

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY KATE GULICK,

Plaintiff,

vs.

CARSON GROUP HOLDINGS, LLC

Defendant.

Case No. 8:24-cv-00141

JOINT 26(F) REPORT

The following attorneys conferred to prepare the Report of Parties' Planning Conference for the above-captioned case:

Thomas J. Freeman and **Alexis S. Mullaney**, attorneys for Plaintiff Mary Kate Gulick.

Kerri S. Reisdorff and **Heather R. Hamilton**, attorneys for Defendant Carson Group Holdings, LLC.

The parties discussed the case and jointly make the following report:¹

I. INITIAL MATTERS:

A. Jurisdiction and Venue: As to the defendant(s) (mark all boxes that may apply).

Jurisdiction is contested because _____.

Venue is contested because _____.

Neither jurisdiction nor venue are contested.

¹ Counsel are advised to use caution in filing this report as well as other documents so there is no disclosure of information required by the E-Government Act of 2002 to be kept non-public, such as addresses, phone numbers, social security numbers, etc. If such identifiers are required to be disclosed to opposing parties, you may wish to file redacted versions for the public court file and serve opposing parties with unredacted versions. See NECivR 5.3, available on the court's Website at www.ned.uscourts.gov.

If the case alleges an action for forfeiture, complete only sections **IV: Settlement**; **V. Consent to Final Resolution by a Magistrate Judge**; and **VI: Case Progression**.

B. Immunity: As to the defendant(s) (mark all boxes that may apply).

- An immunity defense has been raised by a defendant.
- An immunity defense will be raised, such defense to be raised on or before [Click here to enter a date..](#)
- No immunity defense has or will be raised in this case.

C. Either jurisdiction or venue is being challenged, or a defense of immunity has or will be raised, and:

- Not applicable.
- The parties agree that discovery and case progression can begin before the jurisdiction, venue, and/or immunity issues are decided.
- Any or all parties believe that case progression and discovery should be stayed pending a ruling on those issues, and
 - before any motion(s) to resolve jurisdiction, venue, and/or immunity issues can be filed, initial discovery limited to those issues will be necessary, and such discovery can be completed by: [Click here to enter a date..](#)
Explain: _____.
 - a dispute exists as to whether and to what extent discovery is needed to resolve jurisdiction, venue, and/or immunity issues. A conference with the court is requested.
 - motion(s) to resolve jurisdiction, venue, and/or immunity issues can be filed on or before [Click here to enter a date..](#)

II. CLAIMS AND DEFENSES:

A. Claims:² Provide a brief statement of the alleged facts and a succinct summary of the alleged federal or state theories of recovery, citing any relevant statutes which provide the basis for any statutory claims. You do not need to list the elements of each claim.

² The category "Claims" includes any claims raised by any party, including not only those raised by the party(s) who filed the lawsuit, but any crossclaims, counterclaims, or third-party claims raised in the operative pleadings.

Plaintiff's Summary: Plaintiff's claims stem from an incident in late 2022, when an employee of Defendant allegedly sexually assaulted an attendee at an industry conference.

Defendant failed to discipline the alleged assailant and allowed him to continue to travel to further conferences. Defendant failed and refused to put any protective measures in place to try to protect women from this individual. Plaintiff objected to that, as she felt Defendant's continued employment and travel put other women in the organization, particularly the young women on her team, at extreme and unnecessary risk. Defendant grew increasingly angry that Plaintiff would not let it go and move on.

1. Plaintiff alleges Defendant discriminated against her on the basis of her sex or gender, in violation of Title VII and the Nebraska Fair Employment Practice Act (NFEPA). Plaintiff was summoned to help "handle the victim" because she was female. Plaintiff was repeatedly demeaned by Defendant's leadership team, who told her that she needed to be less emotional and get over it.
2. Plaintiff alleges Defendant retaliated against her, in violation of Title VII and the NFEPA. Plaintiff engaged in protected activity when she reported that Defendant had not handled an incident of sexual assault properly and was subjecting Defendant's female employees to risk of sexual harassment or sexual assault as a result. Plaintiff further alleges Defendant retaliated against her by reducing her compensation, repeatedly berating and mocking her, disciplining her, and ultimately terminating her employment.
3. Plaintiff alleges that Defendant discriminated against her on the basis of her disability, in violation of the Americans with Disabilities Act (ADA) and the NFEPA. Plaintiff suffered from disabilities, which include major depressive disorder, post-traumatic stress disorder, and chronic brain impairment. Plaintiff requested intermittent FMLA to allow her to attend appointments with her medical providers. Defendant approved Plaintiff's request for intermittent FMLA. Defendant then subjected Plaintiff to poor treatment, discipline, and finally terminated her employment, despite excellent performance, due to her disability.

Defendant disputes Plaintiff's characterization of the facts and denies Plaintiff was subjected to unlawful discrimination or retaliation during her employment.

- B. Defenses:³ List each alleged affirmative defense to the claims, and for any defenses based on a statute, cite the relevant statute.

