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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 SERGIO OCHOA,

8 Plaintiff,

9 v.

10 MID COLUMBIA FORKLIFT,

11 Defendant.

NO: 1:15-CV-3013-RMP

STIPULATED PROTECTIVE ORDER

12 BEFORE THE COURT is the parties' Stipulated Protective Order, ECF No.

13 8. The Court has reviewed the proposed order and is fully informed. Having
14 found good cause to enter the Order, **IT IS HEREBY ORDERED:**

15 1. LIMITATIONS

16 This agreement does not confer blanket protection on all disclosures or
17 responses to discovery. The protection it affords from public disclosure and use
18 extends only to the limited information or items that are entitled to confidential
19 treatment under the applicable legal principles, and it does not presumptively
20 entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible
3 things produced or otherwise exchanged: Plaintiff’s medical records, financial
4 records containing and any other sensitive personal identifying information, and
5 Defendant’s sensitive information.

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential
8 material as defined above, but also: (1) any information copied or extracted from
9 confidential material; (2) all copies, excerpts, summaries, or compilations of
10 confidential material; and (3) any testimony, conversations, or presentations by
11 parties or their counsel that might reveal confidential material. However, the
12 protections conferred by this agreement do not cover information that is in the
13 public domain or that becomes part of the public domain through trial or otherwise.

14 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

15 4.1 Basic Principles. A receiving party may use confidential material that
16 is disclosed or produced by another party or by a non-party in connection with this
17 case only for prosecuting, defending, or attempting to settle this litigation.

18 Confidential material may be disclosed only to the categories of persons and under
19 the conditions described in this agreement. Confidential material must be stored
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1 and maintained by a receiving party at a location and in a secure manner that
2 ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the designating party, a
5 receiving party may disclose any confidential material only to:

6 a. the receiving party’s counsel of record in this action, as well as
7 employees of counsel;

8 b. the officers, directors, and employees, including in house
9 counsel, of the receiving party to whom disclosure is reasonably
10 necessary for this litigation, unless the parties agree that a particular
11 document or material produced is for Attorney’s Eyes Only and is so
12 designated;

13 c. experts and consultants who have signed the “Acknowledgment
14 and Agreement to Be Bound” (Exhibit A);

15 d. the court, court personnel, and court reporters and their staff;

16 e. copy or imaging services retained by counsel to assist in the
17 duplication of confidential material, provided that counsel for the
18 party retaining the copy or imaging service instructs the service not to
19 disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

1 f. during their depositions, witnesses in the action who have
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A), unless otherwise agreed by the designating party or ordered by the
4 court. Pages of transcribed deposition testimony or exhibits to
5 depositions that reveal confidential material must be separately bound
6 by the court reporter and may not be disclosed to anyone except as
7 permitted under this agreement; and

8 g. the author or recipient of a document containing the
9 information or a custodian or other person who otherwise possessed or
10 knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or
12 discussing or referencing such material in court filings, the filing party shall confer
13 with the designating party to determine whether the designating party will remove
14 the confidential designation, whether the document can be redacted, or whether a
15 motion to seal or stipulation and proposed order is warranted.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each party or non-party that designates information or items for protection under
19 this agreement must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The designating party must designate for

1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify, so that other portions of the material, documents,
3 items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited.

6 Designations that are shown to be clearly unjustified or that have been made for an
7 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development
8 process or to impose unnecessary expenses and burdens on other parties) expose
9 the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it
11 designated for protection do not qualify for protection, the designating party must
12 promptly notify all other parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this agreement, *see, e.g.*, second paragraph of section 5.2(a) below, or as otherwise
15 stipulated or ordered, disclosure or discovery material that qualifies for protection
16 under this agreement must be clearly so designated before or when the material is
17 disclosed or produced.

18 a. Information in documentary form: (*e.g.*, paper or electronic
19 documents and deposition exhibits, but excluding transcripts of
20 depositions or other pretrial or trial proceedings), the designating

1 party must affix the word “CONFIDENTIAL” to each page that
2 contains confidential material. If only a portion or portions of the
3 material on a page qualifies for protection, the producing party also
4 must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins).

6 b. Testimony given in deposition or in other pretrial or trial
7 proceedings: the parties must identify on the record, during the
8 deposition, hearing, or other proceeding, all protected testimony,
9 without prejudice to their right to so designate other testimony after
10 reviewing the transcript. Any party or non-party may, within fifteen
11 days after receiving a deposition transcript, designate portions of the
12 transcript, or exhibits thereto, as confidential.

13 c. Other tangible items: the producing party must affix in a
14 prominent place on the exterior of the container or containers in which
15 the information or item is stored the word “CONFIDENTIAL.” If
16 only a portion or portions of the information or item warrant
17 protection, the producing party, to the extent practicable, shall identify
18 the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive

1 the designating party's right to secure protection under this agreement for such
2 material. Upon timely correction of a designation, the receiving party must make
3 reasonable efforts to ensure that the material is treated in accordance with the
4 provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge to a
8 designating party's confidentiality designation is necessary to avoid foreseeable,
9 substantial unfairness, unnecessary economic burdens, or a significant disruption
10 or delay of the litigation, a party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any
15 motion regarding confidential designations or for a protective order must include a
16 certification, in the motion or in a declaration or affidavit, that the movant has
17 engaged in a good faith meet and confer conference with other affected parties in
18 an effort to resolve the dispute without court action. The certification must list the
19 date, manner, and participants to the conference. A good faith effort to confer
20 requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
2 court intervention, the designating party may file and serve a motion to retain
3 confidentiality under Local Civil Rule 7.1. The burden of persuasion in any such
4 motion shall be on the designating party. Frivolous challenges, and those made for
5 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
6 on other parties) may expose the challenging party to sanctions. All parties shall
7 continue to maintain the material in question as confidential until the court rules on
8 the challenge.

9 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
10 **PRODUCED IN OTHER LITIGATION**

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
13 “CONFIDENTIAL,” that party must:

- 14 a. promptly notify the designating party in writing and include a
15 copy of the subpoena or court order;
- 16 b. promptly notify in writing the party who caused the subpoena
17 or order to issue in the other litigation that some or all of the material
18 covered by the subpoena or order is subject to this agreement. Such
19 notification shall include a copy of this agreement; and
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1 c. cooperate with respect to all reasonable procedures sought to be
2 pursued by the designating party whose confidential material may be
3 affected.

4 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
6 confidential material to any person or in any circumstance not authorized under
7 this agreement, the receiving party must immediately: (a) notify in writing the
8 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
9 all unauthorized copies of the protected material, (c) inform the person or persons
10 to whom unauthorized disclosures were made of all the terms of this agreement,
11 and (d) request that such person or persons execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13 9. NON TERMINATION AND RETURN OF DOCUMENTS

14 Within 60 days after the termination of this action, including all appeals,
15 each receiving party must return all confidential material to the producing party,
16 including all copies, extracts and summaries thereof. Alternatively, the parties
17 may agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival
19 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
20 correspondence, deposition and trial exhibits, expert reports, attorney work

1 product, and consultant and expert work product, even if such materials contain
2 confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in
4 effect until a designating party agrees otherwise in writing or a court orders
5 otherwise.

6 **IT IS SO ORDERED.**

7 The District Court Clerk is directed to enter this Order and provide copies to
8 counsel.

9 **DATED** this 21st day of July 2015.

10 *s/ Rosanna Malouf Peterson*
11 ROSANNA MALOUF PETERSON
12 Chief United States District Court Judge
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