

1 The Honorable Marsha J. Pechman

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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 JOVANNA EDGE, et al.,

11 Plaintiffs,

12 v.

13 CITY OF EVERETT, a Washington Municipal
14 Corporation,

15 Defendant.

Case No. 2:17-cv-01361-MJP

STIPULATED PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:
November 17, 2017

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17 In accordance with LCR 26(c)(2) the Parties submit this Stipulated Protective Order.
18 Based upon the representations and submissions of the parties, the Court's records and files in
19 this matter, and good cause appearing therefore, the Court enters the following Protective Order
20 (hereinafter "Order" or "Protective Order") to govern the discovery, use, and handling of
21 Protected Material produced by parties and non-parties in the above-captioned case. IT IS
22 HEREBY ORDERED that:

23 **1. PURPOSE AND LIMITATIONS**

24 Discovery in this action is likely to involve production of confidential, proprietary, or
25 private information for which special protection may be warranted. Accordingly, the parties
26 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
27 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
28 protection on all disclosures or responses to discovery, the protection it affords from public

1 disclosure and use extends only to the limited information or items that are entitled to
2 confidential treatment under the applicable legal principles, and it does not presumptively entitle
3 parties to file confidential information under seal.

4 **2. “CONFIDENTIAL” MATERIAL**

5 “Confidential” material shall include the following documents and tangible things
6 produced or otherwise exchanged: Photographs and other visual depictions that might embarrass
7 or expose the person depicted to criticism or ridicule, as designated by Plaintiffs; physical and
8 email or social media identifying information that would allow persons to identify the residence
9 or name of confidential social media accounts; confidential pricing and business information
10 belonging to plaintiffs; certain law enforcement information and data in the possession of the
11 City of Everett; certain business records of Plaintiffs; documents exempt under the Washington
12 Public Records Act, chapter 42.56 RCW; materials subject to LCR 5.2(a).

13 **3. SCOPE**

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

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

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

21 **4.1. Basic Principles:** A receiving party may use confidential material that is
22 disclosed or produced by another party or by a non-party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
24 disclosed only to the categories of persons and under the conditions described in this agreement.
25 Confidential material must be stored and maintained by a receiving party at a location and in a
26 secure manner that ensures that access is limited to the persons authorized under this agreement.

27 **4.2. Disclosure of “CONFIDENTIAL” Information or Items:** Unless otherwise
28 ordered by the court or permitted in writing by the designating party, a receiving party may

1 disclose any confidential material only to:

- 2 (a) the receiving party's counsel of record in this action, as well as employees
3 of counsel to whom it is reasonably necessary to disclose the information
4 for this litigation;
- 5 (b) the officers, directors, and employees (including in house counsel) of the
6 receiving party to whom disclosure is reasonably necessary for this
7 litigation, unless the parties agree that a particular document or material
8 produced is for Attorney's Eyes Only and is so designated;
- 9 (c) experts and consultants to whom disclosure is reasonably necessary for
10 this litigation and who have signed the "Acknowledgment and Agreement
11 to Be Bound" (Exhibit A);
- 12 (d) the court, court personnel, and court reporters and their staff;
- 13 (e) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the
15 copy or imaging service instructs the service not to disclose any
16 confidential material to third parties and to immediately return all originals
17 and copies of any confidential material;
- 18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the "Acknowledgment and
20 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
21 designating party or ordered by the court. Pages of transcribed deposition
22 testimony or exhibits to depositions that reveal confidential material must
23 be separately bound by the court reporter and may not be disclosed to
24 anyone except as permitted under this agreement;
- 25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the
27 information.
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1 **4.3. Filing Confidential Material:** Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party
3 to determine whether the designating party will remove the confidential designation, whether the
4 document can be redacted, or whether a motion to seal or stipulation and proposed order is
5 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
6 standards that will be applied when a party seeks permission from the court to file material under
7 seal.

8 **5. DESIGNATING PROTECTED MATERIAL**

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

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

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

23 **5.2 Manner and Timing of Designations:** Except as otherwise provided in this
24 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
25 ordered, disclosure or discovery material that qualifies for protection under this agreement must
26 be clearly so designated before or when the material is disclosed or produced.

- 27 (a) **Information in documentary form:** (*e.g.*, paper or electronic documents
28 and deposition exhibits, but excluding transcripts of depositions or other

1 pretrial or trial proceedings), the designating party must affix the word
2 “CONFIDENTIAL” to each page that contains confidential material. If
3 only a portion or portions of the material on a page qualifies for
4 protection, the producing party also must clearly identify the protected
5 portion(s) (e.g., by making appropriate markings in the margins).

6 (b) **Testimony given in deposition or in other pretrial proceedings:** the
7 parties and any participating non-parties must identify on the record, during
8 the deposition or other pretrial proceeding, all protected testimony, without
9 prejudice to their right to so designate other testimony after reviewing the
10 transcript. Any party or non-party may, within fifteen days after receiving the
11 transcript of the deposition or other pretrial proceeding, designate portions of
12 the transcript, or exhibits thereto, as confidential. If a party or non-party
13 desires to protect confidential information at trial, the issue should be
14 addressed during the pre-trial conference.

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

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

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 **6.1 Timing of Challenges:** Any party or non-party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 **6.2 Meet and Confer:** The parties must make every attempt to resolve any dispute
5 regarding confidential designations without court involvement. Any motion regarding
6 confidential designations or for a protective order must include a certification, in the motion or in
7 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
8 conference with other affected parties in an effort to resolve the dispute without court action. The
9 certification must list the date, manner, and participants to the conference. A good faith effort to
10 confer requires a face-to-face meeting or a telephone conference.

11 **6.3 Judicial Intervention:** If the parties cannot resolve a challenge without court
12 intervention, the designating party may file and serve a motion to retain confidentiality under
13 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
15 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
16 other parties) may expose the challenging party to sanctions. All parties shall continue to
17 maintain the material in question as confidential until the court rules on the challenge.

18 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN** 19 **OTHER LITIGATION**

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

- 23 (a) promptly notify the designating party in writing and include a copy of the
24 subpoena or court order;
- 25 (b) promptly notify in writing the party who caused the subpoena or order to issue in
26 the other litigation that some or all of the material covered by the subpoena or
27 order is subject to this agreement. Such notification shall include a copy of this
28 agreement; and

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

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

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

11 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a producing party gives notice to receiving parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery
17 order or agreement that provides for production without prior privilege review. The parties agree
18 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

19 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

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

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

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

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

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5 Respectfully submitted November 13, 2017.

6 **Newman Du Wors LLP**

Pacifica Law Group

7 s/ Keith Scully

s/ Sarah C. Johnson

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Derek A. Newman, WSBA No. 26967
dn@newmanlaw.com

Mathew J. Segal, WSBA #29797
Matthew.Segal@pacificalawgroup.com

9 Jessica V. Newman, WSBA #28080
jessica@newmanlaw.com

Sarah S. Washburn, WSBA #44418
Sarah.Washburn@pacificalawgroup.com

10 Keith Scully, WSBA #28677
keith@newmanlaw.com

Sarah C. Johnson, WSBA #34529
sarah.johnson@pacificalawgroup.com

11 Jason Sykes, WSBA #44369
jason@newmanlaw.com

1191 Second Avenue, Suite 2000
Seattle, WA 98101

13 *Attorneys for Plaintiffs*

Attorneys for Defendant

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16 **ORDER**

17 PURSUANT TO STIPULATION, IT IS SO ORDERED

18 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
19 documents in this proceeding shall not, for the purposes of this proceeding or any other
20 proceeding in any other court, constitute a waiver by the producing party of any privilege
21 applicable to those documents, including the attorney-client privilege, attorney work-product
22 protection, or any other privilege or protection recognized by law.

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24 DATED this 13th day of November, 2017.

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Marsha J. Pechman
27 United States District Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury 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 [date] in the
7 case of _____ [insert formal name of the case and the number and initials assigned
8 to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
11 in any manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this 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 Stipulated
15 Protective Order, 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 _____
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