³ The category "Defenses" includes any defenses raised in any pleading filed in response to the operative complaint, any crossclaims, counterclaims, or third-party claims.

Each of the following applicable defenses were included in Defendant's Answer to Without assuming any burden of proof that by law is not otherwise Defendant's, Answer to Amended Complaint and Jury Demand (Doc. 11):

1. Plaintiff's claims against Defendant may be barred by the applicable statute of limitations for any actions that occurred outside the relevant time frame, including, without limitation, Plaintiff's allegations relating to her decision to voluntarily resign as CMO of Defendant and her subsequent decision to accept another role with Defendant. See 42 U.S.C. § 2000e-5; Neb. Rev. Stat. §§ 48-1118, 48-1120.01.
2. Plaintiff's Complaint, in whole or in part, against Defendant may be barred to the extent she failed to exhaust her administrative remedies. See 42 U.S.C. § 2000e-5; Neb. Rev. Stat. §§ 48-1118, 48-1120.01.
3. Plaintiff's claims are barred, in whole or in part, to the extent that they exceed the scope of or are inconsistent with the Charge and Amended Charge of Discrimination filed with the EEOC and NEOC. See 42 U.S.C. § 2000e-5; Neb. Rev. Stat. §§ 48-1118, 48-1120.01.
4. Plaintiff's claims are barred because Defendant's actions were made in good faith and with reasonable grounds to believe its conduct was in full compliance with the relevant laws. 42 U.S.C. § 1981(3).
5. Plaintiff's claims are barred because even if an impermissible factor had been a motivating factor in any decision made or action taken by Defendant, which Defendant denies, Defendant would have taken the same actions in the absence of any impermissible factor. See 42 U.S.C. § 2000e-5(g)(2)(B); Neb. Rev. Stat. § 48-1119(5).
6. Plaintiff's Complaint, in whole or in part, against Defendant is barred because the alleged actions of Defendant, which are denied, were not intentional, malicious, willful or reckless.
7. If Plaintiff has been damaged as alleged, which is denied, her damages have been caused by her own intentional or negligent acts or omissions, or by intentional or negligent acts or omissions of those other than Defendant, or for which Defendant is not responsible.
8. All alleged adverse actions during Plaintiff's employment occurred based on legitimate, non-discriminatory, and non-retaliatory reasons entirely unrelated to Plaintiff's gender, alleged disability, or any alleged protected activity. See 42 U.S.C. § 2000e-2; 42 U.S.C. § 2000e-3(a); Neb. Rev. Stat. §§ 48-1104(1), 48-1107.01, 48-1107.02, 48-1111.
9. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted, as Plaintiff is not disabled as that term is defined in the

Nebraska Fair Employment Practice Act and the ADA. See 42 U.S.C. § 12111; Neb. Rev. Stat. §§ 48-1104(1), 48-1107.01.

10. Plaintiff is not a qualified individual with a disability under the Nebraska Fair Employment Practice Act and Section 101(8) of the ADA. See 42 U.S.C. §§ 12111, 12112; Neb. Rev. Stat. § 48-1102(9)-(10).
11. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted as Plaintiff failed to notify Defendant of the existence of a disability as that term is defined under the Nebraska Fair Employment Practice Act and the ADA. See 42 U.S.C. § 1981a(3); 42 U.S.C. §§ 12111, 12112; Neb. Rev. Stat. §§ 48-1102(9)-(10), 48-1107.01-02.
12. Plaintiff is not otherwise qualified within the meaning of the Nebraska Fair Employment Practice Act and Section 102 of the ADA. See 42 U.S.C. §§ 12111, 12112; Neb. Rev. Stat. §§ 48-1102(9)-(10), 48-1107.01-02.
13. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted in that Plaintiff's alleged disability could not be accommodated sufficiently to allow Plaintiff to perform the essential functions of her job. See 42 U.S.C. §§ 12111, 12112; Neb. Rev. Stat. §§ 48-1102(9)-(10), 48-1107.01-02.
14. Defendant has provided a reasonable accommodation to Plaintiff, but in spite of providing reasonable accommodation, Plaintiff could not perform the essential functions of the job satisfactorily. See 42 U.S.C. §§ 12111, 12112; Neb. Rev. Stat. §§ 48-1102(9)-(10), 48-1107.01-02.
15. Plaintiff cannot prove she engaged in any conduct "opposing any practice made unlawful" by the Nebraska Fair Employment Practice Act or Title VII. See 42 U.S.C. § 2000e-3(a); Neb. Rev. Stat. § 48-1114.
16. Plaintiff has not engaged in any of the protected conduct described in the Nebraska Fair Employment Practice Act or Title VII. See 42 U.S.C. § 2000e *et seq.*; Neb. Rev. Stat. § 48-1114.
17. There is no causal connection between protected conduct displayed by the Plaintiff and her alleged termination, and there is no evidence of animus by the Defendant against the Plaintiff for the exercise of any right protected by the Nebraska Fair Employment Practice Act or Title VII. See 42 U.S.C. § 2000e-3(a); Neb. Rev. Stat. § 48-1114.
18. Plaintiff cannot establish that her alleged protected activity was the "but-for" reason for any alleged adverse employment action. See 42 U.S.C. § 2000e-3(a); Neb. Rev. Stat. § 48-1114.
19. Plaintiff's demand for liquidated damages is inappropriate as liquidated damages are not a recoverable damage under the causes of action pled by

Plaintiff in the Amended Complaint. See 42 U.S.C. § 1981a; Neb. Rev. Stat. § 48-1119(4).

