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 8 *and Mujahid Ramadan*

9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF NEVADA**

11 ***

12 ABDUL HOWARD,
 13 Plaintiff,
 14 vs.

CASE NO. 2:16-cv-1553-MMD-PAL
PROTECTIVE ORDER

15 JOHN DOE, Badge #5577; PEGGY
 16 MARTINEZ, Kitchen Officer, BONNIE
 POLLEY; MUJAHID RAMADAN; LAS
 17 VEGAS METROPOLITAN POLICE
 DEPARTMENT DETENTION SERVICES
 18 DIVISION; OFFICER GARVEY, Badge #
 9250; SHERIFF LOMBARDO; KITCHEN
 19 MANAGER JOHN DOE; THE STATE OF
 NEVADA ex rel, all.
 20 Defendants.

21
 22 The parties to this action, by their respective counsel, having agreed to the following, and
 23 for good cause shown pursuant to Fed. R. Civ. P 26(c)(1), IT IS HEREBY ORDERED as follows:

24 **1. PURPOSES AND LIMITATIONS.**

25 Disclosure and discovery activity in this action may involve production of confidential,
 26 proprietary, or private information for which special protection from public disclosure may be
 27 warranted pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure. The parties
 28 acknowledge that this Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords extends only to the limited information or items that
2 are entitled under law to treatment as confidential.

3 **2. SCOPE.**

4 All documents produced in the course of discovery, all responses to discovery requests,
5 and all deposition testimony and exhibits and any other materials which may be subject to
6 discovery (hereinafter collectively “Discovery Material”) shall be subject to this stipulated
7 protective order concerning confidential information as set forth below. Any party, or any third
8 party who produces documents in this litigation, may designate documents as Confidential but
9 only after review of the documents by an attorney who has, in good faith, determined that the
10 documents contain “Confidential Information,” as defined below, and pursuant to the procedure
11 set forth below.

12 **3. CONFIDENTIAL INFORMATION.**

13 “Confidential Information” shall mean information meriting special protection under the
14 Federal Rules of Civil Procedure and applicable case law. Confidential Information does not
15 include information that: (a) is in the public domain at the time of disclosure; (b) becomes part of
16 the public domain through no fault of the Receiving Party; (c) the Receiving Party can show was
17 in its rightful and lawful possession at the time of disclosure; or (d) the Receiving Party lawfully
18 receives from a Non-party later without restriction as to disclosure.

19 **4. OTHER DEFINITIONS.**

20 Party: any party to this action, including all of its officers, directors, agents, and attorney(s) of
21 record for a Party in this action (including their associates, paralegals, and support/ clerical staff).
22 Non-party: any individual, corporation, association, or natural person or entity other than a party.
23 Protected Material: any Discovery Material containing Confidential Information that is designated
24 by a Party or Non-party as “CONFIDENTIAL,” unless the Receiving Party challenges the
25 confidentiality designation and (a) the Court decides such material is not entitled to protection as
26 confidential; (b) the Designating Party fails to apply the Court for an order designating the
27 material confidential within the time period specified below; or (c) the Designating Party
28 withdraws its confidentiality designation in writing.

- 1 Producing Party: a Party or Non-party that produces Discovery Material in this action.
- 2 Receiving Party: a Party that receives Discovery Material from a Producing Party.
- 3 Designating Party: a Party or Non-party that designates Discovery Material as
- 4 “CONFIDENTIAL”. The Party or Non-party designating information or items as Protected
- 5 Material bears the burden of establishing good cause for the confidentiality of all such items.
- 6 Challenging Party: a party that elects to initiate a challenge to a Designating Party’s confidentiality
- 7 designation.

8 **5. FORM AND TIMING OF DESIGNATION.**

9 Protected Material shall be so designated by the Producing Party by placing or affixing the

10 word “CONFIDENTIAL” on the document in a manner which will not interfere with the legibility

11 of the document and which will permit complete removal of the “Confidential” designation.

