

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO		
Court Address: 7325 S POTOMAC ST, CENTENNIAL, CO, 80112		
Plaintiff(s) HEATHER GARDENS METROPOLITAN DISTRICT		DATE FILED November 5, 2024 4:14 PM CASE NUMBER: 2023CV32439
v.		
Defendant(s) HEATHER GARDENS ASSOCIATION		
		△ COURT USE ONLY △
		Case Number: 2023CV32439 Division: 15 Courtroom:
Order: Objection to Proposed Protective Order		

The motion/proposed order attached hereto: DENIED.

The Court has entered the Heather Gardens Metropolitan District's ("District") proposed protective order because there is not a need to have an "Auditor's Eyes Only" classification. The District's board members are reminded that pursuant to paragraph 5 of the Protective Order "neither the contents nor the substance of Confidential Material may be disclosed to anyone other than the parties, including their directors, officers, employees, accountants, forensic auditors, and subject to the conditions in paragraph 6 below, to persons identified pursuant to C.R.C.P. 26(a)(1)(A)(i), consultants and vendors who assist the law firms in their analysis of the evidence and presentation of the case." This provision will be strictly enforced with potential contempt of court if confidential information is disseminated for nonpermitted purposes, such as for a campaign, platform, or debate in a recall election. The confidentiality protections will survive the outcome of the recall election.

Issue Date: 11/5/2024



BENJAMIN TODD FIGA
District Court Judge

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Court Address: 7325 South Potomac Street Centennial, CO 80112	
Plaintiff(s): HEATHER GARDENS METROPOLITAN DISTRICT v.	Δ COURT USE ONLY Δ Case No.: 23CV32439 Division/Ctrm.: 15
Defendant(s): HEATHER GARDENS ASSOCIATION	
Attorney for Plaintiff: FORBES LAW GROUP, LLC Peter C. Forbes, #14081 730 Seventeenth Street – Suite 700 Denver, CO 80202 303-893-1815 (telephone) 303-893-1829 (facsimile)	
Attorney for Defendant: WINZENBURG, LEFF, PURVIS & PAYNE, LLP Travis B. Keenan, # 41354 <i>tkeen@wlpplaw.com</i> Michael C. Lamb, #33295 <i>mlamb@wlpplaw.com</i> 8020 Shaffer Parkway, Suite 300 Littleton, CO 80127 Tel.: (303) 863-1870	
OBJECTION TO PROPOSED PROTECTIVE ORDER	

Defendant Heather Gardens Association, (“Association”), by its attorneys, Winzenburg, Leff, Purvis & Payne, LLP, object to the proposed Protective Order submitted by Plaintiff Heather Gardens Metropolitan District (“District”) as follows:

1. At the October 23, 2024, hearing regarding the discovery dispute between the District and the Association, the District argued that the Association’s employee’s salary information was relevant to the District’s claims in this case.

2. Specifically, the District argued that the Association may have overcharged the District for employees who helped operate the District’s facilities (even though the parties’

contract does not set a specific standard as to how the Association should charge the District for those employees and the District made no claim for monetary relief). The Court ruled in the District's favor, reasoning that certain allegations in the District's Complaint could be construed as allegations that the Association had overcharged the District, thereby making the Association's employees' salaries relevant to this litigation.

3. While the parties' discovery dispute was ongoing, the Association received a request from Brett Johnson, a CPA with the firm of Eide Bailly, LLP, ("Auditor") which is attached as Exhibit A. Mr. Johnson stated the District hired his firm "to perform a review of the transactions between the District and the Association."

4. The Contract between the Auditor and the District is attached as Exhibit B. It states, in relevant part, that the Auditor will "provide forensic accounting services for the scope time period of January 1, 2022 through September 14, 2024. The purpose of the engagement shall be to substantiate the accuracy of revenue and amounts billed to the District by [the Association] for wages, benefits, and all other expenses for which the District reimbursed HGA. The Contractor will not be providing statutory audit services." (emphasis added).

5. In other words, the District hired Eide Bailly to audit the amounts that the District paid to the Association pursuant to the parties' contract.

6. This is precisely the reason the District claims it needs the Association's employees' salary information – despite the fact that the parties' contract says all employment matters shall remain confidential.

7. On November 4, 2024, the undersigned counsel called the District to discuss the Association's desire for an "Auditor's Eyes Only" classification. The District's counsel stated

that the District's board members would have to review the salary information themselves because the Auditor would be preparing a statutorily required audit that the directors would have to sign. However, as evidenced by the express language in the District's contract with the Auditor, that is not the case.

8. The Association believes that the District's board members have ulterior motives for obtaining the Association's employees' salary information. The fact that the District objects to an "Auditor's Eyes Only" classification only goes to support that belief because providing the information to the District's Auditor *should* satisfy the District's alleged desire verify whether it was overcharged.

9. The District's directors' ulterior motives could be to try and hire away the Association's employees, to use the information as propaganda to fight the recall actions several of them are facing, or for other unknown reasons. Although the District argues, in its Notice, that the Association and the District are not competitors, that is not the case. The District and the Association are competing for employees. Allowing the District's board of directors to find out how much the Association pays its employees will certainly cause competitive harm in that regard.

10. Including an "Auditor's Eyes Only" classification in the Protective Order allows the District, through a certified public accountant, to determine whether it was overcharged while still honoring the spirit of the confidentiality clause in the parties' contract. If it becomes necessary for the District's Auditor to share the salary information with the District's directors for the purpose of this litigation, the District can always petition the Court to allow such


disclosure. The Association's proposed Protective Order, filed contemporaneously with this Objection, expressly contemplates such a situation.

11. That said, in the spirit of compromise, the Association has removed the liquidated damages clause from its proposed Protective Order.

WHEREFORE, Defendant Heather Gardens Association respectfully requests that the Court enter the proposed Protective Order filed contemporaneously with this Objection and for such other and further relief as the Court deems necessary and appropriate.

Date: November 5, 2024

WINZENBURG, LEFF, PURVIS & PAYNE, LLP
Counsel for Defendant



Travis B. Keenan, #41354

CERTIFICATE OF SERVICE

I certify that on November 5, 2024, a true and correct copy of the foregoing **OBJECTION TO PROPOSED PROTECTIVE ORDER** was served via Colorado Courts E-Filing to the following:

Peter C. Forbes
Forbes Law Group, LLC
730 Seventeenth Street, Suite 700
Denver, Colorado 80202



Travis B. Keenan