

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JORGE TORRES,

Plaintiff,

vs.

CITY OF SEATTLE

Defendants.

No. 2:16-CV-01863-TSZ

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

1 applicable legal principles, and it does not presumptively entitle parties to file confidential
2 information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things produced
5 or otherwise exchanged: (1) police personnel files; (2) unsustained police internal investigations
6 and disciplinary files; (3) unsustained complaints of police misconduct; (4) medical, psychological,
7 and financial records; (5) non-public tactical policies and procedures and training protocols; (6)
8 non-public police documents concerning procedures for protests and demonstrations and other
9 emergency management; (7) non-public law enforcement, intelligence, and tactical documents; (8)
10 records that could implicate the privacy rights of the plaintiff or third parties, including, but not
11 limited to, personal identifying information (“PII”) such as date(s) of birth, social security
12 number(s), personal home address(es), phone number(s), and e-mail address(es); driver’s license or
13 state identification number(s); personal financial information; passport information; immigration
14 status; criminal history and/or criminal record number(s); and other unspecified PII; and (9)
15 plaintiff’s medical records and bills; plaintiff’s employment information.

16 3. SCOPE

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

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

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

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

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

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

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

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

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

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

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party to
11 determine whether the designating party will remove the confidential designation, whether the
12 document can be redacted, or whether a motion to seal or stipulation and proposed order is
13 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
14 that will be applied when a party seeks permission from the court to file material under seal.

15 5. DESIGNATING PROTECTED MATERIAL

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

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
2 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
3 encumber or delay the case development process or to impose unnecessary expenses and burdens
4 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 for
6 protection do not qualify for protection, the designating party must promptly notify all other parties
7 that it is withdrawing the mistaken designation.

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

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition
13 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the
14 designating party must affix the word "CONFIDENTIAL" to each page that contains confidential
15 material. If only a portion or portions of the material on a page qualifies for protection, the
16 producing 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 proceedings: the parties must
19 identify on the record, during the deposition, hearing, or other proceeding, all protected testimony,
20 without prejudice to their right to so designate other testimony after reviewing the transcript. Any
21 party or non-party may, within fifteen days after receiving a deposition transcript, designate
22 portions of the transcript, or exhibits thereto, as confidential.
23

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

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

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

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

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

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

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

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
19 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 confidential
22 material to any person or in any circumstance not authorized under this agreement, the receiving
23

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

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

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

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

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

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: November 8, 2017

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Seattle City Attorney

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DATED this 7th day of December, 2017.

Thomas S. Zilly
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 that I have read
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States District
6 Court for the Western District of Washington on _____, 20____, in the case of *Torres v. City of Seattle*, I
7 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
8 and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
9 contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject
10 to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
11 this Order.

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

15 Date: _____

16 City and State where sworn and signed: _____

17 Printed name: _____

18 Signature: _____