (for example, paper or electronic documents but 17 excluding transcripts of depositions or other pretrial or trial proceedings), the Producing Party must 18 affix at a minimum the legend "CONFIDENTIAL" to each page that contains Protected Material. 19 If only a portion or portions of the material on a page qualify for protection, the Producing Party 20 must clearly identify the protected portion(s) (for example, by making appropriate markings in the 21 margins). 22 A Party or Nonparty that makes original documents available for inspection need not 23 designate them for protection until after the inspecting Party has indicated which documents it would 24 like copied and produced. During the inspection and before the designation, all material made 25 available for inspection must be treated as "CONFIDENTIAL." After the inspecting Party has 26 identified the documents it wants copied and produced, the Producing Party must determine which 27 documents, or portions thereof,

qualify for protection under this Order. Then, before producing the 1 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page 2 that contains Protected Material. If only a portion or portions of the material on a page qualify for 3 protection, the Producing Party also must clearly identify the protected portion(s) (for example, by 4 making appropriate markings in the margins). 5 (b) for testimony given in depositions, the Designating Party must identify the Disclosure 6 or Discovery Material that is protected on the record, before the close of the deposition. 7 (c) for information produced in some form other than documentary and for any other 8 tangible items, the Producing Party must affix in a prominent place on the exterior of the container 9 or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion 10 or portions of the information warrant protection, the Producing Party, to the extent practicable, 11 must identify the protected portion(s). 12 5.3 If timely corrected, an inadvertent failure to designate qualified information or items 13 does not, standing alone, waive the Designating Party’s right to secure protection under this Order 14 for that material. On timely correction of a designation, the Receiving Party must make reasonable 15 efforts to assure that the material is treated in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Any Party or Nonparty may challenge a designation of confidentiality at any time 18 consistent with the Court’s scheduling order. 19 6.2 The Challenging Party must initiate the dispute-resolution process (and, if necessary, 20 file a discovery motion) under the Local Rules. 21 6.3 The burden of persuasion in any such proceeding is on the Designating Party. 22 Frivolous challenges, and those made for an improper purpose (for example, to harass or impose 23 unnecessary expenses and burdens on other parties), may expose the Challenging Party to sanctions. 24 Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties 25 must continue to afford the material in question the level of protection to which it is entitled under 26 the Producing Party’s designation until the Court rules on the challenge. 27

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 A Receiving Party may use Protected Material that is disclosed or produced by 3 another Party or by a Nonparty in connection with this Action only for prosecuting, defending, or 4 attempting to settle this Action. Such Protected Material may be disclosed only to the categories of 5 people and under the conditions described in this Order. When the Action has been terminated, a 6 Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION). 7 Protected Material must be stored and maintained by a Receiving Party at a location and in 8 a manner sufficiently secure to ensure that access is limited to the people authorized under this 9 Order. 10 7.2 Unless otherwise ordered by the Court or permitted in writing by the Designating 11 Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only 12 to the following people: 13 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees 14 of that Outside Counsel of Record to whom it is reasonably

necessary to disclose the information 15 for this Action; 16 (b) the officers, directors, and employees (including House Counsel) of the Receiving 17 Party to whom disclosure is reasonably necessary for this Action; 18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is 19 reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to 20 Be Bound” (Exhibit A); 21 (d) the Court and its personnel; 22 (e) court reporters and their staff; 23 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom 24 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and 25 Agreement to Be Bound” (Exhibit A); 26 (g) the author or recipient of a document containing the information or a custodian or 27 other person who otherwise possessed or knew the information; 1 (h) during their depositions, witnesses and attorneys for witnesses to whom disclosure 2 is reasonably necessary, provided that the deposing party requests that the witness sign the form 3 attached as Exhibit A hereto and the witnesses will not be permitted to keep any confidential 4 information unless they sign the form, unless otherwise agreed by the Designating Party or ordered 5 by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal 6 Protected Material may be separately bound by the court reporter and may not be disclosed to anyone 7 except as permitted under this Order; and 8 (i) any mediator or settlement officer, and their supporting personnel, mutually agreed 9 on by any of the Parties engaged in settlement discussions or appointed by the Court.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 11 LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation that compels 13 disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party 14 must 15 (a) promptly notify in writing the Designating Party. Such notification must include a 16 copy of the subpoena or court order unless prohibited by law; 17 (b) promptly notify in writing the party who caused the subpoena or order to issue in the 18 other litigation that some or all of the material covered by the subpoena or order is subject to this 19 Protective Order. Such notification must include a copy of this Order; and 20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the 21 Designating Party whose Protected Material may be affected. 22 If the Designating Party timely seeks a protective order, the Party served with the subpoena 23 or court order should not produce any information designated in this action as “CONFIDENTIAL” 24 before a determination on the protective-order request by the relevant court unless the Party has 25 obtained the Designating Party’s permission. The Designating Party bears the burden and expense 26 of seeking protection of its Confidential Material, and nothing in these provisions should be 27 1 construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful 2 directive from another court.

