

Hon. Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICHELLE P. CHUN FOOK and
YOLANDA C. COOPER,

Plaintiffs,

v.

CITY OF SEATTLE, a Washington municipal
corporation; ROBERT L. GAUTSCHI, SR., in
his official and individual capacities; HARRY
J. FITHIAN, JR., in his official and individual
capacities,

Defendants.

No. C16-01239-RSL

~~[PROPOSED]~~

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.

STIPULATED PROTECTIVE ORDER (C16-01239-RSL) - 1

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things produced
3 or otherwise exchanged: Plaintiffs' medical records; Plaintiffs' personal financial information;
4 personal identifiers such as social security numbers, addresses, and employee identifiers; personnel
5 files; files containing personal benefit and beneficiary information; files containing medical
6 information; disciplinary information; performance evaluations; investigations of claims, including
7 supporting interviews and notes; and FMLA and accommodation requests.

8 3. SCOPE

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

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

22 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
23 court or permitted in writing by the designating party, a receiving party may disclose any Confidential

1 material only to:

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

4 (b) the receiving party itself, including officers, directors, and employees (including
5 in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation,
6 unless the parties agree that a particular document or material produced is for Attorney's Eyes Only
7 and is so designated;

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

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

11 (e) copy or imaging services retained by counsel to assist in the duplication of
12 Confidential material, provided that counsel for the party retaining the copy or imaging service
13 instructs the service not to disclose any Confidential material to third parties and to immediately
14 return all originals and copies of any Confidential material;

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

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

23 4.3 Filing Confidential Material. Before filing Confidential material or discussing or

1 referencing such material in court filings, the filing party shall confer with the designating party to
2 determine whether the designating party will remove the confidential designation, whether the
3 document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted.
4 Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be
5 applied when a party seeks permission from the court to file material under seal.

6 5. DESIGNATING PROTECTED MATERIAL

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

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

18 If it comes to a designating party's attention that information or items that it designated for
19 protection do not qualify for protection, the designating party must promptly within five (5) court
20 days notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see,
22 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or
23 discovery material that qualifies for protection under this agreement must be clearly so designated

1 before or when the material is disclosed or produced.

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

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

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

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
18 qualified information or items does not, standing alone, waive the designating party's right to secure
19 protection under this agreement for such material. Upon timely correction of a designation, the
20 receiving party must make reasonable efforts to ensure that the material is treated in accordance with
21 the provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of

1 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
3 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a
4 confidentiality designation by electing not to mount a challenge promptly after the original
5 designation is disclosed.

6 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
7 confidential designations without court involvement. Any motion regarding confidential designations
8 or for a protective order must include a certification, in the motion or in a declaration or affidavit, that
9 the movant has engaged in a good faith meet and confer conference with other affected parties in an
10 effort to resolve the dispute without court action. The certification must list the date, manner, and
11 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a
12 telephone conference.

13 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention,
14 the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7
15 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such
16 motion shall be on the designating party. Frivolous challenges, and those made for an improper
17 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose
18 the challenging party to sanctions. All parties shall continue to maintain the material in question as
19 confidential until the court rules on the challenge.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party

1 must:

2 (a) promptly (within four (4) court days) notify the designating party in writing and
3 include a copy of the subpoena or court order;

4 (b) promptly (within four (4) court days) notify in writing the party who caused the
5 subpoena or order to issue in the other litigation that some or all of the material covered by the
6 subpoena or order is subject to this agreement. Such notification shall include a copy of this
7 agreement; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
9 designating party whose Confidential material may be affected.

10 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
19 MATERIAL

20 When a producing party gives notice to receiving parties that certain inadvertently produced
21 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
22 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
23 modify whatever procedure may be established in an e-discovery order or agreement that provides

1 for production without prior privilege review. Parties shall confer on an appropriate non-waiver order
2 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 receiving party
5 must return all confidential material to the producing party, including all copies, extracts and
6 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

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

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

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED this 19th day of April, 2017.

15 PETER S. HOLMES
16 Seattle City Attorney

THE PAUL WOODS LAW FIRM,
PLLC

17 By: s/ Molly Daily
18 MOLLY DAILY, WSBA #28360
19 ANDREA SCHEELE, WSBA #36773
20 Assistant City Attorneys
21 Seattle City Attorney's Office
22 701 Fifth Avenue, Suite 2050
23 Seattle, WA 98104-7097
Ph: (206) 684-8289 / (206) 615-0768
Fax: (206) 684-8284
molly.daily@seattle.gov
andrea.scheele@seattle.gov

By: s/ Paul S. Woods
PAUL S. WOODS, WSBA #42976
The Paul Woods Law Firm, PLLC
1001 Fourth Avenue, Suite 3200
Seattle, WA 98154
Ph: (425) 773-8109
Fax: (425) 523-9166
paul@paulwoodslawfirm.com

Attorney for Plaintiffs

Attorneys for Defendant City of Seattle

1 SO ORDERED:

2 DATED this 24th day of April, 2017.

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5 HONORABLE ROBERT S. LASNIK
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