

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE:

PROCEDURES FOR THE FILING,
SERVICE, AND MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS

ADMINISTRATIVE ORDER NO. 716

-----x

WHEREAS, in response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts; based thereon, the Court finds that good cause exists to require all parties to file certain highly sensitive documents as defined below outside of the Court’s electronic filing system (CM/ECF).

THEREFORE, IT IS HEREBY ORDERED that, from and after the date of this Order, and until such time as the Court Orders otherwise, the filing of any document a party believes to be a highly sensitive document shall be subject to the procedures and requirements set forth below. This order supersedes any and all inconsistent provisions in existing local rules or other Orders of this Court, including EDNY LBR 9018-1.

1. Documents subject to this Order.

- a. The filing procedures set forth below only apply to documents that contain highly sensitive information (“HSD”). For purposes of this Order, an HSD is defined as a document relating to matters of national security, foreign sovereign interests, or cybersecurity; the extent of domestic or international interests; the involvement of public officials; intellectual property or trade secrets; or the reputational interests of the United States.
- b. The following types of documents generally are not considered HSDs: bank records; Social Security records; health records, and sealed filings in many bankruptcy cases and adversary proceedings that are not sufficiently sensitive to require HSD treatment and that may continue to be sealed in CM/ECF as necessary.
- c. The HSD Motion shall explain why the proposed document contains classified information or information that could harm national security, or why its disclosure could reasonably be expected to cause exceptionally grave damage or injury to any person, entity or institution.

2. Filing of Motions to Treat a Document as an HSD.

- a. Parties represented by an attorney.
 - i. A party represented by an attorney shall electronically file a Motion to treat a document as an HSD and a proposed order under Fed. R. Bankr. P. 9018 and EDNY Local Rules 9006-1, 9018-1; **the proposed HSD shall not be filed electronically** (the “HSD Motion”).
 - ii. As soon as practicable after the HSD Motion is filed, the filing party shall deliver the proposed HSD to the Clerk’s office, along with a certificate of service. The proposed HSD, unfolded, shall be submitted to the Clerk’s office in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT.” The outside of the envelope shall be affixed with the case number and name of the Debtor(s), along with the name, phone number and email address of the attorney submitting the HSD, along with a return mailing address. No confidential information shall be included on the outer envelope page.
 - iii. The filing party shall serve the HSD Motion and the proposed HSD on the other parties-in-interest as provided for in Federal Rules of Bankruptcy Procedure 7004, 7005 and 9036, along with the proposed Order. The Motion may be served via CM/ECF as provided for in EDNY LBR 9036-2. The proposed HSD shall be delivered to the other parties-in-interest in the form of a paper copy or by electronic means determined by the movant to best protect the confidentiality of the proposed HSD. A proof of service of the HSD Motion and the HSD, including the means of delivery of the proposed HSD, shall be filed with the Court along with the filing of the HSD Motion. Nothing contained in this Order shall prohibit a party from seeking to limit notice of the HSD Motion.
 - iv. The Court will issue an order on the HSD Motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The Clerk’s office will maintain the HSD in a secure paper filing system, until an Order of removal or destruction is entered.
- b. Procedures specific to self-represented parties (“pro se parties”).
 - i. Pro se parties shall file the HSD Motion through the Court’s Pro Se Electronic Document Upload Program, or physically at the Drop Box location maintained in either the Central Islip courthouse or at the

Brooklyn court house, or by mail; **the proposed HSD shall not be filed electronically.**

- ii. All other procedures outlined in paragraph 2a(ii), (iii), and (iv) above shall apply.

3. Service of Highly Sensitive Court Orders.

If the Court determines that one of its orders contains highly sensitive information, the Clerk's office will file and maintain the order in a secure paper filing system and will serve paper copies of the order on the parties via mail, and an informational entry will be made on the case docket indicating that an order has been entered that contains highly sensitive information.

4. Form of Order.

An HSD Motion shall be accompanied by a proposed Order in the attached form.

5. Questions about HSD Filing Procedures.

Parties are advised that, during the Court's Operations During COVID-19 Pandemic, limited personnel will be available at each Court location, and access to each Clerk's office is restricted. For more information, please access the Court's main website, <https://www.nyeb.uscourts.gov>

SO ORDERED

At Central Islip, New York
this 20th day of January, 2021

S/ Hon. Alan S. Trust
CHIEF JUDGE ALAN S. TRUST

PROPOSED FORM OF ORDER

[CASE CAPTION]

ORDER ON MOTION CONCERNING ALLEGED HIGHLY SENSITIVE DOCUMENTS

On [DATE], in accordance with EDNY Administrative Order No. ----- (the “HSD Order”), [PARTY] (“Movant”), filed a Motion [dkt item --] , seeking an Order determining certain document(s) to be highly sensitive for the reason that it/they contain information relating to matters of national security, foreign sovereign interests, or cybersecurity; the extent of domestic or international interests; the involvement of public officials; intellectual property or trade secrets; or the reputational interests of the United States (the “HSD”).

Based upon this Court’s review,

Movant has/ has not complied with the applicable requirements of the HSD Order;

The HSD do/ do not constitute highly sensitive documents.

Based thereon, it is hereby

ORDERED, that the Motion is granted/ denied; and it is further

[IF GRANTED] ORDERED, that an informational entry will be made on the case docket indicating that the HSD has been filed with the Court; the Clerk’s office will maintain the HSD in a secure paper filing system, until an Order of removal or destruction is entered.

[IF DENIED] The documents submitted to the Court shall be destroyed by the Clerk of Court.