3 9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS 4 LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Nonparty in this 6

Action and designated as “CONFIDENTIAL.” Such information is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Nonparty from seeking additional protections. (b) In the event that a Party is required by a valid discovery request to produce a Nonparty’s Confidential Information in its possession and the Party is subject to an agreement with the Nonparty not to produce the Nonparty’s Confidential Information, then the Party must (1) promptly notify in writing the Requesting Party and the Nonparty that some or all of the information requested is subject to a confidentiality agreement with a Nonparty; (2) promptly provide the Nonparty with a copy of this Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and (3) make the information requested available for inspection by the Nonparty, if requested. (c) If the Nonparty fails to seek a protective order within 21 days of receiving the notice and accompanying information, the Receiving Party may produce the Nonparty’s Confidential Information responsive to the discovery request. If the Nonparty timely seeks a protective order, the Receiving Party must not produce any information in its possession or control that is subject to the confidentiality agreement with the Nonparty before a ruling on the protective-order request. Absent a court order to the contrary, the Nonparty must bear the burden and expense of seeking protection of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately notify the Designating Party in writing of the unauthorized disclosures, use its best efforts to retrieve all unauthorized copies of the Protected Material, inform the person or people to whom unauthorized disclosures were made of the terms of this Order, and ask that person or people to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

12. MISCELLANEOUS

12.1 Nothing in this Order abridges the right of any person to seek its modification by the Court. 12.2 By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order. 12.3 A Party that seeks to file under seal any Protected Material must comply with Civil Local Rules. Protected Material may be filed under seal only pursuant to a court order authorizing the sealing of the specific Protected

Material at issue. If a Party's request to file Protected Material 21 under seal is denied, then the Receiving Party may file the information in the public record unless 22 otherwise instructed by the Court.

23 13. FINAL DISPOSITION

24 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a 25 written request by the Designating Party, each Receiving Party must return all Protected Material to 26 the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" 27 includes all copies, abstracts, compilations, summaries, and any other format reproducing or 1 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, 2 the Receiving Party must submit a written certification to the Producing Party (and, if not the same 3 person or entity, to the Designating Party) by the 60-day deadline that identifies (by category, when 4 appropriate) all the Protected Material that was returned or destroyed and affirms that the Receiving 5 Party has not retained any copies, abstracts, compilations, summaries, or any other format 6 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel 7 are entitled to retain an archival copy of all pleadings; motion papers; trial, deposition, and hearing 8 transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney 9 work product; and consultant and expert work product even if such materials contain Protected 10 Material. Any such archival copies that contain or constitute Protected Material remain subject to 11 this Order as set forth in Section 4 (DURATION).

12 14. SANCTIONS

13 Any willful violation of this Order may be punished by civil or criminal contempt, financial 14 or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the 15 discretion of the Court. 16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: March 8, 2023 SOLOMON WARD SEIDENWURM & SMITH, LLP

18 By: /s/ John A. Kelly

THOMAS F. LANDERS

19

JOHN A. KELLY

20 Attorneys for Defendant, Midland Credit Management, Inc. 21

22 DATED: March 8, 2023 RECOVERY LAW GROUP, APC

23 By: /s/ John Steinkamp

24 JOHN STEINKAMP

Attorneys for Plaintiff, 25 Breana Hicks 26 27

1 ATTESTATION OF SIGNATURE

2 Pursuant to Eastern District Local Rule 131(e), I hereby certify that the content of this 3 document is acceptable to John Steinkamp, counsel for Plaintiff, and I obtained his authorization to 4 affix his electronic signature to this document. /s/ John A. Kelly 5 John A. Kelly 6 7 8 9 10 11

12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 4 I, _____ [full name], of _____ [full address], 5
declare under penalty of perjury that I have read in its entirety and understand the Stipulated 6
Protective Order that was issued by the U.S. District Court for the Central District of California on
7 [date] in the case of _____ [insert case name and number]. I agree to comply with and to
8 be bound by all terms of this Stipulated Protective Order, and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment, including contempt. I
solemnly 10 promise that I will not disclose in any manner any information or item that is subject
to this 11 Stipulated Protective Order to any person or entity except in strict compliance with the
provisions 12 of this Order. 13 I further agree to submit to the jurisdiction of the U.S. District
Court for the Central District 14 of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such 15 enforcement proceedings occur after termination of
this action. I hereby appoint 16 _____ [full name] of
_____ 17 [full address and telephone number] as my
California agent for service of process in connection 18 with this action or any proceedings related
to enforcement of this Stipulated Protective Order. 19 Date:
_____ 20 City and State where signed:
_____ 21 22 Printed name:
_____ 23 24 Signature: _____

25 26 27

1 ORDER

2 Upon review, IT IS ORDERED that the parties’ stipulation and joint request for entry of 3 ||
protective order (ECF No. 21) is approved. 4 ; IT IS SO ORDERED. 6 || Dated: _Mareh 8, 2023
□□□ hey —

7 UNITED STATES MAGISTRATE JUDGE

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