

Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARLENE JORDAN,

Plaintiff,

v.

ANTHONY R. FOXX, Secretary, U.S.
Department of Transportation,
Defendant.

NO. C13-2280-RSM

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 is consistent with LCR 26(c). It 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.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: the plaintiff's medical records; the plaintiff's tax

1 returns; personnel and employment files or records of current or former employees of the
2 United States; and any other records whose production without a protective order would
3 potentially violate the Privacy Act, 5 U.S.C. § 552a.

4 3. SCOPE

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

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is
14 disclosed or produced by another party or by a non-party in connection with this case
15 only for prosecuting, defending, or attempting to settle this litigation. Confidential
16 material may be disclosed only to the categories of persons and under the conditions
17 described in this agreement. Confidential material must be stored and maintained by a
18 receiving party at a location and in a secure manner that ensures that access is limited to
19 the persons authorized under this agreement.

20 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the designating party, a receiving party
22 may disclose any confidential material only to:

23 (a) the receiving party's counsel of record in this action and counsel of
24 record in the related action entitled *Jordan v. United States*, 1:13: cv-995 CFL, Ct. of
25 Fed. Claims, and employees of counsel to whom it is reasonably necessary to disclose the
26 information for this litigation;

27 (b) the officers, directors, and employees (including agency counsel and
28 in house counsel) of the receiving party to whom disclosure is reasonably necessary for

1 this litigation, unless the parties agree that a particular document or material produced is
2 for Attorney's Eyes Only and is so designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary
4 for this litigation and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A);

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

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

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

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

19 4.3 Filing Confidential Material. Before filing confidential material or
20 discussing or referencing such material in court filings, the filing party shall confer with
21 the designating party to determine whether the designating party will remove the
22 confidential designation, whether the document can be redacted, or whether a motion to
23 seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the
24 procedures that must be followed and the standards that will be applied when a party
25 seeks permission from the court to file material under seal.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
28 party or non-party that designates information or items for protection under this
agreement must take care to limit any such designation to specific material that qualifies

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

5 | Mass, indiscriminate, or routinized designations are prohibited. Designations that
6 | are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
7 | to unnecessarily encumber or delay the case development process or to impose
8 | unnecessary expenses and burdens on other parties) expose the designating party to
9 | 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 this
14 | agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
15 | or ordered, disclosure or discovery material that qualifies for protection under this
16 | agreement must be clearly so designated before or when the material is disclosed or
17 | produced.

18 | (a) Information in documentary form: (e.g., paper or electronic
19 | documents and deposition exhibits, but excluding transcripts of depositions or other
20 | pretrial or trial proceedings), the designating party must affix the word
21 | "CONFIDENTIAL" to each page that contains confidential material. If only a portion or
22 | portions of the material on a page qualifies for protection, the producing party also must
23 | clearly identify the protected portion(s) (e.g., by making appropriate markings in the
24 | margins).

25 | (b) Testimony given in deposition or in other pretrial or trial
26 | proceedings: the parties must identify on the record, during the deposition, hearing, or
27 | other proceeding, all protected testimony, without prejudice to their right to so designate
28 | other testimony after reviewing the transcript. Any party or non-party may, within fifteen

1 days after receiving a deposition transcript, designate portions of the transcript, or
2 exhibits thereto, as confidential.

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

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

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation
15 of confidentiality at any time. Unless a prompt challenge to a designating party’s
16 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
17 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
18 party does not waive its right to challenge a confidentiality designation by electing not to
19 mount a challenge promptly after the original 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 certification,
23 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
24 meet and confer conference with other affected parties in an effort to resolve the dispute
25 without court action. The certification must list the date, manner, and participants to the
26 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
27 conference.

28 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
intervention, the designating party may file and serve a motion to retain confidentiality

1 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).
2 The burden of persuasion in any such motion shall be on the designating party. Frivolous
3 challenges, and those made for an improper purpose (e.g., to harass or impose
4 unnecessary expenses and burdens on other parties) may expose the challenging party to
5 sanctions. All parties shall continue to maintain the material in question as confidential
6 until the court rules on the challenge.

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

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

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

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

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

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

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

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

6 This provision is not intended to modify whatever procedure may be established in an e-
7 discovery order or agreement that provides for production without prior privilege review.

8 Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

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

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 DATED May 8, 2014

22 s/Judith A. Lonquist
23 JUDITH A. LONQUIST
24 KATHERINE E. CAMERON
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DATED May 8, 2014

s/Patricia D. Gugin
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED this 27 day of May 2014.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on
7 _____ [date] in the case of *Marlene Jordan v. Anthony R. Foxx, Secretary, U.S.*
8 *Department of Transportation, USDC WDWA C13-2280-RSM* . I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment in
11 the nature of contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person or
13 entity except in strict compliance with the provisions of this Order.

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

18
19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____