

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 5168 / October 12, 2017

Administrative Proceeding
File No. 3-17950

In the Matter of
David Pruitt, CPA

**Protective Order for Third-
Party Productions**

The Division of Enforcement and Respondent David Pruitt have served or intend to serve subpoenas for documents in connection with the above-referenced proceeding (document subpoenas) on certain third parties. The discovery provided by third parties (Producing Parties) in this administrative proceeding may involve trade secrets or other confidential research, development or commercial information, official government records, or information affecting the privacy interests of the Producing Party or other non-parties. In addition, Producing Parties may have statutory, regulatory, professional and/or contractual obligations to protect certain information about their clients or their businesses. I therefore find good cause to limit the disclosure and use of such information and wish to prevent all unauthorized disclosures of such information in accordance with the Securities and Exchange Commission Rules of Practice.

I ADOPT the parties' proposed protective order and ORDER the parties and any Producing Parties to follow the procedures set forth in this order (Protective Order) with respect to documents, information, electronically stored information (ESI), or other things turned over, produced, or otherwise disclosed by Producing Parties pursuant to a document subpoena or otherwise.

- 1. Designation of Confidential Information.** The Producing Party may, at its option and in good faith, designate as confidential any documents, writings, recordings, photographs, electronic data, other written or tangible materials of any kind, or any other information produced or disclosed by the Producing Party to the Division or the Respondent, and the contents thereof, in response to a document subpoena that the Producing Party reasonably believes contains, constitutes, reflects, or discloses non-public, confidential, personal, proprietary, trade secret, customer, client, or other commercially

sensitive information that requires the protections provided in this Protective Order, including personal identifying information (PII), such as Social Security numbers, telephone numbers, dates of birth, and the like (collectively, confidential information). Confidential information also includes materials that refer to materials that the Producing Party has designated as confidential, including any such notes, analyses, compilations, studies, interpretations, or other documents prepared by the Division, the Respondent, or their counsel, or others who are allowed access to confidential information pursuant to paragraph 5 below, except that only the portion of any such document that specifically includes or references the confidential information shall be kept confidential in accordance with this Protective Order. Once material is designated as confidential, any and all disclosure, handling, or use of such confidential information, shall be governed by the terms of this Protective Order unless and until such designation is withdrawn either by written consent of the Producing Party or by an order of the administrative law judge, the Commission, or by court order. A Producing Party may only designate as confidential documents that are produced voluntarily or pursuant to a subpoena issued in connection with this administrative proceeding, and shall not include documents produced in connection with any investigations regarding Respondent.

2. ***Manner of Designation.*** The designation of material as confidential for purposes of this Protective Order shall be made as follows:
 - a. With respect to documents, a designation of confidential shall be placed or affixed on each page of such document in such a manner as will not interfere with the legibility thereof; *provided, however,* that when confidential information is disclosed in a document in a form not appropriate for such placing or affixing, such document shall be identified and designated as confidential by the Producing Party in writing at the time the document is delivered to the Division or the Respondent, and such designation shall be effective;
 - b. With respect to tangible materials other than documents, a designation of confidential shall be placed or affixed on such material in such a manner as will not interfere with the legibility or functionality thereof; *provided, however,* that when confidential information is disclosed in tangible material other than a document in a form not appropriate for such placing or affixing, such material shall be identified and designated as confidential by the Producing Party in writing at the time the material is delivered to the Division or the Respondent, and such designation shall be effective;