20. Defendant avers that any award of punitive damages to Plaintiff in this case would be in violation of the constitutional safeguards provided to Defendant under the Constitution of the United States of America.
21. An award of punitive damages is not proper in this case because Plaintiff cannot show that Defendant intended to cause injury to Plaintiff or otherwise acted with reckless or wanton disregard for Plaintiff's rights. See 42 U.S.C. § 1981(b)(1).
22. To the extent Plaintiff engaged in wrongdoing of such severity that Plaintiff, in fact, would have been terminated on those grounds alone if Defendant had known of the wrongdoing at the time of the wrongdoing, Defendant is not liable for reinstatement, front pay, or back pay after the date on which Defendant discovered the misconduct and would have terminated Plaintiff for that misconduct.
23. To the extent any unlawful conduct is found to have been committed by any agent of Defendant, Defendant should not be held liable because the conduct was outside the scope of the agent's employment, and the agent did not act with express or implied authority, and Defendant did not ratify or approve any unlawful conduct.
24. Plaintiff is not entitled to a jury trial on any equitable claims or equitable relief asserted in the Amended Complaint.
25. Plaintiff is barred from pursuing some, or all, of her claims or remedies by the doctrine of laches and/or unclean hands, and by unreasonably delaying her assertion of claims to the disadvantage and prejudice of Defendant.
26. Defendant is not liable for punitive damages because neither Defendant, nor any of its employees sufficiently high in its corporate hierarchy, committed any act with malice, intent, willfulness, or reckless indifference to Plaintiff's protected rights, or approved, authorized or ratified, or had actual knowledge, of any such acts. See 42 U.S.C. § 1981(b)(1).
27. Plaintiff's Complaint fails to allege facts sufficient to state a claim that would support an award of actual, compensatory, or punitive damages against Defendant. See 42 U.S.C. § 1981(b); Neb. Rev. Stat. § 48-1119(4).
28. Plaintiff's Complaint fails to state a proper claim for compensatory or punitive damages as all of Defendant's challenged actions were the product of good faith efforts as defined under the Nebraska Fair Employment Practice Act and in Title VII. See 42 U.S.C. § 1981(a)-(b); Neb. Rev. Stat. § 48-1119(4).

29. Defendant is not liable for punitive damages because it has at all times made a good faith effort to comply with the laws, has complied with all applicable laws to the best of its knowledge and belief, and any action by a manager contrary to these efforts is in violation of Defendant's policies and procedures. See 42 U.S.C. § 1981(a)-(b).
30. Defendant is not liable for punitive damages because its alleged conduct was not outrageous and its actions and/or conduct were not intentional, taken with evil motive, or in reckless indifference to the rights of others. See 42 U.S.C. § 1981(a)-(b).
31. The actions taken by Defendant with respect to Plaintiff were within the business judgment of Defendant.
32. Plaintiff is not entitled to a back or front pay award because Plaintiff has suffered no economic damage and/or because she engaged in misconduct, including the intentional and unauthorized access of restricted electronic platforms containing Defendant's confidential marketing and business information following her separation that had she still been employed, would have resulted in her termination. See 18 U.S.C. § 1030 *et seq.*; Neb. Rev. Stat. § 87-501 *et seq.*
33. Defendant states that the standard used to determine the amount of such damages as emotional distress damages, if any, is vague and overly arbitrary, and, as such, supplies no notice of potential repercussions of the alleged misconduct, thereby denying Defendant due process under the Fifth and Fourteenth Amendments to the United States Constitution, as well as under the Nebraska Constitution. Defendant also affirmatively asserts that any request for arbitrary emotional distress damages and/or subsequent impositions of such damages violates its rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
34. Without conceding that Plaintiff has suffered any damages as a result of any alleged wrongdoing by Defendant, Plaintiff has failed to mitigate her claimed damages. To the extent Plaintiff has mitigated her damages, Defendant is entitled to offset those amounts she has earned.

III. METHOD OF RESOLUTION: Please indicate below how the parties anticipate that this case will be resolved.

- Administrative record review:
 - A party will request discovery.
 - A party will not request discovery.

Note: If no party is requesting discovery, the parties need not complete the **Section VI: Case Progression** portion of this report. Instead, contact the assigned magistrate judge to schedule a conference for entering an administrative review scheduling order.

