

Hon. James L. Robart
Trial Date: 5/6/2019

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL ESPINOZA,

Plaintiff,

v.

THE CITY OF SEATTLE, WASHINGTON,
and LIEUTENANT THOMAS MAHAFFEY,
individually,

Defendants.

No. C17-01709-JLR

~~PROTECTED~~
**STIPULATION AND ORDER FOR
PROTECTION OF CONFIDENTIAL
DISCOVERY DOCUMENTS**

[CLERK'S ACTION REQUIRED]

THE PARTIES, Plaintiff Daniel Espinoza, represented by Thomas G. Jarrard, Matthew Z. Crotty and John M. Tymczyszyn, and Defendant City of Seattle, represented by Assistant City Attorneys David Bowman and Andrea Scheele, stipulate and agree to the terms and procedures set forth in the below Protective Order for designating and protecting confidential information.

DATED this 28th day of June, 2018.

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Seattle City Attorney

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DAVID BOWMAN, WSBA #28523
ANDREA SCHEELE, WSBA #36773
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Attorneys for Plaintiff

ORDER

Based on the foregoing stipulation of the parties and good cause appearing, **NOW, THEREFORE,**

IT IS ORDERED that the parties to the above-captioned case shall disclose documents designated as confidential subject to the following terms and conditions:

1. The Documents may contain or refer to sensitive confidential information, including medical information, personnel files containing benefit and beneficiary information, discipline, performance evaluations, investigations of claims and other documents that would

1 normally not be available to persons other than the employee and the supervisory chain for such
2 employee. If disclosed other than as provided in this Protective Order, such information could
3 result in invasion of the privacy of non-litigants. In order that all parties may obtain evidence in
4 this case, it is necessary to make such Documents and discovery available to counsel of record and
5 others while protecting each party against unnecessary disclosure of private and confidential
6 information. Consequently, no Documents or discovery or copies of Documents or discovery
7 designated confidential by this Order shall be delivered to any person except as provided in
8 paragraphs 6, 8 and 9. Neither the contents nor substance of any such Document or discovery shall
9 be revealed except to persons authorized by paragraphs 7, 9 and 10 of this Order.

10 All persons bound by this Protective Order shall maintain confidentiality, both during and
11 after disposition of this case.

12 2. As used herein, the term "CONFIDENTIAL" is defined as follows:

13 a. Any Document which is marked as such by stamping the cover or first page
14 of each such Document with the word "CONFIDENTIAL." Some documents stamped
15 "CONFIDENTIAL" may also be marked "ATTORNEY'S EYES ONLY," in which case they shall
16 only be disclosed to individuals described in section 6 b-f of this Order. All copies of materials so
17 marked shall also be stamped "CONFIDENTIAL" and dated if the duplicating process by which
18 copies are made does not produce the original stamp. The person designating Documents as
19 "CONFIDENTIAL" shall be deemed the "Designating Person" for purposes of this Protective
20 Order. If any Document so designated becomes publicly available through no fault of a recipient
21 of such Document pursuant to this Order, then the document will lose its "CONFIDENTIAL"
22 status.

23 b. Any deposition designated by any person as "CONFIDENTIAL" at any

1 time during the deposition or upon the conclusion of the deposition, as set forth below. Any
2 depositions so designated shall be marked "CONFIDENTIAL" by the court reporter on all
3 transcripts and on the original.

4 c. Documents or testimony designated "CONFIDENTIAL" are expressly
5 subject to this Court's ruling on their confidentiality.

6 3. Nothing in this Order shall require any person to treat as "CONFIDENTIAL" any
7 material or information which has not been so designated in accordance with this Order.

8 4. The Parties agree, and the Court hereby orders, that each Designating Person shall
9 exercise caution in designating any Document and any portion of a deposition as
10 "CONFIDENTIAL." This category shall be reserved for Documents which contain information
11 that most individuals would consider private and confidential information relating to employment
12 and/or medical records. The City agrees that when determining which documents should be
13 designated "CONFIDENTIAL," it will be guided by considerations of which documents may be
14 exempt from disclosure or subject to redaction under the Public Records Act.

