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Ruby Tuesday, Inc., Consent Protective Order and Clawback Order

John J. Goger
Fulton County Superior Court

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

RUBY TUESDAY, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE
)	NO. 2018CV304101
CEDE & CO., QUADRE INVESTMENTS, LP,)	
LAWRENCE N. LEBOW, JONATHAN)	
LEBOW, MIRIAM D. ROTH,)	
POWELL ANDERSON CAPITAL LP, and)	
LELAND WYKOFF,)	
)	
Defendants.)	

~~PROPOSED~~ **CONSENT PROTECTIVE ORDER AND CLAWBACK ORDER**

Discovery sought in this case by the parties from each other or from non-parties may involve the production of documents and things containing confidential information and testimony that may concern matters that are of a confidential nature. For good cause shown, the parties agree and, pursuant to O.C.G.A. §§ 9-11-26(c) and 9-11-29, **IT IS HEREBY ORDERED THAT:**

1. Any person providing discovery in this action (a “Producing Person”) has the right to designate as “CONFIDENTIAL” for purposes of this Order any information produced in this case, whether it be a document, information contained in a document, a response to interrogatories, testimony given at a deposition, tangible things, or other information produced or supplied that the Producing Person in good faith believes contains non-public, confidential, or proprietary information, including but not limited to, proprietary research, analysis, development, marketing, financial, trade secret, or other commercially or personally sensitive information.

2. Any information or material so designated shall be considered “CONFIDENTIAL” material for purposes of this Order and may not be used or disclosed except as provided in this Order.

3. The designation of discovery material as “CONFIDENTIAL” for purposes of this Order shall be made as follows:

- a. In the case of a document, a response to interrogatories, or other written material (apart from depositions, other pretrial testimony, transcripts thereof, and exhibits thereto) by stamping in a conspicuous place on each page containing such confidential information the term “CONFIDENTIAL.”
- b. In the case of a tangible thing, by placing in a prominent place the term “CONFIDENTIAL.”
- c. In the case of depositions, other pretrial testimony, the transcripts thereof, and exhibits thereto, by stating on the record at the time of such disclosure or in a writing to the parties within fifteen (15) days of receipt of the transcript of such testimony that such testimony is “CONFIDENTIAL” and requesting that the transcript of such material be clearly marked as “CONFIDENTIAL.”
- d. A designation of any material as “CONFIDENTIAL” shall also render “CONFIDENTIAL” any copies, excerpts, summaries, or other disclosure of the substance or contents of such material.

4. Stipulating to the terms of this Order, producing or receiving “CONFIDENTIAL” information, and otherwise complying with the terms of this Order shall not prejudice in any way the rights of a party to seek a determination by the Court whether any “CONFIDENTIAL” information should be subject to the terms of this Order. Any party who wishes to challenge the propriety of a designation of material as “CONFIDENTIAL” may do so by providing written notice to the Producing Party. The notice shall (a) attach a copy of each “CONFIDENTIAL” document subject to challenge, or identify such document by production number or other appropriate designation, and state that the challenging party objects to the designation of such

document as “CONFIDENTIAL” and (b) set forth the reason for such objection. The objecting party and the Producing Party shall attempt in good faith to resolve any challenge on an informal basis. If an agreement cannot be reached, the objecting party may seek a decision from this Court with respect to the propriety of the designation. The “CONFIDENTIAL” information shall continue to be protected by the terms of this Order until the Court orders otherwise. In the event that a party challenges the designation of information as “CONFIDENTIAL,” the burden of establishing the designation is on the designating party.

5. Nothing in this Order shall limit any party's use or disclosure of its own Confidential material.

6. When filed with the Court, all materials designated “CONFIDENTIAL,” as well as all motions, briefs, memoranda, or other pleadings containing such materials (in such manner that the “CONFIDENTIAL” information may be revealed thereby), shall be filed in a sealed envelope or other appropriately sealed container on which shall be endorsed the style of this action, a description of the contents of the envelope or container, the phrase “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER,” as applicable, and the following statement: “This envelope (or container) contains confidential documents filed in this case pursuant to a Protective Order and is not to be opened, nor are its contents to be displayed or revealed, except on order of the Court.” Such envelope or sealed container may be opened and its contents reviewed only by authorized Court personnel or upon written consent of the counsel of record for the Producing Party. The terms and conditions of this Paragraph shall not be applicable to any public records and attachments filed with this Court prior to entry of this Order. This paragraph shall be applicable provided the Court allows for such sealed filings and the same is acceptable to the electronic filing system used by the Court.