- A dispute exists as to whether and to what extent discovery is needed. The parties need not complete the **Section VI: Case Progression** portion of this report at this time. Instead, contact the assigned magistrate judge to set a case progression conference.
- Cross-motions for summary judgment and/or resolution on stipulated facts:
 - A party will request discovery.
 - A party will not request discovery. The parties' cross-motions for summary judgment will be filed on or before [Click here to enter a date.](#)

Note: If no party is requesting discovery, the parties need not complete the **Section VI: Case Progression** portion of this report.
 - A dispute exists as to whether and to what extent discovery is needed. The parties need not complete the **Section VI: Case Progression** portion of this report at this time. Instead, contact the assigned magistrate judge to set a case progression conference.
- Trial:
 - No party has timely demanded a jury trial.
 - A party has timely demanded a jury trial and does not anticipate waiving that demand, and the parties agree that all or part of the claims in this case must be tried to a jury.
 - A party has demanded a jury trial, and the parties disagree on whether trial by jury is available for all or part of this case. A motion to strike the jury demand will be filed no later than: [Click here to enter a date.](#)
 - The party who previously demanded a jury trial now wishes to waive that right. Any other party who will now demand a jury trial will file that demand within 14 days of the filing of this report, in the absence of which jury trial will be deemed to have been waived.

IV. SETTLEMENT:

Counsel state (mark all boxes that may apply):

- To date, there have been no efforts taken to resolve this dispute.
- Efforts have been taken to resolve this dispute
 - prior to filing this lawsuit. Explain: The parties engaged in mediation but were unable to reach a mediated settlement.
 - after filing this lawsuit, but before the filing of this report. Explain: The parties continue to periodically discuss potential resolution but, to date, have been unsuccessful.
- Counsel have discussed the court's Mediation Plan and its possible application in this case with their clients and opposing counsel, and:
 - It is agreed:
 - Mediation is appropriate at this time, and pending the outcome of those efforts,
 - case progression should be stayed.
 - case progression should not be stayed.
 - Mediation may be appropriate in the future. Please explain when you believe mediation may be useful: After discovery is completed.
 - Mediation will not be appropriate. Explain: _____.
 - Counsel believe that with further efforts in the future, the case can be settled, and they will be prepared to discuss settlement, or again discuss settlement, by **November 29, 2024.**
 - At least one party is not interested in exploring options for settling this case.

V. CONSENT TO FINAL RESOLUTION BY A MAGISTRATE JUDGE:

As explained more fully in the Civil Case Management Practices, in accordance with the provisions of 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties in this

case may voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in the case, including the trial, and order the entry of final judgment. The consent must be unanimous, and any appeal must be taken to the United States Court of Appeals. If the parties do not presently consent, they may do so later. Absent consent, the case will remain with the assigned United States District Judge or, if not previously assigned to a District Judge, it will be randomly assigned to a District Judge.

- All parties hereby voluntarily consent to have the United States Magistrate Judge conduct all further proceedings in this case including the trial and entry of final judgment.
- At least one party does not currently consent.

VI. CASE PROGRESSION:

A. Initial mandatory disclosures required by Rule 26(a)(1).

- Have been completed.
- Will be completed by **June 28, 2024**.

B. Motions to amend the pleadings or to add parties.

- A plaintiff does not anticipate a need to amend pleadings or add parties. Motions to amend pleadings or add parties will be filed by Plaintiff(s) on or before **July 1, 2024**.
- A defendant does not anticipate a need to amend pleadings or add parties. Motions to amend pleadings or add parties will be filed by Defendant (s) on or before **August 1, 2024**.

If more than 90 days are needed, explain why: _____.

C. Discovery.

1) As to written discovery under Rules 33, 34, 36, and 45:

- a. The parties have discussed currently anticipated number of interrogatories, document production requests, and requests for admissions. Based on those discussions:
 - The parties do not anticipate any disputes over the number of discovery requests served.

- The parties believe a dispute may arise over the number of (mark all boxes that may apply):
 - Interrogatories.
 - Requests for Production.
 - Requests for Admission.

If the parties anticipate a possible dispute over the number of written discovery requests, when completing **Section VII** below, indicate when a conference with the court may be useful to avert or resolve that dispute.

b. Written discovery will be completed⁴ by **April 7, 2025**.

2) As to expert disclosures as required under Rule 26(a)(2):

- The parties do not anticipate calling experts to testify at trial.
- The parties anticipate calling experts to testify at trial, and

a. Counsel agree to at least **identify** such experts, by name, address, and profession (i.e., without the full reports required by Rule 26(a)(2)), by:

December 17, 2024 (Plaintiff)

January 31, 2025 (Defendant)

February 14, 2025 (Rebuttal)

b. Expert **reports** shall be served by:

January 31, 2025 (Plaintiff)

March 17, 2025 (Defendant)

March 31, 2025 (Rebuttal)

⁴ “Completed” means the discovery answers or responses to written discovery have been served. As such, written discovery must be served sufficiently in advance of the discovery completion deadline to afford the responding party the time permitted under the discovery rules to answer or respond.