- c. With respect to information transmitted on a disk, DVD, hard drive, or on any other device, by placing in a prominent place the term confidential on the disk, DVD, hard drive, or on any other device or means by which the information is produced; *provided, however*, that the documents transmitted on the device shall be electronically endorsed as confidential.
3. ***Non-Disclosure.*** The Division, the Respondent, or their counsel shall not disclose or otherwise disseminate confidential information other than as provided in paragraphs 4 and 5, below. The Division, the Respondent, and their counsel agree to take all reasonable measures to safeguard the contents of the confidential information and to restrict access to the confidential information to the persons listed in paragraph 5, below.
4. ***Limitation on Use.*** The confidential information may be used by the Division and the Respondent only in connection with this administrative proceeding, including any judicial or appellate review thereof, and not for any other purpose. This Protective Order does not apply to any documents already provided to the Respondent by the Division pursuant to its obligations under Rule of Practice 230, *Brady v. Maryland*, or otherwise.
5. ***Access.*** Access to the confidential information shall be limited to: (i) the Division and Respondent; (ii) counsel, together with any employees or contractors of counsel, engaged by the Division and Respondent; (iii) vendors engaged by the Division, Respondent, or their counsel; (iv) experts and consultants engaged by the Division, Respondent, or their counsel; (v) witnesses and their counsel whom the Division or Respondent chooses to interview, examine, or depose in connection with this administrative proceeding provided, however, that such witnesses and counsel shall not be allowed to take copies of any such documents that may be shown to them; and (vi) the administrative law judge and other persons necessarily involved in this administrative proceeding, including stenographers, videographers, reporters, clerks, and other officials and administrative personnel. The persons or entities in the category described in subparagraphs (iii) and (iv) of this paragraph who are given access to confidential information will execute an Agreement of Confidentiality in substantially the form attached hereto as Exhibit A.

Disclosure pursuant to this paragraph shall not constitute a waiver of the confidential status of the confidential information so disclosed.

6. ***Copies and Reproductions of Confidential Information.*** For purposes of this Protective Order, any copies or reproductions of confidential information shall be deemed confidential and shall be subject to the terms of

this Protective Order. If the duplicating process by which copies or reproductions of confidential information are made does not preserve the confidentiality designation that appears on the original material, the party responsible for making or having made such copies or reproductions shall cause such copies or reproductions to be stamped or otherwise labeled confidential.

7. ***Challenging Designations.*** In the event that either of the Division or the Respondent objects to any confidential designation (the Objecting Party), the Objecting Party shall notify the Producing Party in writing (the Notice). In the Notice, the Objecting Party shall identify the material in question and shall specify the reason or reasons for the objection. Within seven (7) calendar days of the receipt of the Notice, the Producing Party and the Objecting Party shall meet and confer in an effort to resolve the disagreement. If the Objecting Party and the Producing Party fail to resolve their dispute, the Objecting Party may apply to the administrative law judge in this administrative proceeding for a ruling that the material shall not be treated as confidential, giving notice to the Producing Party. The Producing Party shall bear the burden of establishing that the material is entitled to confidential treatment. While any such application is pending, such material shall retain its confidential designation and be subject to the terms of this Protective Order. If the Objecting Party and the Producing Party are unable to reach an accord and if no application in this administrative proceeding is made after the seven-day period referenced, or after such other period agreed to in writing by the Objecting Party and the Producing Party, the material will continue to carry the designation. No Party shall be obligated to challenge the propriety of any confidential designation upon receipt of the information, and a failure to do so shall not preclude a later challenge to the propriety of such designation. Any written objection from the Division or the Respondent pursuant to this paragraph shall be made in good faith and the Producing Party will act in good faith in determining whether to maintain the confidentiality designation with consideration for minimizing the number of instances that may be necessary to involve the administrative law judge in this administrative proceeding.
8. ***Subpoenas/Discovery Requests for Confidential Information.*** If the Division or the Respondent is: (a) subpoenaed to produce confidential information, or (b) served with a discovery request to produce confidential information, prior to making any disclosures of confidential information, the Division or the Respondent shall give written notice to the Producing Party no later than five (5) business days from receipt of such subpoena or document request, to allow the Producing Party to seek a protective order precluding such disclosure. Unless the Producing Party moves for a

protective order within ten (10) days of receipt of such notice, the Division or the Respondent shall be free to produce the confidential information notwithstanding the restrictions set forth in this Protective Order. Upon motion by the Producing Party, the Division or the Respondent shall not produce such confidential information until a ruling on the motion.