7. Documents and other material designated “CONFIDENTIAL” pursuant to the terms of this Order may only be disclosed to:

- a. the parties, Ruby Tuesday, Inc., Cede & Co., Quadre Investments, LP, Jonathan Lebow, Lawrence Lebow, Miriam Roth, Powell Anderson Capital LP, and Leland Wykoff;
- b. the parties’ counsel of record in this case, in-house counsel, and their employees or professional assistants, paralegals, legal assistants, and secretaries actually working on this action;
- c. any other witnesses or deponents, and their counsel, during the course of or, to the extent necessary, in preparation for depositions or testimony in this action, provided that non-party witnesses or third-party deponents and their counsel shall not be permitted to copy or retain “CONFIDENTIAL” material beyond the time such witnesses or deponents are in need and use of such materials;
- d. the Court and Court personnel at any stage in this case;
- e. any experts, consultants, or independent contractors employed to advise or assist counsel of record for any party in the preparation, hearing, or trial of this action, and any of their employees or support personnel working on this action;
- f. a party’s insurers, reinsurers, insurance brokers, or agents and their counsel;
- g. court reporters actually recording proceedings in this action;
- h. mediators, arbitrators, or similar outside parties and their staffs enlisted by all parties to assist in the resolution of this matter;
- i. other persons as agreed to by the parties and, if different, the Producing Person, or as ordered by the Court; and
- j. any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or person if such disclosure is protected under the whistleblower provisions of any federal law or regulation. Notwithstanding any language in Paragraph 8 below to the contrary, no prior authorization is required to make any such disclosure nor is there any requirement to notify any party of such a disclosure.

8. If any person possessing information designated “CONFIDENTIAL” is subpoenaed by a court of competent jurisdiction in another action or proceeding or served with a document demand, and such subpoena or document demand seeks information designated “CONFIDENTIAL,” the person receiving the subpoena or document demand (1) shall give written notice within three business days of the receipt of such subpoena or demand to undersigned counsel for the party or parties that produced and/or designated the information “CONFIDENTIAL” and notice to the opposing counsel in the current action within the same three day period and (2) shall, to the extent permitted by law, withhold production of the subpoenaed material until any dispute relating to the production of such material is resolved, provided, however, that nothing in this agreement shall prevent any party to this agreement from disclosing any such documents pursuant to an administrative order, demand, summons, subpoena, or other request from any federal or state agency or grand jury, and the notification and withholding procedures set forth above shall not apply in the case of any such request.

9. Nothing herein shall be construed to provide a basis for a non-compliance with the parties’ obligations to produce documents under the Georgia Civil Practice Act or other applicable rules of procedure or local court rules; nothing herein shall be construed to waive any right that any party may have to object to any demand for production of any documents or any other form of discovery other than on grounds of confidentiality.

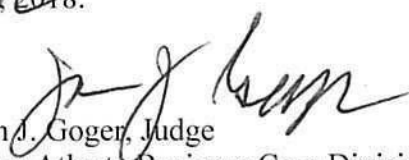
10. Any party who wishes to challenge the propriety of a privilege designation may do so by providing written notice to the Producing Party. The notice shall (a) attach a copy of each document subject to challenge, or identify such document by production number or other appropriate designation, and state that the challenging party objects to the designation of such document as privileged and (b) set forth the reason for such objection. The objecting party and

the Producing Party shall attempt in good faith to resolve any challenge on an informal basis. If an agreement cannot be reached, the objecting party may seek a decision from this Court with respect to the propriety of the designation. The information shall continue to be protected as privileged by the terms of this Order until the Court orders otherwise. In the event that a party challenges the designation of information as privileged, the burden of establishing the designation is on the designating party.

11. Within ninety (90) days after the conclusion of this action (including any appeals and remands), each recipient of information designated "CONFIDENTIAL" must destroy all such CONFIDENTIAL information or return it to the Producing Person. Counsel may retain copies of CONFIDENTIAL information provided the confidential information is properly secured.

12. The Court retains jurisdiction over the parties for enforcement of the provisions of this Order following the conclusion of the action.

SO ORDERED this 15 day of March 2018.


John J. Goger, Judge
Metro Atlanta Business Case Division
Fulton County Superior Court
Atlanta Judicial Circuit

Copies to:

Attorneys for Plaintiff	Attorneys for Defendants
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