- c. Motions to exclude expert testimony on *Daubert* and related grounds will be filed by May 16, 2025.
- 3) As to deposition testimony under Rules 30 and 45:
 - a. The maximum number of depositions that may be taken by the plaintiffs as a group and the defendants as a group is: 14.
 - b. All depositions
 - will be limited by Rule 30(d)(1).
 - will be limited by Rule 30(d)(1), except as follows: for

_____.
 - c. All depositions, regardless of whether they are intended to be used at trial, will be completed by **May 5, 2025**.
- 4) Protective Order:
 - All parties anticipate that a protective order will be needed to complete the exchange of discovery, and
 - the parties hereby move the court to enter the court's standard protective order (see, Civil Case Management website page,
 - with the court's standard Attorneys' Eyes Only provisions.
 - with the court's standard HIPAA language permitting release of Protected Health Information.
 - the parties hereby move the court to enter the proposed protective order attached to this report.
 - the parties will jointly move, or a party will move for entry of a protective order, emailing a copy of the proposed protective order in Word format to the

chambers of the magistrate judge assigned to the case.⁵

At least one party believes a protective order will not be necessary in this case.

5) Work Product and Privileged Information: The parties have reviewed the **Civil Case Management Practices**, including those provisions discussing discovery of **Privileged Information**, and they have discussed whether certain categories of documents, are presumptively privileged.

The parties agree that the following categories of documents are presumptively privileged and need not be listed on a privilege log:

Documents between legal counsel and clients created on or after **June 1, 2023**

Documents maintained by consulting or testifying experts created on or after **April 19, 2024**.

The following documents: _____.

Counsel have discussed the discovery of privileged information, but they have not agreed on what documents are presumptively privileged.

If the parties anticipate a possible dispute over Work Product and Privileged Information discovery, when completing **Section VII** below, indicate when a conference with the court may be useful to avert or resolve that dispute.

6) Electronically Stored Information (ESI): The parties have reviewed the Civil Case Management Practices, including those provisions discussing discovery of ESI and,

the parties do not anticipate a dispute over preservation, scope, and production of ESI.

⁵ If a dispute exists over the need for a protective order, or the content of that order, the parties shall confer in good faith and if they cannot resolve the issue without court intervention, they shall schedule a conference call with the magistrate judge assigned to the case before engaging in written motion practice.

- the parties anticipate a dispute regarding the preservation, scope, and production of ESI.

If the parties anticipate a possible dispute over ESI, when completing **Section VII** below, indicate when a conference with the court may be useful to avert or resolve that dispute.

- 7) Other special discovery provisions agreed to by the parties include:
_____.

D. Dispositive Motions.

- The parties do not anticipate filing motions to dismiss, for judgment on the pleadings, or for summary judgment as to any claims and/or defenses.
- A party anticipates filing a motion to dismiss, and/or for judgment on the pleadings, and/or or for summary judgment

- a. as to the following claims and/or defenses:⁶ **Defendant intends to move for summary judgment on all claims advanced by Plaintiff; Plaintiff may file a motion for summary judgment on any of Defendant’s affirmative defenses.**

- b. such motions to be filed on or before **June 20, 2025.**

- E. Other matters to which the parties stipulate and/or which the court should know or consider: _____.

F. This case will be ready for trial before the court by: (February 2026).

G. The estimated length of trial is 7 days.

VII. CONFERENCING WITH THE COURT:

A. Initial Case Conference:

- At least one party requests a conference with the court before the court enters a final case progression order for this lawsuit.
- All parties agree that the court may enter a final case progression order for this lawsuit without first conferring with the parties.

⁶ As to forfeiture actions, dispositive motions on any “claims and/or defenses” include any motions to suppress.

B. Interim Status Conference:

- At least one party believes a court conference with the parties may be helpful (e.g., to assist with averting or resolving a dispute over written discovery, ESI, or privilege/work product discovery; following service of mandatory disclosures; after completing written discovery, etc.), and requests a conference be set in: (October 2024).
- The parties do not currently anticipate that a court conference will assist with case progression, and they will contact the assigned magistrate judge to schedule a conference if a problem arises.

Reminder: By signing this document, counsel and any self-represented parties acknowledge that they have reviewed the Civil Case Management Practices, including those provisions discussing discovery of Electronically Stored Information and Privileged Information.

Dated: **June 21, 2024.**

s/Alexis S. Mullaney

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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s/ Alexis S. Mullaney_____

(Rev. 6/11/2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY KATE GULICK,

Plaintiff,

vs.

CARSON GROUP HOLDINGS, LLC,

Defendant.

Case No. 8:24-cv-00141

PROTECTIVE ORDER

Upon consideration of the parties' joint request for entry of a Protective Order, the Court enters the following Protective Order governing the disclosure of confidential Discovery Material by a Producing Party to a Receiving Party in this Action.

1) **Definitions.** As used in this Order:

- a. Action refers to the above-captioned litigation.
- b. Discovery Material includes all information exchanged between the parties, whether gathered through informal requests or communications between the parties or their counsel, or gathered through formal discovery conducted pursuant to Rules 30 through 36, and Rule 45. Discovery Material includes information within documents, depositions, deposition exhibits, and other written, recorded, computerized, electronic or graphic matter, copies, and excerpts or summaries of documents disclosed as required under Rule 26(a).
- c. A Producing Party is a party to this litigation, or a non-party either acting on a party's behalf or responding to discovery pursuant to a Rule 45 subpoena, that produces Discovery Material in this Action.
- d. A Receiving Party is a party to this litigation that receives Discovery Material from a Producing Party in this Action.

