**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF KANSAS**

GARMIN CORPORATION,

Plaintiff,

vs. Case No. 04-2373-KHV-DJW

NCR CORPORATION,

Defendant.

**MEMORANDUM AND ORDER**

Pending before the Court is the parties' Joint Motion for Protective Order (doc. 30). For the reasons set forth below, the Joint Motion is denied and the parties are directed to submit a revised proposal by February 1, 2005.

The decision whether to enter a protective order lies within the sound discretion of the court.[1] Federal Rule of Civil Procedure 26 provides that the court, upon a showing of good cause, "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."[2] With that said, orders of a court are binding only upon parties to the pending cause and cannot bind non-parties; thus, any provision within a proposed protective order stating otherwise is inaccurate.

The Court finds there are at least two provisions in the proposed protective order that attempt to bind non-parties. More specifically,

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[1] *Thomas v. IBM*, 48 F.3d 478, 482 (10th Cir.1995).

[2] Fed.R.Civ.P. 26(c).

- Paragraph 2(i) states that "Each person to whom all or part of the Designated Material is disclosed or otherwise furnished agrees to subject himself/herself to the jurisdiction of the Court;" and
- Paragraph 10 provides strict guidelines for non-parties to follow when they desire to file something under seal with the Court.

In addition to the issue of non-parties, paragraph 13(e) improperly permits a party to designate material as confidential but later acknowledge that it was not confidential. And finally, paragraph 16 of the proposed order inappropriately grants the parties permission to later modify the order without leave of Court.

In light of the above, the Court is unable to grant the parties' request to enter the Protective Order submitted by the parties. Thus, the Motion is denied and the parties are hereby granted leave for additional time – up to and including **February 1, 2005** – in which to submit a revised, agreed protective order consistent with this Order.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this _____ day of February, 2005.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties