

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Peter J. Petesch, admitted *pro hac vice*
Birgitte M. Gingold, WSBA #50630
LITTLER MENDELSON, P.C.
One Union Square
600 University Street, Suite 3200
Seattle, WA 98101.3122
Telephone: 206.623.3300
Fax: 206.447.6965

The Honorable Thomas O. Rice

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

CHERYL OLSON,

Plaintiff,

v.

AARP Inc., a nonprofit corporation,
AARP Foundation, a nonprofit
corporation, and SANDRA MOORE,
an individual ,

Defendants.

Case No. 2:17-cv-00426-TOR

STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively 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: (a) personal identifying information
4 (including names, Social Security numbers, home addresses or telephone numbers),
5 sensitive employment records, and documents that are protected by the Health
6 Insurance Portability and Accountability Act for current and former employees of
7 AARP and AARP Foundation, and volunteers and participants of the AARP
8 Foundation Senior Community Service Employment Program (SCSEP); (b)
9 Defendants’ non-public financial, accounting, commercial, proprietary data or
10 applications, or other proprietary or trade secret information; (c) Non-public
11 financial records of AARP Foundation SCSEP participants; (d) Information over
12 which the designating party is obligated to maintain confidentiality by contract or
13 otherwise; and (f) information expressly designated as, and reasonably believed by
14 the designating party to be, confidential in nature.

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential
17 material (as defined above), but also (1) any information copied or extracted from
18 confidential material; (2) all copies, excerpts, summaries, or compilations of
19 confidential material; and (3) any testimony, conversations, or presentations by
20 parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this agreement do not cover
22 information that is in the public domain or becomes part of the public domain
23 through trial or otherwise.

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

25 4.1. Basic Principles. A receiving party may use confidential material that
26 is disclosed or produced by another party or by a non-party in connection with this

1 case only for prosecuting, defending, or attempting to settle this litigation.
2 Confidential material may be disclosed only to the categories of persons and under
3 the conditions described in this agreement. Confidential material must be stored and
4 maintained by a receiving party at a location and in a secure manner that ensures that
5 access is limited to the persons authorized under this agreement.

6 4.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court to permitted in writing by the designating party, a
8 receiving party may disclose any confidential material only to:

9 (a) the receiving party’s counsel of record in this action, as well as
10 employees of counsel to whom it is reasonably necessary to disclose the information
11 for this litigation;

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

16 (c) experts and consultants to whom disclosure is reasonably
17 necessary for this litigation and who have signed the “Acknowledgment and
18 Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the
21 duplication of confidential material, provided that counsel for the party retaining the
22 copy or imaging service instructs the service not to disclose any confidential material
23 to third parties and to immediately return all originals and copies of any confidential
24 material;

25 (f) during their depositions, witnesses in the action to whom
26 disclosure is reasonably necessary and who have signed the “Acknowledgment and

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

6 (g) the author or recipient of a document containing the information
7 or a custodian or other person who otherwise possessed or knew the information;
8 and

9 (h) mediators engaged by the parties.

10 4.3. Filing Confidential Material. Before filing confidential material or
11 discussing or referencing such material in court filings, the filing party shall confer
12 with the designating party to determine whether the designating party will remove
13 the confidential designation, whether the document can be redacted, or whether a
14 motion to seal or stipulation and proposed order is warranted.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1. Exercise of Restraint and Care in Designating Material for Protection.
17 Each party or non-party that designates information or items for protection under
18 this agreement must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The designating party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications for which protection is not warranted are not swept unjustifiably
22 within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper
25 purposed (*e.g.* to unnecessarily encumber or delay the case development process or
26

1 to impose unnecessary expenses and burdens on other parties) expose the
2 designating party to sanctions.

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

6 5.2. Manner and Timing of Designations. Except as otherwise provided in
7 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, disclosure or discovery material that qualifies for protection
9 under this agreement must be clearly so designated before or when that material is
10 disclosed or produced.

11 (a) Information in documentary form: (*e.g.*, paper or electronic
12 documents and deposition exhibits, but excluding transcripts of depositions or other
13 pretrial or trial proceedings), the designating party must affix the word
14 “CONFIDENTIAL” to each page that contains confidential material. If only a
15 portion or portions of the material on a page qualifies for protection, the producing
16 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
17 markings in the margins).

