

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 13, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DR. ABDUL KHAN,

Plaintiff,

v.

BECHTEL NATIONAL, INC., and
NATIONAL ENGINEERING
SERVICES CORPORATION,

Defendants.

NO: 4:20-CV-5020-RMP

ORDER GRANTING MOTION FOR
ENTRY OF A STIPULATED
PROTECTIVE ORDER

BEFORE THE COURT is a motion for entry of a stipulated protective order, ECF No. 11, by Plaintiff Dr. Abdul Khan and Defendants Bechtel National, Inc. and National Engineering Services Corporation. A district court may issue protective orders regarding discovery upon a showing of good cause. Fed. R. Civ. P. 26(c). Before issuing a stipulated protective order, a district court judge should ensure that the protective order's restrictions do not infringe on the public's general right to inspect and copy judicial records and documents. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *see also Courthouse News Serv. v.*

ORDER GRANTING MOTION FOR ENTRY OF A STIPULATED PROTECTIVE
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1 benefit information, investigations, performance and disciplinary
2 information, termination reasons, Social Security numbers, contact
3 information, dates of birth, taxes or tax returns, medical and healthcare
4 information and records, for current and former employees (except
5 Plaintiff), officers, or directors of Defendants or any affiliated entities;

6 (b) Plaintiff's tax records, date of birth, and Social Security number;

7 (c) Plaintiff's medical and/or counseling records, including but not limited to,
8 bills, charts, and invoices;

9 (d) Confidential, proprietary, or financial information of Defendant and/or any
10 affiliated entities.

11 Material marked "Confidential" shall include any document, file, portion of file,
12 transcribed testimony, or other material that the Designating Party in good faith
13 reasonably believes comprises confidential information.

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

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

1 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 **4.1 Basic Principles.** A receiving party may use confidential material that
3 is disclosed or produced by another party or by a non-party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation.
5 Confidential material may be disclosed only to the categories of persons and under
6 the conditions described in this agreement. Confidential material must be stored and
7 maintained by a receiving party at a location and in a secure manner that ensures
8 that access is limited to the persons authorized under this agreement.

9 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
10 otherwise ordered by the court or permitted in writing by the designating party, a
11 receiving party may disclose any confidential material only to:

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

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

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

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

2 (e) copy or imaging services retained by counsel to assist in the duplication of
3 confidential material, provided that counsel for the party retaining the copy or
4 imaging service instructs the service not to disclose any confidential material to
5 third parties and to immediately return all originals and copies of any confidential
6 material;

7 (f) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the “Acknowledgment and Agreement
9 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
10 ordered by the court. Pages of transcribed deposition testimony or exhibits to
11 depositions that reveal confidential material must be separately bound by the court
12 reporter and may not be disclosed to anyone except as permitted under this
13 agreement;

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 **4.3 Filing Confidential Material.** Before filing confidential material or
17 discussing or referencing such material in court filings, the filing party shall confer
18 with the designating party to determine whether the designating party will remove
19 the confidential designation, whether the document can be redacted, or whether a
20 motion to seal or stipulation and proposed order is warranted.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 **5.1 Exercise of Restraint and Care in Designating Material for**
3 **Protection.** Each party or non-party that designates information or items for
4 protection under this agreement must take care to limit any such designation to
5 specific material that qualifies under the appropriate standards. The designating
6 party must designate for protection only those parts of material, documents, items,
7 or oral or written communications that qualify, so that other portions of the material,
8 documents, items, or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or delay the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 designating party to sanctions.

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

18 **5.2 Manner and Timing of Designations.** Except as otherwise provided
19 in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
20 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
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1 protection under this agreement must be clearly so designated before or when the
2 material is disclosed or produced.

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

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

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

3 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the designating party's right to secure protection under this agreement for such
6 material. Upon timely correction of a designation, the receiving party must make
7 reasonable efforts to ensure that the material is treated in accordance with the
8 provisions of this agreement.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

17 **6.2 Meet and Confer.** The parties must make every attempt to resolve any
18 dispute regarding confidential designations without court involvement. Any motion
19 regarding confidential designations or for a protective order must include a
20 certification, in the motion or in a declaration or affidavit, that the movant has
21 engaged in a good faith meet and confer conference with other affected parties in

1 an effort to resolve the dispute without court action. The certification must list the
2 date, manner, and participants to the conference. A good faith effort to confer
3 requires a face-to-face meeting or a telephone conference.

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

12 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

5 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

14 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
15 **OTHERWISE PROTECTED MATERIAL**

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

3 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

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

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

13 **11. SCOPE OF ORDER**

14 This Order does not address the discoverability of documents, other than
15 mitigating any objection based on the confidentiality of the documents, nor does it
16 address the admissibility of the documents at trial or during motions practice other
17 than to the extent it addresses sealing of filed materials.

18 The confidentiality obligations imposed by this agreement shall remain in
19 effect until a designating party agrees otherwise in writing or a court orders
20 otherwise.