2) **Confidential Discovery Material.** This Protective Order applies to all confidential Discovery Material produced or obtained in this case. For the purposes of this Protective Order, CONFIDENTIAL Discovery Material shall include:

- a. Commercial information relating to any party's business including, but not limited to, tax data, financial information, financial or business plans or projections, proposed strategic transactions or other business combinations, internal audit practices, procedures, and outcomes, trade secrets or other commercially sensitive business or technical information, proprietary business and marketing plans and strategies, studies or analyses by internal or outside experts, competitive analyses, customer or prospective customer lists and information, profit/loss information, product or service pricing or billing agreements or guidelines, and/or confidential project-related information;
- b. Personnel data of the parties or their employees, including but not limited to employment application information; the identity of and information received from employment references; wage and income information; benefits information; employee evaluations; medical evaluation and treatment information and records; counseling or mental health records; educational records; and employment counseling, internal investigations and/or discipline, or performance improvement documentation;
- c. Information concerning settlement discussions and mediation, including demands or offers, arising from a dispute between a party and a non-party;
- d. Medical or mental health information;
- e. Records restricted or prohibited from disclosure by statute; and
- f. Any information copied or extracted from the previously described materials, including all excerpts, summaries, or compilations of this information or testimony, and documentation of questioning, statements, conversations, or presentations that might reveal the information contained within the underlying confidential Discovery Material.

3) **Highly Confidential Discovery Material.** For the purposes of this Protective Order, HIGHLY CONFIDENTIAL Discovery Material shall include:

- a. Any and all information not already in the public domain pertaining to complaints of sexual harassment or sexual misconduct (including allegations of non-consensual sexual contact), including but not limited to information that discloses or could disclose the identity of individuals involved (accused, accuser, witnesses), information disclosed by any individual during an investigation regarding a complaint(s), internal documents concerning a complaint(s), and documents pertaining to

investigations into the allegations of harassment or misconduct.

- b. Discovery material that counsel for either party has concluded in good faith that the material is or contains non-public information that is highly sensitive proprietary information including, but not limited to, trade secrets, privileged information, or nonpublic technical, financial, personal or business information.

4) **Manner of Confidential Designation.** A Producing Party shall affix a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation to any confidential Discovery Material produced in this Action.

- a. As to documentary information (defined to include paper or electronic documents, but not transcripts of depositions or other pretrial or trial proceedings), the Producing Party must affix the appropriate “CONFIDENTIAL” legend to each page that contains protected material.
- b. If only a portion or portions of the information on a document page qualifies for protection, the Producing Party must clearly identify the protected portion(s) (e.g., by using highlighting, underlining, or appropriate markings in the margins).
- c. If it is not feasible to label affix the appropriate CONFIDENTIAL legend to the confidential Discovery Material, the Producing Party shall indicate via cover letter or otherwise at the time of production that the material being produced is CONFIDENTIAL.

5) **Timing of Confidential Designation.**

- a. Except as otherwise stipulated or ordered, or where discovery is made available for inspection before it is formally disclosed, Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.
- b. If the Producing Party responds to discovery by making Discovery Material available for inspection, the Producing Party need not affix confidential designations until after the Receiving Party has selected the material it wants to receive. During the inspection and before the designation, all material made available for inspection is deemed “CONFIDENTIAL.” After the Receiving Party has identified the Discovery Material it wants produced, the Producing Party must determine which materials, or portions thereof, qualify for protection under this Order, and designate the materials as CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as required under this

order.

6) **Qualified Recipients.** For the purposes of this Protective Order, the persons authorized to receive confidential Discovery Material (hereinafter “Qualified Recipient”) are:

For information designated as CONFIDENTIAL:

- a. The Parties, including any members, council members, officers, board members, directors, employees, or other legal representatives of the parties;
- b. Legal counsel representing the parties, and members of the paralegal, secretarial, or clerical staff who are employed by, retained by, or assisting such counsel; including vendors who are retained to copy documents or electronic files, provide technical, litigation support, or mock trial services, or provide messenger or other administrative support services;
- c. Any non-expert witness during any deposition or other proceeding in this Action, and counsel for that witness;
- d. Potential witnesses and their counsel, but only to the extent reasonably related to the anticipated subject matter of the potential witness’s deposition, trial, or hearing testimony for this Action, so long as such persons agree to maintain the confidential Discovery Material in confidence per the terms of this Order, and provided that such persons may only be shown copies of confidential Discovery Material and may not retain any such material;
- e. Consulting or testifying expert witnesses who will be providing professional opinions or assistance for this Action based upon a review of the CONFIDENTIAL information, and the staff and assistants employed by the consulting or testifying experts;
- f. Any mediator or arbitrator retained by the parties to assist with resolving and/or settling the claims of this Action and members of the arbitrator’s or mediator’s staff and assistants;
- g. The parties’ insurers for this Action, and their staff and assistants, members, officers, board members, directors or other legal representatives;
- h. Court reporters for depositions taken in this Action, including persons

operating video recording equipment and persons preparing transcripts of testimony;

- i. The court and its staff, any court reporter or typist recording or transcribing hearings and testimony, and jurors; and
- j. Any auditor or regulator of a party entitled to review the confidential Discovery Material due to contractual rights or obligations, or federal or state laws, or court orders, but solely for such contractual or legal purposes.