15 5. Each Designating Person may orally designate as "CONFIDENTIAL" any
16 testimony during the course of a deposition that refers or relates to a confidential Document, in
17 which case the court reporter shall transcribe the testimony so designated in a separate volume
18 marked "CONFIDENTIAL." Counsel for all parties will receive copies of all answers, Documents
19 and testimony designated "CONFIDENTIAL" or otherwise for their use. In any event, counsel
20 shall have 15 days after receiving a deposition transcript to designate pages of the transcript (and
21 exhibits thereto) as "CONFIDENTIAL." Until expiration of the 15-day period, the parties will
22 treat the entire deposition as subject to protection against disclosure under this Order. If no party's
23 counsel timely designates confidential information in a deposition in the manner described above,

1 then none of the transcript or its exhibits will be treated as "CONFIDENTIAL." For the sake of
2 convenience, the parties may agree to treat as "CONFIDENTIAL" material the entirety of any
3 transcript in which confidential Documents or information have been discussed or attached as
4 exhibits.

5 6. CHALLENGE TO DESIGNATION. If a Party contends that any material
6 designated as "CONFIDENTIAL" is not entitled to confidential treatment, that Party may at any
7 time give written notice challenging the designation to the Party that designated the material as
8 "CONFIDENTIAL." The designating Party shall respond in writing to the notice challenging the
9 designation within fourteen (14) calendar days, or within such other period of time as may be
10 agreed upon by the Parties. If the designating Party refuses to remove the "CONFIDENTIAL"
11 designation, its response shall state the reasons for this refusal. If the Parties are unable to resolve
12 their dispute over the designation of the material, then, after meeting and conferring, the Party that
13 designated the material confidential shall, either: (a) remove such designation; or (b) if it desires
14 to retain the confidential designation, may within 14 days request a Telephonic Discovery
15 Conference with the court to resolve the matter, or (c) seek a protective order from the court as
16 prescribed by Fed R. Civ. P 26(c) and the local rules, but shall not seek any attorney fees or costs
17 related to seeking such an order.

18 7. "CONFIDENTIAL" material (until such time as this Court rules on the question of
19 its confidentiality, if any, and the appropriate treatment to be afforded confidential material) may
20 be used solely for the purposes of this litigation and may be disclosed solely to the following
21 qualified persons:

- 22 a. Named parties;
- 23 b. Attorneys, including both outside and in-house counsel, for any party

1 engaged in the litigation and employees of such attorneys assisting in the litigation;

2 c. Persons expressly retained to assist such party's counsel in the preparation
3 of this action for trial, including expert witnesses;

4 d. Persons necessary to the preparation of Documents, and transcription of
5 testimony;

6 e. The author or a prior recipient of the documents who is or may be a potential
7 witness; and

8 f. This Court and/or the trier of fact.

9 "CONFIDENTIAL" material shall *not* be disclosed to any other person absent consent of the
10 Designating Person or further order of the Court. Nothing herein shall be construed to prevent this
11 Court from disclosing any facts relied upon in making any evidentiary rulings, rulings on motions,
12 or orders of whatever description.

13 8. Before disclosing "CONFIDENTIAL" material to any person falling within
14 categories 6 a-f, above, counsel for the party making such disclosures shall advise such person in
15 writing not to disclose any "CONFIDENTIAL" material to any other person and that, if the person
16 does disclose such "CONFIDENTIAL" material, the person may be subject to the sanctions of this
17 Court. Counsel for the party making such disclosure may satisfy this notice requirement by
18 providing a copy of this Order to any party to whom "CONFIDENTIAL" material is to be
19 disclosed.

20 9. If a party wishes to use "CONFIDENTIAL" material to support a motion or at trial,
21 the party submitting the materials:

22 a. If seeking to have the record containing such material sealed, shall submit
23 to the Court a motion to seal pursuant to this Court's rules, including LCR 5(g).