- 9. *Public Filings.*** If confidential information is disclosed in or contained within any document that the Division or the Respondent intends to file publicly in this administrative proceeding or in any court proceeding, the Division or the Respondent shall notify the Producing Party three (3) business days in advance of any such filing to afford it an opportunity to move for a protective order in accordance with Rule of Practice 322 or pursuant to the equivalent federal or state rule providing for protective orders. The party making the filing may publicly file a redacted version of the filing from which all confidential information has been redacted. If the Producing Party does not move for a protective order within three (3) business days of receiving notice under this paragraph, then the Producing Party shall be deemed to have waived the confidential designation for any such materials included in any public filing and these materials will no longer be deemed to be confidential information as defined in this Protective Order. If it is not practical for the party to provide three (3) business days' notice to the Producing Party prior to filing a document containing confidential information in this administrative proceeding, the party may file the document including the confidential information with the court, provided that all confidential information in any publicly filed version of the document shall be redacted or filed under seal in accordance with the Rules of Practice.
- 10. *Trial and Evidentiary Hearings.*** During trial or an evidentiary proceeding in this administrative proceeding, material that the Producing Party has designated as confidential information pursuant to this Protective Order may be offered into evidence, retained by the administrative law judge, and filed with the Office of the Secretary, provided that the proponent of the evidence advises the Producing Party in advance of the trial or proceedings that it intends to offer confidential information. In accordance with Rule 322, the Producing Party may apply to the hearing officer to allow the material to keep its confidential status notwithstanding such use or for such other procedures that it believes are warranted. If the Producing Party does not seek a protective order within five (5) business days of being notified that a proponent intends to use confidential information at the hearing then the Producing Party shall be deemed to have waived the confidential designation for the confidential information offered or intended to be offered into evidence and these materials will no longer be deemed to

be confidential information as defined in this Protective Order. The provisions of this paragraph will not impact the admissibility of confidential information or any document containing confidential information.

11. ***Inadvertent Failure to Designate.*** If the Producing Party inadvertently fails to designate any information as confidential at the time of production or disclosure, the Producing Party shall not be deemed to have waived, in whole or in part, any claim to such designation, either as to the specific information disclosed or as to any other information on the same or related subject matter. As soon as reasonably practicable after the Producing Party becomes aware of the inadvertent failure to designate material as confidential, the Producing Party shall identify and designate such information as confidential in writing, accompanied by substitute copies of each item stamped or labeled confidential. If such written notice is given, all information so designated shall be subject to this Protective Order as if it had been initially designated as confidential.

Within five (5) business days of receipt of the substitute copies of the information, the Division and the Respondent shall return or destroy the previously unstamped and unlabeled produced information and all copies thereof. If, prior to receiving such notice, the Division or the Respondent has disseminated the confidential information to individuals not authorized to receive such confidential information pursuant to this Protective Order, the Division or the Respondent shall make a reasonable effort to retrieve the confidential information or, if such effort fails, to advise each recipient that the confidential information is subject to this Protective Order.

12. ***No Waiver of Privileges or Other Objection to Discovery.*** Nothing in this Protective Order shall require disclosure of any material that the Producing Party contends is protected from disclosure by any attorney-client privilege, work product protection, or other immunity or protection from disclosure including statutory protections, or other objection to discovery. The inadvertent production of any document or information protected by, or claimed to be protected by, privilege, other immunity or protection from disclosure, or other objection to discovery, shall not prejudice or otherwise constitute a waiver of, or estoppel as to, any such claim that the Producing Party otherwise would be entitled to assert.