For information designated as “HIGHLY CONFIDENTIAL”:

- a. The Parties, including any members, council members, officers, board members, directors, employees, or other legal representatives of the parties;
- b. Legal counsel representing the Receiving Parties, and members of the paralegal, secretarial, or clerical staff who are employed by, retained by, or assisting such counsel;
- c. Potential witnesses and their counsel, but only to the extent the HIGHLY CONFIDENTIAL discovery material is (1) reasonably related to the anticipated subject matter of the potential witness’s deposition, trial, or hearing testimony for this Action, (2) such material directly reflects statements given by the potential witness in connection to alleged misconduct or during an investigation; for example, an employee may be shown documents reflecting a statement the employee provided during an investigation but may not be shown any other documents relating to the misconduct or investigation; (3) such persons agree to maintain the confidential Discovery Material in confidence per the terms of this Order, and (4) such persons may only be shown copies of confidential Discovery Material and may not retain any copies;
- d. Consulting or testifying experts for the Receiving Party, defined to include only those experts retained or employed to assist the Receiving party in preparing for trial or any other proceeding in the Action and who need access to the HIGHLY CONFIDENTIAL information to provide such assistance, and who are not employed by, or an agent or representative for, the Receiving Party, nor anticipated to become an employee, agent or representative of the Receiving Party in the near future;
- e. If necessary to promote alternative dispute resolution, any mediator or

arbitrator (and their assistants or staff) retained by the parties who needs access to the HIGHLY CONFIDENTIAL information to assist the parties with resolving the claims of this Action;

- f. Court reporters for depositions taken in this Action, including persons operating video recording equipment and persons preparing transcripts of testimony; and
- g. The court and its staff, any court reporter or typist recording or transcribing hearings and testimony, and jurors.

7) **Dissemination by the Receiving Party.** Counsel for the Receiving Party shall:

- a. Require Qualified Recipients who are non-expert witnesses or expert witnesses and consultants and who receive information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” to review and agree to the terms of this Protective Order and execute a copy of the Agreement attached hereto as Appendix A before receiving confidential Discovery Material.
- b. Instruct witnesses, consultants, and outside counsel who assist with case preparation or represent a witness that disclosure of the information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” is prohibited as set forth herein.
- c. Maintain a list of any confidential Discovery Material disclosed and to whom, along with the executed copies of the Appendix A Agreement.

The prohibition on disclosing information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” exists and is enforceable by the court even if the person receiving the information fails or refuses to sign the Appendix A Agreement.

8) **Duty as to Designations.** Each Producing Party that designates information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” must exercise reasonable care to limit any such designation to specific material that qualifies under the appropriate standards, and designate only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Broadly described, indiscriminate, or

routinized designations are prohibited.

9) **Limitations on Use.** Confidential Discovery Material shall be used by the Receiving Party only to prepare for and conduct proceedings herein and not for any business or other purpose whatsoever. The parties acknowledge that some of the information produced in this case may be protected health information, or contain such information, within the meaning of the Health Insurance Portability and Accountability Act (HIPAA). Consistent with 45 C.F.R. § 164.512(e)(1)(iv)(v), and as to the health information requested, counsel and the Receiving Party:

- a. Shall not use or disclose the information for any purpose other than the litigating this Action;
- b. Shall return or destroy the protected health information (including all copies made) at the end of this Action; and
- c. Shall request, use and disclose only the minimum amount necessary to conduct this Action.

10) **Maintaining Confidentiality.** Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be held in confidence by each Qualified Recipient to whom it is disclosed, shall be used only for purposes of this action, and shall not be disclosed to any person who is not a Qualified Recipient. Each party, each Qualified Recipient, and all counsel representing any party, shall use their best efforts to maintain all information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in such a manner as to prevent access, even at a hearing or trial, by individuals who are not Qualified Recipients. Nothing herein prevents disclosure beyond the terms of this Protective Order if the party claiming confidentiality consents in writing to such disclosure.

11) **Copies.** Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall not be copied or otherwise reproduced by the Receiving Party, except for transmission to Qualified Recipients, without the written permission of the Producing Party or, in the alternative, by order of the court. However, nothing herein shall restrict a Qualified Recipient from loading confidential documents into document review platforms or programs for the purposes of case or trial preparation or making

working copies, abstracts, digests, and analyses of information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” under the terms of this Protective Order.

