

THE HONORABLE ROBERT S. LASNIK

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

RALPH G. JOHNSON,  
Plaintiff,

v.

THE BOEING COMPANY, a Delaware  
corporation, and BARBARA WILEY,  
individually and on behalf of her marital  
community,  
Defendants.

Case No. 2:17-cv-00706-RSL

**MOTION TO APPROVE  
STIPULATED PROTECTIVE ORDER**

**Date of Filing:** May 5, 2017

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

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

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things  
5 produced or otherwise exchanged:

6 All documents, interrogatory responses, admissions, depositions, other pretrial or trial  
7 testimony, medical records, EEO or other Boeing investigative reports, employee performance or  
8 disciplinary documents (including but not limited to Corrective Action Memoranda), and other  
9 discovery materials produced, served, or given by a party to this litigation, and all third party  
10 provider information that is disclosed in connection with a signed authorization or release by a  
11 party to this litigation, may be designated by the party producing or authorizing the disclosure of  
12 such material or testimony as “Confidential” if they contain information relating to the medical  
13 conditions and restrictions of third-parties who have a reasonable expectation of privacy and if  
14 they contain information regarding private employment information regarding third-party  
15 employees.

16 3. SCOPE

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

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

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

25 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
26 or produced by another party or by a non-party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
2 the categories of persons and under the conditions described in this agreement. Confidential  
3 material must be stored and maintained by a receiving party at a location and in a secure manner  
4 that ensures that access is limited to the persons authorized under this agreement.

5 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the designating party, a receiving party may  
7 disclose any confidential material only to:

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

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

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

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

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

21 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
22 necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

24 Pages of transcribed deposition testimony or exhibits to depositions that reveal  
25 confidential material must be separately bound by the court reporter and may not be  
26 disclosed to anyone except as permitted under this agreement;

1 (g) the author or recipient of a document containing the information or a custodian or  
2 other person who otherwise possessed or knew the information;

3 (h) a third party neutral retained by the parties to assist in the resolution of the matter.

4 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
5 referencing such material in court filings, the filing party shall confer with the designating party  
6 to determine whether the designating party will remove the confidential designation, whether the  
7 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
8 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
9 standards that will be applied when a party seeks permission from the court to file material under  
10 seal.

11 5. DESIGNATING PROTECTED MATERIAL

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

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
20 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
21 unnecessarily encumber or delay the case development process or to impose unnecessary  
22 expenses and burdens on other parties) expose the designating party to sanctions. If it comes to a  
23 designating party's attention that information or items that it designated for protection do not  
24 qualify for protection, the designating party must promptly notify all other parties that it is  
25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this

1 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
2 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
3 be clearly so designated before or when the material is disclosed or produced.

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

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

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

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

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1           6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           6.1       Timing of Challenges. Any party or non-party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

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

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

22           7.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
23                    OTHER LITIGATION

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

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

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

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

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
17 PROTECTED MATERIAL

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

24 10. NON TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the termination of this action, including all appeals, each receiving  
26 party must return all confidential material to the producing party, including all copies, extracts

1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
2 destruction.

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

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

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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1 Dated: September 14, 2017

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7 Dated: September 14, 2017

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Attorneys for Defendant  
THE BOEING COMPANY

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.  
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9 Dated: Sept. 28, 2017

10 By:   
11 HONORABLE ROBERT S. LASNIK  
12 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [PRINT OR TYPE FULL NAME],  
of \_\_\_\_\_ [PRINT OR TYPE FULL ADDRESS], declare  
under penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
Order that was issued by the United States District Court for the Western District of  
Washington on \_\_\_\_\_ [DATE] in the case of *Ralph Johnson v. The Boeing  
Company*, USDC Case No. 2:17-cv-00706. I agree to comply with and to be bound by all the  
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_