12 Documents shall be designated “Confidential” prior to, or contemporaneously with, the production

13 or disclosure of the documents.

14 A Designating Party must exercise restraint and make good faith efforts to limit

15 CONFIDENTIAL designations to specific materials that qualify for protection under the

16 appropriate standard. Further, a Designating Party must use good faith efforts to designate for

17 protection only those parts of material, documents, items, or communications that qualify – so that

18 other portions of the materials, documents, items, or communications for which protection is not

19 warranted are not swept unjustifiably within the ambit of this Order. If only a portion or portions

20 of materials on a page or within a document merit protection, a Producing Party must so indicate

21 by making appropriate markings in the margins but not over text.

22 A Producing Party that makes original documents or materials available for inspection

23 need not designate them for protection until after the inspecting Party has indicated which material

24 it would like copied and produced. During the inspection and before the designation, all of the

25 material made available for inspection shall be deemed “Confidential.” After the inspecting Party

26 has identified the documents it wants copied and produced, the Producing Party must determine

27 which documents, or portions thereof, qualify for protection under this Order, and, before

28 producing the specified documents, the Producing Party must affix the appropriate legend on each

1 page that contains Protected Material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriated markings in the margins or by redacting protected
4 portions).

5 Portions of depositions shall be designated Confidential when the deposition is taken or
6 within fourteen (14) business days after receipt of the transcript, if feasible. Such designation shall
7 be specific as to the portions to be protected. A Designating Party must exercise restraint and
8 make good faith efforts to limit “CONFIDENTIAL” designations to specific materials that qualify
9 for protection under the appropriate standards.

10 Inadvertent or unintentional production of Protected Material without prior designation as
11 “Confidential” shall not be deemed a waiver, in whole or in part, of the right to designate
12 documents as Protected Material as otherwise allowed by this Order. Further, a Party may assert
13 that disclosures or discovery material produced by another Party constitute Protected Material by
14 informing the opposing Party by following the procedures set forth herein for a Designated Party.

15 **6. Protection of PROTECTED Material.**

16 **a. General Protections.** Protected Material shall not be used or disclosed by the parties or counsel
17 for the parties or any other persons identified below (¶ 6.b.) for any purposes whatsoever other
18 than preparing for and conducting litigation in the above-entitled action (including any appeal).

19 **b. Qualified Receiving Parties and Limited Third Party Disclosures.** Protected Material shall
20 be held in confidence by each qualified Receiving Party to whom it is disclosed, shall be used only
21 for purposes of this action, and shall not be disclosed to any person who is not a qualified
22 recipient. All Protected Material shall be carefully maintained so as to preclude access by persons
23 who are not qualified Receiving Parties.

24 Subject to these requirements, in addition to Parties and the Court, the following
25 categories of persons may be allowed to review Protected Material pursuant to this Order after
26 executing an acknowledgment (in the form set forth at Exhibit A hereto), that he or she has read
27 and understands the terms of this Order and is bound by it:

28 (1) Any officers, directors, or designated employees of a Party deemed

- 1 necessary by counsel of record in this action to aid in the prosecution,
2 defense, or settlement of this action;
- 3 (2) Professional outside vendors for attorneys of record (such as copying
4 services and translators and interpreters),
- 5 (3) Court reporters, deposition notaries and staff;
- 6 (4) The author of any document designated as CONFIDENTIAL or the original
7 source of Confidential Information contained therein;
- 8 (5) Persons other than legal counsel who have been retained or specially
9 employed by a party as an expert witness for purposes of this lawsuit or to
10 perform investigative work or fact research;
- 11 (6) Deponents during the course of their depositions;
- 12 (7) Counsel for issuers of insurance policies under which any issuer may be
13 liable to satisfy part or all of a judgment that may be entered in these
14 proceedings or indemnify or reimburse payments or costs associated with
15 these proceedings;
- 16 (8) Any private mediator or arbitrator appointed by the Court or selected by
17 mutual agreement of the parties and the mediator or arbitrator's secretarial
18 and clerical personnel;
- 19 (9) Any other person as to whom the Producing Party has consented to disclosure in advance and
20 in writing, on notice to each Party hereto.

21 **c. Control of Documents.** Counsel for Parties shall take reasonable efforts to prevent
22 unauthorized disclosure of Protected Material pursuant to the terms of this Order. No copies of
23 Protected Material shall be made except by or on behalf of attorneys of record, in-house counsel or
24 the parties in this action.

25 **d. Copies.** Any person making copies of Protected Material shall maintain all copies within their
26 possession or the possession of those entitled to access to such information under the Protective
27 Order. All copies shall be immediately affixed with the designation "CONFIDENTIAL" if the
28 word does not already appear on the copy. All such copies shall be afforded the full protection of

1 this Order.

2 **7. UNAUTHORIZED DISCLOSURE.**

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
4 Material to any person or in any circumstance not authorized under this Stipulated Protective
5 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
6 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
7 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
8 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
9 Be Bound by Stipulated Protective Order” (Exhibit A).

10 **8. Filing PROTECTED Material**

11 The Parties shall follow Rule 10-5 of the Local Rules of Practice for the U.S. District
12 Court of Nevada, and must file documents under seal under the Court’s electronic filing
13 procedures.

14 Further, the Parties recognize the presumption of public access inherent in judicial records
15 and that a Protective Order does not establish that documents meet the “standard for sealing set
16 forth in Rule 10-5 of the Local Rules of Practice for the U.S. District Court of Nevada and the
17 Ninth Circuit’s decisions in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
18 2006) and *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016), *cert.*
19 *denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016). “A party seeking to
20 seal a judicial record then bears the burden of overcoming this strong presumption by meeting the
21 ‘compelling reasons’ standard.” *Kamakana*, 447 F.3d at 1178. The only exception to this rule is
22 that only good cause need be established “for sealed materials attached to a discovery motion
23 unrelated to the merits of a case.” *Chrysler Group*, 809 F. 3d at 1097 (citing *Phillips ex rel. Estates*
24 *of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213–14 (9th Cir.2002).). Further, the Court should
25 make an independent determination regarding whether documents merits sealed status, and thus
26 expressly reserves the right to do. *Kamakana* 447 F.3d at 1186-87.

27 In recognition of this legal standard, and the fact that the party filing Protected Material
28 may not be the party that designated it confidential (and thus, may not believe good cause exists

1 for sealing), the Parties suggest that the procedure set forth below is followed if the sole ground
2 for a motion to seal is that the opposing party (or non-party) has designated a document as subject
3 to protection pursuant to this Stipulated Protective Order: The Party filing such Protected
4 Materials may assert in the accompanying motion any reasons why the Protected Materials should
5 not, in fact, be kept under seal and the Designating Party, who must be properly noticed, may
6 likewise file a response asserting its position that the Protected Material merits protection under
7 Rule 26(c) of the Federal Rules of Civil Procedure and attaching a declaration supporting the
8 assertion that the designated material meets the applicable standard..

9 **9. Challenges to PROTECTED MATERIAL.**

10 Any designation of Protected Material is subject to challenge. The following procedures
11 shall apply to any such challenge:

12 **a. Burden.** The burden of proving the necessity of a “CONFIDENTIAL” designation remains
13 with the party asserting confidentiality.

14 **b. Notice; Opportunity to Challenge.** A party who contends that Protected Material is not
15 entitled to confidential treatment shall give written notice to the party who affixed the
16 “CONFIDENTIAL” designation of the specific basis for the challenge. The party who so
17 designated the documents shall have ten (10) days from service of the written notice to determine
18 if the dispute can be resolved without judicial intervention and, if not, to move for an Order
19 confirming the “CONFIDENTIAL” designation, and the status as Protected Material.

20 **c. Treatment as Protected Material until Order or Withdrawal.** Notwithstanding any
21 challenge to the designation of documents as such, all material previously designated
22 “CONFIDENTIAL” shall continue to be treated as Protected Material subject to the full
23 protections of this Order until one of the following occurs: (1) the Party who claims that the
24 documents are Protected Material withdraws such designation in writing; (2) the Party who claims
25 that the documents are confidential fails to move timely for an Order designating the documents as
26 confidential as set forth in paragraph 9.b. above; or (3) the Court rules that the documents are not
27 Protected Material and/or should no longer be designated as “Confidential.”

28 **d. No Waiver.** Challenges to the confidentiality of documents may be made at any time and are

1 not waived by the failure to raise the challenge at the time of initial disclosure or designation.

2 **10. DURATION; Conclusion of Litigation.**

3 All provisions of this Order restricting the use of Protected Material shall continue to be
4 binding after the conclusion of the litigation unless otherwise agreed or ordered. However, the
5 dismissal of this action will terminate the jurisdiction of this Court, including over this Order.
6 Within thirty (30) days of the final termination of in the above-entitled action, which would be
7 either a final judgment on all claims or stipulation and order for dismissal with prejudice, all
8 documents and information designated as CONFIDENTIAL by a Designating Party and which has
9 not been challenged, including any copies, or documents containing information taken therefrom,
10 shall be returned to the Designating Party. In the alternative, within thirty (30) days of the final
11 termination of this case, which would be either a final judgment on all claims or stipulation and
12 order for dismissal with prejudice, all such documents, including copies, may be shredded or
13 disposed of in a manner to ensure the destruction thereof and a declaration certifying such
14 destruction or disposal provided to the Designating Party. To the extent a party has designated
15 portions of a deposition transcript as CONFIDENTIAL, the non-designating party is under no
16 obligation or duty to shred or dispose of the deposition transcript, however, the CONFIDENTIAL
17 designation will remain.

18 **11. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
19 **IN OTHER LITIGATION.**

20 If a Party is served with a subpoena or an order issued in other litigation that would compel
21 disclosure of Protected Material designated by another Party or Non-party, the Party must so
22 notify the Designating Party, in writing (by e-mail or fax, if possible) within three (3) court days
23 after receiving the subpoena or order. Such notification must include a copy of the subpoena or
24 court order.

25 **12. ORDER SUBJECT TO MODIFICATION.**

26 This Order shall be subject to modification on motion of any Party or any other person
27 who may show an adequate interest in in the above-entitled action to intervene for purposes of
28 addressing the scope and terms of this Order. The Order shall not, however, be modified until the

1 Parties shall have been given notice and an opportunity to be heard on the proposed modification.

2 **13. NO JUDICIAL DETERMINATION.**

3 This Order is entered based on the representations and agreements of the Parties and for
4 the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial
5 determination that any specific document or item of information designated as CONFIDENTIAL
6 by counsel is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or
7 otherwise until such time as a document-specific ruling shall have been made.

8 **14. MISCELLANEOUS.**

9 **a. Public Health and Safety.** Nothing in this Order is intended to prevent any Party from raising
10 with the Court any concern that the non-disclosure of certain Protected Material may have a
11 possible adverse effect upon the general public health or safety, or the administration or operation
12 of government or public office.

13 **b. Right to Further Relief.** Nothing in this Order abridges the right of any person to seek its
14 modification by the Court in the future.

15 **c. Right to Assert Other Objections.** By stipulating to the entry of this Order, no Party waives
16 any right it otherwise would have to object to disclosing or producing any information or item on
17 any ground not addressed in this Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

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15. PERSONS BOUND UPON ENTRY OF ORDER.

This Order shall take effect when entered and shall be immediately binding upon the Parties (as defined herein).

IT IS SO STIPULATED.

DATED this 24th day of January 2018.

DATED this 24th day of January, 2018.

LEWIS BRISBOIS BISGAARD & SMITH

MORRIS LAW GROUP

/s/ Noel E. Eidsmore

/s/ Akke Levin

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ORDER

IT IS SO ORDERED.

Dated this 29th day of January, 2018.



U.S. MAGISTRATE JUDGE