12) **Docket Filings.** All documents of any nature including, but not limited to, briefs, motions, memoranda, transcripts, discovery responses, evidence, and the like that are filed with the court for any purpose and that contain Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be provisionally filed under restricted access with the filing party’s motion for leave to file restricted access documents. A party seeking to file Discovery Material under restricted access must comply with the court’s rules and electronic docketing procedures for filing such motions.

13) **Depositions.** The following procedures shall be followed at all depositions to protect the integrity of all Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” :

- a. Only Qualified Recipients may be present at a deposition in which such information is disclosed or discussed.
- b. All deposition testimony which discloses or discusses information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” is likewise deemed designated as CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
- c. Information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” may be used at a nonparty deposition only if necessary to the testimony of the witness.

14) **Challenges to Confidentiality Designations.** A Receiving Party that questions the Producing Party’s confidentiality designation will, as an initial step, contact the Producing Party and confer in good faith to resolve the dispute. If the parties are unable to resolve the dispute without court intervention, they shall schedule a conference call with the magistrate judge assigned to the case before engaging in written motion practice. If a written motion and briefing are necessary and the information in dispute must be reviewed by the court to resolve that motion, the confidential information shall be filed under restricted access pursuant to the court’s electronic docketing procedures.

The party that produced the information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” bears the burden of proving it was properly designated. The party challenging a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation must obtain a court order before disseminating the information to anyone other than Qualified Recipients.

15) **Use at Court Hearings and Trial.** Subject to the Federal Rules of Evidence, Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” be offered and received into evidence at trial or at any hearing or oral argument. A party agreeing to the entry of this order does not thereby waive the right to object to the admissibility of the material in any proceeding, including trial. Any party may move the court for an order that Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” be reviewed *in camera* or under other conditions to prevent unnecessary disclosure.

16) **Return or Destruction of Documents.** Upon final termination of this Action, including all appeals, each party shall make reasonable efforts to destroy all Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” The destroying party shall notify the producing party when destruction under this provision is complete. If a party is unable to destroy all Discovery Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material shall be returned to the Producing Party or the Producing Party’s counsel. This Protective Order shall survive the final termination of this action, and it shall be binding on the parties and their legal counsel in the future.

17) **Modification.** This Protective Order is entered without prejudice to the right of any party to ask the court to order additional protective provisions, or to modify, relax or rescind any restrictions imposed by this Protective Order when convenience or necessity requires. Disclosure other than as provided for herein shall require the prior written consent of the Producing Party, or a supplemental Protective Order of the court.

18) **Additional Parties to Litigation.** In the event additional parties are joined in this action, they shall not have access to Discovery Material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” until the newly joined party, by its counsel, has executed and, at the request of any party, filed with the court, its agreement to be fully bound by

this Protective Order.

19) Sanctions.

- a. Any party subject to the obligations of this order who is determined by the court to have violated its terms may be subject to sanctions imposed by the court under Rule 37 of the Federal Rules of Civil Procedure and the court's inherent power.
- b. Confidentiality designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily prolong or encumber the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions. Upon discovering that information was erroneously designated as CONFIDENTIAL and/or HIGHLY CONFIDENTIAL, the Producing Party shall promptly notify all other Parties of the improper designation

20) Inadvertent Disclosure of Protected Discovery Material.

- a. A Producing Party that inadvertently fails to properly designate Discovery Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall have 14 days from discovering the oversight to correct that failure. Such failure shall be corrected by providing written notice of the error to every Receiving Party.
- b. Any Receiving Party notified that confidential Discovery Material was received without the appropriate confidentiality designation as authorized under this order shall make reasonable efforts to retrieve any such documents distributed to persons who are not Qualified Recipients under this order, and as to Qualified Recipients, shall exchange the undesignated or improperly designated documents with documents that include the correct "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation.

21) Disclosure of Privileged or Work Product Discovery Material.

- a. The production of attorney-client privileged, or work-product protected electronically stored information ("ESI") or paper documents, whether disclosed inadvertently or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Protective Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Nothing contained herein is intended to or shall serve to limit a party's right to

conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

- b. Any party who discloses documents that are privileged or otherwise immune from discovery shall promptly upon discovery of such disclosure, advise the Receiving Party and request that the documents be returned. The Receiving Party shall return such produced documents or certify their destruction, including all copies, within 14 days of receiving such a written request. The party returning such produced documents may thereafter seek re-production of any such documents pursuant to applicable law.

[Click here to enter a date..](#)

BY THE COURT:

s/
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY KATE GULICK,

Plaintiff,

vs.

CARSON GROUP HOLDINGS, LLC,

Defendant.

EXHIBIT A

I hereby acknowledge that I am about to receive Confidential Information supplied in connection with the above-captioned case. I understand that such information is being provided to me pursuant to the terms and restrictions of the Protective Order entered in this case. I have been given a copy of the Protective Order, have read the Protective Order, and agree to be bound by its terms. I understand that Confidential Information as defined in the Protective Order, or any notes or other records that may be made regarding any such materials, shall not be disclosed to any persons except as permitted by the Protective Order.

Click or tap to enter a date..

Printed Name

Signature