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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

E.C. a minor, by and through her guardian ad litem Gretta Caraballo, et al.,

Plaintiffs,

vs.

LINCOLN MILITARY PROPERTY MANAGEMENT LP, et al.,

Defendants.

Case No.: 3:21-cv-2070-JLS-BLM

ORDER GRANTING JOINT MOTION FOR PROTECTIVE ORDER

[ECF NO. 34]

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, or for personal privacy reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order ("Order") in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G), or, personal medical information. The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

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1 DEFINITIONS

2 1. The term "confidential information" will mean and include information
3 contained or disclosed in any materials, including documents, portions of
4 documents, answers to interrogatories, responses to requests for admissions, trial
5 testimony, deposition testimony, and transcripts of trial testimony and depositions,
6 including data, summaries, and compilations derived therefrom that is deemed to be
7 confidential information by any party to which it belongs.

8 2. The term "materials" will include, but is not limited to: documents;
9 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or
10 other material that identify customers or potential customers; price lists or schedules
11 or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled
12 checks; contracts; invoices; drafts; books of account; worksheets; notes of
13 conversations; desk diaries; appointment books; expense accounts; recordings;
14 photographs; motion pictures; compilations from which information can be obtained
15 and translated into reasonably usable form through detection devices; sketches;
16 drawings; notes (including laboratory notebooks and records); reports; instructions;
17 disclosures; other writings; models and prototypes and other physical objects.

18 3. The term "counsel" will mean outside counsel of record, and other
19 attorneys, paralegals, secretaries, and other support staff employed in the law firms
20 identified below: Gomez Trial Attorneys; Gordon Rees Scully Mansukhani LLP;
21 Hawkins, Parnell & Young, LLP; and Clinton & Clinton. The term "counsel" also
22 includes in-house attorneys for Defendants.

23 GENERAL RULES

24 4. Each party to this litigation that produces or discloses any materials,
25 answers to interrogatories, responses to requests for admission, trial testimony,
26 deposition testimony, and transcripts of trial testimony and depositions, or
27 information that the producing party believes should be subject to this Protective

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1 Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
2 COUNSEL ONLY."

3 a. Designation as "CONFIDENTIAL": Any party may designate
4 information as "CONFIDENTIAL" only if, in the good faith belief of such party and
5 its counsel, the unrestricted disclosure of such information could be potentially
6 prejudicial to the business or operations of such party, or implicate personal medical
7 privacy issues.

8 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any
9 party may designate information as "CONFIDENTIAL - FOR COUNSEL ONLY"
10 only if, in the good faith belief of such party and its counsel, the information is
11 among that considered to be most sensitive by the party, including but not limited to
12 trade secret or other confidential research, development, financial or other
13 commercial information.

14 5. In the event the producing party elects to produce materials for
15 inspection, no marking need be made by the producing party in advance of the initial
16 inspection. For purposes of the initial inspection, all materials produced will be
17 considered as "CONFIDENTIAL" and must be treated as such pursuant to the terms
18 of this Order. Thereafter, upon selection of specified materials for copying by the
19 inspecting party, the producing party must, within five (5) days' time prior to
20 producing those materials to the inspecting party, mark the copies of those materials
21 that contain confidential information with the appropriate confidentiality marking.

22 6. Whenever a deposition taken on behalf of any party involves a
23 disclosure of confidential information of any party:

24 a. the deposition or portions of the deposition must be designated
25 as containing confidential information subject to the provisions
26 of this Order; such designation must be made on the record
27 whenever possible, but a party may designate portions of
28 depositions as containing confidential information after

1 transcription of the proceedings; [A] party will have until
2 fourteen (14) days after receipt of the deposition transcript to
3 inform the other party or parties to the action of the portions of
4 the transcript to be designated "CONFIDENTIAL" or
5 "CONFIDENTIAL - FOR COUNSEL ONLY."

6 b. the disclosing party will have the right to exclude from
7 attendance at the deposition, during such time as the confidential
8 information is to be disclosed, any person other than the
9 deponent, counsel (including their staff and associates), the court
10 reporter, and the person(s) agreed upon pursuant to paragraph 8
11 below; and

12 c. the originals of the deposition transcripts and all copies of the
13 deposition must bear the legend "CONFIDENTIAL" or
14 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate,
15 and the original or any copy ultimately presented to a court for
16 filing must not be filed unless it can be accomplished under seal,
17 identified as being subject to this Order, and protected from
18 being opened except by order of this Court.

19 7. All confidential information designated as "CONFIDENTIAL" or
20 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving
21 party to anyone other than those persons designated within this order and must be
22 handled in the manner set forth below and, in any event, must not be used for any
23 purpose other than in connection with this litigation, unless and until such
24 designation is removed either by agreement of the parties, or by order of the Court.

