

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID SCHWINDT,

Plaintiff,

v.

MENZIES AVIATION, INC., *et al.*,

Defendants.

Case No. 2:16-cv-01586-JCC

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. This order 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 that the producing party in good faith believes constitutes, contains, reveals, or relates to proprietary or confidential business, financial, or personnel information. This may include, but is not limited to, internal guidelines, manuals, instructions, training, or policies regarding business operations and health and safety matters.

1 **3. SCOPE**

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

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

9 **4.1 Basic Principles.** A receiving party may use confidential material that is disclosed or
10 produced by another party or by a non-party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
12 the categories of persons and under the conditions described in this order. Confidential material
13 must be stored and maintained by a receiving party at a location and in a secure manner that
14 ensures that access is limited to the persons authorized under this order.

15 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
16 ordered by the court or permitted in writing by the designating party, a receiving party may
17 disclose any confidential material only to:

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

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

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

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

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

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

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

13 **4.3 Filing Confidential Material.** Before filing confidential material or discussing or
14 referencing such material in court filings, the filing party shall confer with the designating party
15 to determine whether the designating party will remove the confidential designation, whether the
16 document can be redacted, or whether a motion to seal or stipulation and proposed order is
17 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
18 that will be applied when a party seeks permission from the court to file material under seal.

19 **5. DESIGNATING PROTECTED MATERIAL**

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

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

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

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

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

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

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

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

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

22 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under
24 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
25 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
26 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
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1 other parties) may expose the challenging party to sanctions. All parties shall continue to
2 maintain the material in question as confidential until the court rules on the challenge.

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

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
7 must: (a) promptly notify the designating party in writing and include a copy of the subpoena or
8 court order; (b) promptly notify in writing the party who caused the subpoena or order to issue
9 in the other litigation that some or all of the material covered by the subpoena or order is subject
10 to this order. Such notification shall include a copy of this order; and (c) cooperate with respect
11 to all reasonable procedures sought to be pursued by the designating party whose confidential
12 material may be affected.

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

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

21 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
22 **PROTECTED MATERIAL**

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery
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1 order or agreement that provides for production without prior privilege review. Parties shall
2 confer on an appropriate 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 receiving
5 party must return all confidential material to the producing party, including all copies, extracts
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
7 destruction.

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

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

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15 IT IS SO ORDERED.

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17 DATED this 13th day of July, 2017.

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21 John C. Coughenour
22 UNITED STATES DISTRICT JUDGE
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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 that I have read in its entirety and
5 understand the Protective Order that was issued by the United States District Court for the
6 Western District of Washington on _____ [date] in the case of *Schwindt v.*
7 *Menzies Aviation, Inc., et al.*, Case No. 2:16-cv-01586-JCC. I agree to comply with and to be
8 bound by all the terms of this Protective Order and I understand and acknowledge that failure to
9 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Protective Order to any person or entity except in strict compliance with the provisions of this
12 Order.

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

16
17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____