

**UNITED STATES OF AMERICA**  
**Before the**  
**CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING**  
**File No. 2013-CFPB-0002**

**In the Matter of:**

**3D Resorts-Bluegrass, LLC**

**MOTION REGARDING  
PROTECTION OF  
CONFIDENTIAL OR  
SENSITIVE PERSONAL  
INFORMATION AND PRODUCED  
MATERIALS**

**MOTION OF THE CONSUMER FINANCIAL PROTECTION BUREAU REGARDING  
PROTECTION OF CONFIDENTIALITY OF PERSONAL INFORMATION AND  
PRODUCED MATERIALS**

The Consumer Financial Protection Bureau (“Bureau”), pursuant to 12 C.F.R. § 1081 respectfully moves for the entry of an order governing the protection of confidential or sensitive personal information as set forth in the attached proposed order and in the following proposed language in italics below.

On July 1, 2013, the Bureau disseminated this proposed language to Michael Fiorella, Esq., counsel to the Chapter 11 Trustee, and William Palmer, Esq., counsel to 3D Resorts-Bluegrass, LLC. On July 2, 2013, counsel for Mr. Fiorella expressed the Trustee’s position that the first two paragraphs addressed subjects already addressed in the Bureau’s rules, and that the Trustee saw no need for those rules to be restated in an order. Mr. Fiorella also indicated that the third paragraph related to “Materials Produced” would appear to impose a significant cost on the

estate, which cost the Trustee would not be willing to voluntarily accept.<sup>1</sup> Mr. Palmer has not responded to the Bureau's request for his position on the proposed language.

The proposed language (in italics) is set forth below, followed by an explanation and justification of the language.

***Sensitive Personal Information.*** *As set forth in § 1081.112(e), sensitive personal information means an individual's Social Security Number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, State-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, filings unless the person filing the paper determines that such information is relevant or otherwise necessary for the conduct of the proceeding. If the person filing a paper determines the sensitive personal information contained in the paper is relevant or necessary to the proceeding, the person shall file the paper in accordance with paragraph (f) of this section [§ 1081.112(f)], including filing an expurgated copy of the paper with the sensitive personal information redacted.*

Explanation/Justification: This language tracks the rule of § 1081.112(e). Although the language already exists in the promulgated rule, the Bureau respectfully requests that the above language be formally included in an express order to ensure notice and compliance.

***Confidential Material.*** *Motions seeking confidential treatment of information contained in a filing under §§ 1081.112(f) and 1081.119 must meet the strict standards set forth in § 1081.119(b). It is the burden of the party filing a paper or introducing an exhibit at a hearing to redact or omit personal information pursuant to § 1081.112(e). Neither the hearing officer nor the Bureau will review each pleading for compliance with this rule. Any party inadvertently filing or introducing sensitive personal information without prior authorization shall take immediate steps to withdraw the exhibit or filing and shall notify the hearing officer and/or Office of Administrative Adjudication to remove such sensitive information from public view.*

Explanation/Justification: In addition to articulating the standards for filing motions for confidential treatment of information for filings, this proposed language makes clear that the filing party – and not the Administrative Law Judge or the Bureau (unless it is the filing party) –

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<sup>1</sup> The Bureau is producing its materials electronically (on compact disks or other electronic media), so the cost of returning those materials to the Bureau should be minimal. To address Mr. Fiorella's concern regarding return of produced materials to the Bureau following the conclusion of this case, the Bureau would not object to this Court ordering that the Bureau prepay the cost of any postage required for the Trustee to return to the Bureau the produced materials.

is responsible for the appropriate motion, redaction, or other treatment. Additionally, the proposed language describes requisite steps which must be taken in the event that sensitive personal information is filed or submitted as an exhibit.

***Materials Produced.*** *Materials produced by the Bureau to the Respondent may only be used for the purposes of this administrative proceeding, including all appeals. Within sixty (60) days after the conclusion of proceedings, by settlement or otherwise, and all appeals, the Respondent shall return to the Bureau all materials, copies, and any other medium containing, summarizing, or otherwise embodying any sensitive personal information or its contents (including sensitive personal information provided to all experts and receiving parties pursuant to this Order), except that the receiving party's counsel may, solely for record-keeping purposes, retain his or her files intact; however, such counsel shall not use or disclose any sensitive personal information for any purpose other than preserving the integrity of his/her files. All deposition and hearing transcripts (or portions thereof), exhibits, and any similar such materials that contain sensitive personal information shall be returned to the Bureau as set forth above. To the extent material containing sensitive personal information has been disclosed to a non-party whose identity has not been revealed (such as a consulting expert), the receiving party that disclosed the sensitive personal information agrees to secure from the non-party the return of such material. Alternatively, the Respondent may destroy any sensitive personal information. If the receiving party elects to destroy the sensitive personal information, it shall promptly destroy the information and give the producing party an affidavit confirming that it has destroyed the requested information.*

Explanation/Justification: The proposed language limits the use of produced material by the Respondent only for the purposes of the administrative proceeding. Pursuant to 12 C.F.R. §§ 1070.4, unless otherwise provided in the rules, persons in possession of non-public CFPB records may not disclose such materials without authorization. This language does not limit a party's use of its own materials, nor does it govern the Bureau's use of materials collected during the course of its investigation, which is governed by Parts 1070 and 1080 of 12 CFR. The proposed language also provides that, within sixty days after the conclusion of the proceedings (including appeals), Respondents must return produced materials and information (or destroy the materials and information, with a certification attesting to such fact). While allowing for an exception for counsel record-keeping files, the proposed language ensures that after this matter is included, confidential information will not be misplaced or disseminated to third parties.

Accordingly, the Bureau respectfully requests that the Court enter the attached proposed order governing the treatment of confidential materials to protect the integrity of and confidentiality of discovery in this case.

Respectfully submitted,

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Attorneys for Petitioner  
Consumer Financial Protection Bureau

Dated: July 10, 2013

**Certificate of Service**

I certify that on this 10th day of July, 2013, I caused the foregoing **Motion Regarding Protection of Confidential or Sensitive Personal Information and Produced Materials** to be filed and to be served upon the following parties by electronic service:

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