25 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY"
26 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,
27 and by independent experts under the conditions set forth in this Paragraph. The right
28 of any independent expert to receive any confidential information will be subject to

1 the advance approval of such expert by the producing party or by permission of the
2 Court. The party seeking approval of an independent expert must provide the
3 producing party with the name and curriculum vitae of the proposed independent
4 expert, and an executed copy of the form attached hereto as Exhibit A, in advance
5 of providing any confidential information of the producing party to the expert.

6 9. Information designated "confidential" must be viewed only by counsel
7 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant
8 to the terms of paragraph 8), by court personnel, and by the additional individuals
9 listed below, provided each such individual has read this Order in advance of
10 disclosure and has agreed in writing to be bound by its terms:

- 11 a) Parties to this lawsuit, including guardians ad litem;
- 12 b) Executives who are required to participate in policy decisions
13 with reference to this action;
- 14 c) Technical personnel of the parties with whom Counsel for the
15 parties find it necessary to consult, in the discretion of such
16 counsel, in preparation for trial of this action; and
- 17 d) Stenographic and clerical employees associated with the
18 individuals identified above.

19 10. With respect to material designated "CONFIDENTIAL" or
20 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of
21 the document to be its originator, author or a recipient of a copy of the document,
22 may be shown the same.

23 11. All information which has been designated as "CONFIDENTIAL -
24 FOR COUNSEL ONLY" by the producing or disclosing party, and all reproductions
25 of that information, must be retained in the custody of the counsel for the receiving
26 party identified in paragraph 3, except that independent experts authorized to view
27 such information under the terms of this Order may retain custody of copies such as
28 are necessary for their participation in this litigation.

1 12. Before any materials produced in discovery, answers to interrogatories,
2 responses to requests for admissions, deposition transcripts, or other documents
3 which are designated as confidential information are filed with the Court for any
4 purpose, the party seeking to file such material must seek permission of the Court to
5 file the material under seal.

6 13. Filing Under Seal. Before any materials produced in discovery, answers
7 to interrogatories, responses to requests for admissions, deposition transcripts, or
8 other documents which are designated as Confidential Information are filed with the
9 Court for any purpose, the party seeking to file such material must seek permission
10 of the Court to file the material under seal. No document may be filed under seal,
11 i.e., closed to inspection by the public except pursuant to a Court order that
12 authorizes the sealing of the particular document, or portions of it. A sealing order
13 may issue only upon a showing that the information is privileged or protectable
14 under the law. The request must be narrowly tailored to seek sealing only of the
15 confidential or privileged material. To file a document under seal, the parties must
16 comply with the procedures explained in Section 2.j of the Electronic Case Filing
17 Administrative Policies and Procedures Manual for the United States District Court
18 for the Southern District of California and Civil Local Rule 79.2. In addition, in
19 accordance with Judge Major's preferences, a party must file a 'public' version of
20 any document that it seeks to file under seal. In the public version, the party may
21 redact only that information that is deemed 'Confidential.' The party should file the
22 redacted document(s) simultaneously with a joint motion or ex parte application
23 requesting that the confidential portions of the document(s) be filed under seal and
24 setting forth good cause for the request.

25 14. At any stage of these proceedings, any party may object to a designation
26 of the materials as confidential information. The party objecting to confidentiality
27 must notify, in writing, counsel for the designating party of the objected-to materials
28 and the grounds for the objection. If the dispute is not resolved consensually between

1 the parties within seven (7) days of receipt of such a notice of objections, the
2 designating party may move the Court for a ruling on the objection. The materials at
3 issue must be treated as confidential information, as designated by the designating
4 party, until the Court has ruled on the objection or the matter has been otherwise
5 resolved. If the designating party does not move the court for a ruling on the
6 objection within an additional seven (7) days after the dispute is not able to be
7 resolved (that is, a total of fourteen (14) days from the first notice of the objection),
8 such objected-to materials will be deemed de-designated as “confidential.”

9 15. All confidential information must be held in confidence by those
10 inspecting or receiving it, and must be used only for purposes of this action. Counsel
11 for each party, and each person receiving confidential information must take
12 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such
13 information. If confidential information is disclosed to any person other than a
14 person authorized by this Order, the party responsible for the unauthorized
15 disclosure must immediately bring all pertinent facts relating to the unauthorized
16 disclosure to the attention of the other parties and, without prejudice to any rights
17 and remedies of the other parties, make every effort to prevent further disclosure by
18 the party and by the person(s) receiving the unauthorized disclosure.

19 16. No party will be responsible to another party for disclosure of
20 confidential information under this Order if the information in question is not labeled
21 or otherwise identified as such in accordance with this Order.