18 (b) Testimony given in deposition or in other pretrial or trial
19 proceedings: the parties must identify on the record, during the deposition, hearing,
20 or other proceeding, all protected testimony, without prejudice to their right to so
21 designate other testimony after reviewing the transcript. Any party or non-party
22 may, within fifteen days after receiving a deposition transcript, designate portions of
23 the transcript, or exhibits thereto, as confidential. If a party or non-party desires to
24 protect confidential information at trial, the issue should be addressed during the pre-
25 trial conference.

1 (c) Other tangible items: the producing party must affix in a
2 prominent place on the exterior of the container or containers in which the
3 information or item is stored the word "CONFIDENTIAL." If only a portion or
4 portions of the information or item warrant protection, the producing party, to the
5 extent practicable, shall identify the protected portion(s).

6 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the designating party's right to secure protection under this agreement for such
9 material. Upon timely correction of a designation, the receiving party must make
10 reasonable efforts to ensure that the material is treated in accordance with the
11 provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1. Timing of Challenges. Any party or non-party may challenge a
14 designation of confidentiality at any time. Unless a prompt challenge to a
15 designating party's confidentiality designation is necessary to avoid foreseeable,
16 substantial unfairness, unnecessary economic burdens, or a significant disruption or
17 delay of the litigation, a party does not waive its right to challenge a confidentiality
18 designation by electing not to mount a challenge promptly after the original
19 designation is disclosed.

20 6.2. Meet and Confer. The parties must make every attempt to resolve any
21 dispute regarding confidential designations without court involvement. Any motion
22 regarding confidential designations or for a protective order must include a
23 certification, in the motion or in a declaration or affidavit, that the movant has
24 engaged in a good faith meet and confer conference with other affected parties in an
25 effort to resolve the dispute without court action. The certification must list the date,
26

1 manner, and participants to the conference. A good faith effort to confer requires a
2 face-to-face meeting or a telephone conference.

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

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

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

15 (a) promptly notify the designating party in writing and include a
16 copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or
18 order to issue in the other litigation that some or all of the material covered by the
19 subpoena or order is subject to this agreement. Such notification shall include a copy
20 of this agreement; and

21 (c) cooperate with respect to all reasonable procedures sought to be
22 pursued by the designating party whose confidential material may be affected.

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
25 confidential material to any person or in any circumstance not authorized under this
26 agreement, the receiving party must immediately (a) notify in writing the designating

1 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
2 unauthorized copies of the protected material, (c) inform the person or persons to
3 whom unauthorized disclosures were made of all the terms of this agreement, and
4 (d) request that such person or persons execute the “Acknowledgement and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the receiving parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
12 may be established in an e-discovery order or agreement that provides for production
13 without prior privilege review. Parties shall confer on an appropriate non-waiver
14 order under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

20 Notwithstanding this provision, counsel are entitled to retain one archival
21 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
22 correspondence, deposition and trial exhibits, expert reports, attorney work product,
23 and consultant and expert work product, even if such materials contain confidential
24 material.

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 DATED: January 23, 2019 /s/ Paul S. Stewart
7 Paul S. Stewart, WSBA #45469
8 Alex M. Wilson, WSBA #54309
9 Attorneys for Plaintiff

10 DATED: January 23, 2019 /s/ Birgitte M. Gingold
11 Birgitte M. Gingold, WSBA # 50630
12 Peter J. Petesch, admitted *pro hac vice*
13 Attorneys for Defendants

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15
16 DATED: January 24, 2019 
17 Honorable Thomas O. Rice
18 Chief United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or type full
4 address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Western District of Washington on [date] in the case of
7 *Cheryl Olson v. AARP et al.* Case No. 2:17-cv-00426-TOR. I agree to comply with
8 and to be bound by all terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment
10 in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court
14 for the Eastern District of Washington for the purpose of enforcing the terms of this
15 Stipulated Protective Order, even if such enforcement proceedings occur after
16 termination of this action.

17
18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____