If a claim of inadvertent production of privileged or protected material is made by the Producing Party with respect to materials produced to the Division and/or the Respondent, the Division and/or the Respondent shall promptly return the information and all copies thereof to the Producing Party and shall not use such information for any purpose. In the event that the Division or the Respondent disputes that such information is privileged

or protected material, the Division or the Respondent may retain the materials and shall meet and confer with the Producing Party in an effort to resolve the disagreement. If no resolution is reached, the Division, the Respondent or the Producing Party may promptly present this issue under seal to the administrative law judge in this administrative proceeding for determination of the Producing Party's claim that the documents or information were inadvertently produced and are entitled to be withheld on the basis of privilege. The Producing Party must preserve the information until the dispute is resolved. Nothing in this Protective Order shall modify any obligation a Party otherwise has with respect to inadvertent production under the law or ethical rules.

13. ***Unauthorized Disclosure.*** Any person who has received confidential information shall not disclose such information to any person who is not entitled to receive such information under this Protective Order. If confidential information is disclosed to any person not entitled to receive such information under this Protective Order, the Party responsible for the disclosure shall inform the Producing Party and, without prejudice to other rights and remedies of any Party, make a reasonable good faith effort to retrieve such material and to prevent further disclosure of it by the person who received such information, including by having the person who received such information sign a declaration agreeing to comply with this Protective Order.
14. ***Confidential Status Maintained.*** In the event that confidential information is disclosed or used, the confidential information shall not lose its status as confidential information through such use.

This Protective Order shall survive the termination of this administrative proceeding or any litigation or proceeding arising out of or related to this administrative proceeding. Within 180 days of the final termination of this administrative proceeding or any litigation or proceeding arising out of or related to this administrative proceeding, including judicial or appellate review, the Division and the Respondent shall take reasonable efforts to locate and return to the Producing Party or destroy all copies of material in their possession, custody, or control designated as confidential information.

As used in this paragraph, reasonable efforts includes searches of: (i) any electronic workspace associated with the document subpoena; and (ii) physical files associated with the document subpoena including those maintained in the offices of the attorneys, paralegals, and others involved with the document subpoena. Reasonable efforts does not include searches of electronic mail or backup tapes, digital or otherwise.

15. ***Additional Matters.*** Entering into, agreeing to, producing or receiving confidential information pursuant to, or otherwise complying with, the terms of this Protective Order shall not:

- a. operate as an admission by any party that the restrictions and procedures set forth herein constitute, or do not constitute, adequate protection for any particular item of information deemed by the Producing Party to be confidential information;
- b. prejudice in any way the rights of any party to object to the authenticity or admissibility into evidence of any information, document, or other evidence subject to this Protective Order;
- c. prejudice in any way the rights of a party to petition a court or administrative officer in any legal or administrative proceeding for a protective order relating to any purportedly confidential documents or information;
- d. prejudice in any way the rights of a party to seek a determination by a court or administrative officer in any legal or administrative proceeding as to whether any documents, information, or material sought should be subject to the terms of a protective order;
- e. prejudice or alter the Producing Party's rights under prior agreements.

Additionally, this Protective Order shall not be construed as the Producing Party's consent to or acknowledgement of the exercise of jurisdiction over the Producing Party by the administrative law judge in this administrative proceeding, and nothing herein is intended to confer upon the administrative law judge in this administrative proceeding any authority or jurisdiction that would not otherwise exist.

James E. Grimes
Administrative Law Judge

EXHIBIT A

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In the Matter of
David Pruitt, CPA

Protective Order for Third-Party Productions

CERTIFICATION

1. My name is _____ . I live at _____ . I am employed as (state position) _____ by (state name and address of employer) _____ .

2. I have been given a copy of the Protective Order for Third-Party Productions (Protective Order) in the above-referenced matter and have read it. I agree to be bound by the Protective Order. I will not reveal confidential information to anyone, except as allowed by the Protective Order. I will maintain all such confidential information in a secure manner to prevent unauthorized access to it.

3. I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____