22 17. If a party, through inadvertence, produces any confidential information
23 without labeling or marking or otherwise designating it as such in accordance with
24 this Order, the designating party may give written notice to the receiving party that
25 the document or thing produced is deemed confidential information, and that the
26 document or thing produced should be treated as such in accordance with that
27 designation under this Order. The receiving party must treat the materials as
28 confidential once the designating party so notifies the receiving party. If the

1 receiving party has disclosed the materials before receiving the designation, the
2 receiving party must notify the designating party in writing of each such disclosure.
3 Counsel for the parties will agree on a mutually acceptable manner of labeling or
4 marking the inadvertently produced materials as "CONFIDENTIAL" or
5 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE
6 ORDER.

7 18. Nothing within this order will prejudice the right of any party to object
8 to the production of any discovery material on the grounds that the material is
9 protected as privileged or as attorney work product.

10 19. Nothing in this Order will bar counsel from rendering advice to their
11 clients with respect to this litigation and, in the course thereof, relying upon any
12 information designated as confidential information, provided that the contents of the
13 information must not be disclosed.

14 20. This Order will be without prejudice to the right of any party to oppose
15 production of any information for lack of relevance or any other ground other than
16 the mere presence of confidential information. The existence of this Order must not
17 be used by either party as a basis for discovery that is otherwise improper under the
18 Federal Rules of Civil Procedure.

19 21. Nothing within this order will be construed to prevent disclosure of
20 confidential information if such disclosure is required by law or by order of the
21 Court.

22 22. Upon final termination of this action, including all appeals, counsel for
23 each party must, upon request of the producing party, return all confidential
24 information to the party that produced the information, including any copies,
25 excerpts, and summaries of that information, or must destroy same at the option of
26 the receiving party, and must purge all such information from all machine-readable
27 media on which it resides. Notwithstanding the foregoing, counsel for each party
28 may retain all pleadings, briefs, memoranda, motions, and other documents filed

1 with the Court that refer to or incorporate confidential information, and will continue
2 to be bound by this Order with respect to all such retained information. Further,
3 attorney work product materials that contain confidential information need not be
4 destroyed, but, if they are not destroyed, the person in possession of the attorney
5 work product will continue to be bound by this Order with respect to all such retained
6 information.

7 23. The restrictions and obligations set forth within this order will not apply
8 to any information that: (a) the parties agree should not be designated confidential
9 information; (b) the parties agree, or the Court rules, is already public knowledge;
10 (c) the parties agree, or the Court rules, has become public knowledge other than as
11 a result of disclosure by the receiving party, its employees, or its agents in violation
12 of this Order; or (d) has come or will come into the receiving party's legitimate
13 knowledge independently of the production by the designating party. Prior
14 knowledge must be established by pre-production documentation.

15 24. The restrictions and obligations within this order will not be deemed to
16 prohibit discussions of any confidential information with anyone if that person
17 already has or obtains legitimate possession of that information.

18 25. Transmission by email or some other currently utilized method of
19 transmission is acceptable for all notification purposes within this Order.

20 26. This Order may be modified by agreement of the parties, subject to
21 approval by the Court.

22 27. Continuing Jurisdiction. The Court shall retain jurisdiction for a period
23 of one (1) year after the conclusion of this action to enforce the terms of the
24 Protective Order.

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28. Modification of the Protective Order by the Court. The Court may modify the terms and conditions of the Order for good cause, or in the interest of justice, or on its own order at any time during these proceedings.

IT IS SO ORDERED.

Dated: 3/16/2022



Hon. Barbara L. Major
United States Magistrate Judge

1 **EXHIBIT A**

2 **Certification re: Confidential Discovery Materials**

3 I hereby acknowledge that I, _____ [NAME],
4 [POSITION AND EMPLOYER], am about to receive Confidential
5 Information/Materials supplied in connection with this Action,
6 _____ [CASE NAME, CASE NUMBER]. I certify that I
7 understand that the Confidential Information/Materials are provided to me subject
8 to the terms and restrictions of the Protective Order entered in this Action. I have
9 been given a copy of the Protective Order; I have read it, and I agree to be bound by
10 its terms.

11 I understand that Confidential Information/Materials, as defined in the
12 Protective Order, including any notes or other records that may be made regarding
13 any such materials, shall not be Disclosed to anyone except as expressly permitted
14 by the Protective Order. I will not copy or use, except solely for the purposes of the
15 Action, any Confidential Information/Materials obtained pursuant to this Protective
16 Order, except as provided therein or otherwise ordered by the Court in this Action.

17 I further understand that I am to retain all copies of all Confidential
18 Information/ Materials provided to me in the Action in a secure manner, and that all
19 copies of such Confidential Information/Materials are to remain in my personal
20 custody until termination of my participation in this Action, whereupon the copies
21 of such Confidential Information/Materials will be returned to counsel who provided
22 me with the Confidential Information/Materials.

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I declare under penalty of perjury of the laws of the United States and the state of California that the foregoing is true and correct. Executed this ____ day of _____, 20____, at _____.

By: _____
Signature

Title

Address

City, State, Zip

Telephone Number