1 b. If not seeking to have the record containing such material sealed, and not
2 the Designating Person, shall comply with either of the following requirements:

3 i. At least ten (10) business days prior to the filing or use of the
4 “CONFIDENTIAL” material, or in the case of a responsive or reply brief, as soon as practicable
5 prior to filing or use, the submitting party shall give notice to all Designating Persons of the
6 submitting party’s intention to file or use the “CONFIDENTIAL” material, including specific
7 identification (by reference to Bates number or other identifier) of the “CONFIDENTIAL”
8 material. The Designating Person may then file a motion to seal, pursuant to this Court’s rules,
9 including LCR 5(g); or

10 ii. At the time of filing or desiring to use the “CONFIDENTIAL”
11 material, the submitting party shall submit the materials pursuant to the following procedure:

12 (i) The Document(s) containing or referring to
13 “CONFIDENTIAL” material shall be put in a sealed envelope, sealed in the envelope, and
14 provided to the Court;

15 (ii) The envelope must be labeled “CONDITIONALLY
16 UNDER SEAL;” and

17 (iii) The party submitting the Document(s) must affix to the
18 envelope a cover sheet that contains the case caption and states that the enclosed record is subject
19 to a motion to file the record under seal. The Designating Person may then file a motion to seal,
20 pursuant to this Court’s rules, including LCR 5(g), within ten (10) business days after the
21 Document(s) are provided to the Court. Such Document(s) will not be filed with the Clerk of Court
22 until the Court rules on the motion to seal. If no party or non-party files a motion to seal, the
23 Document(s) will be filed, unsealed, after the expiration of ten (10) business days.

1 10. “CONFIDENTIAL” material may be used in connection with the examination by
2 deposition of any witness. Whenever “CONFIDENTIAL” material is so disclosed in a deposition,
3 the party making such disclosure shall inform the witness, on the record, that the use of such
4 “CONFIDENTIAL” material is subject to the terms of this Protective Order and that the witness
5 is bound by the terms of this Protective Order. If any person present at the deposition, other than
6 the reporter and witness, does not come within the categories of persons defined in paragraphs 6
7 a-f of this Order, then that person shall not continue to be present while this “CONFIDENTIAL”
8 material is used during the deposition.

9 11. The provisions of this Protective Order shall continue in effect unless or until
10 modified by this Court in a future order (which is expressly contemplated by the terms of this
11 Protective Order), or until expressly released by all parties. Upon final determination of the subject
12 litigation, each party will return to the other, or destroy (at the election of the Designating Person)
13 all “CONFIDENTIAL” material in its possession and control and all copies of material deemed
14 by this Court in a future order to be confidential or which have been treated as confidential by the
15 parties. In no case shall such documents be used in other litigation unless specifically authorized
16 in this Order.

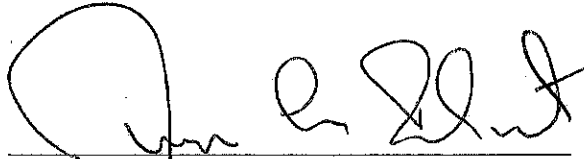
17 12. All Confidential documents, including all copies, shall be returned to counsel for
18 the originating party at the conclusion of this litigation (including the conclusion of any appeal),
19 or destroyed, at the direction of counsel for the originating party, provided that counsel for each
20 party may maintain, in confidence, a copy of any such documents as counsel deems necessary to
21 justify professional judgments made in the case.

22 13. In the event a party is subject to a discovery request or subpoena from a non-party
23 calling for the production of Documents produced by another party designated

1 "CONFIDENTIAL," then notice of such shall be given to the Designating Person/party. The
2 Designating party shall have the obligation of bringing on a motion for relief or direction from
3 this Court. Absent such a motion or action by the Designating party, the other party may comply
4 with the discovery requests or subpoena including the production of the "CONFIDENTIAL"
5 materials.

6 The clerk shall send copy of this Order to all counsel of record.

7 DATED this 20 day of ~~June~~^{July}, 2018.



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10 James L. Robart, Judge
U.S. District Court

11 Western District of Washington

12 Presented by:

13 PETER S. HOLMES
Seattle City Attorney

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that, on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the below-listed:

- Thomas G. Jarrard, TJarrard@att.net
- Matthew Z Crotty, matt@crottyandson.com, matthew.z.crotty@msn.com
- John M. Tymczyszyn, JohnT@JohnTLaw.com
- David Bowman, david.bowman@seattle.gov

In addition, I certify that I forwarded a copy of the proposed order, in Word format, to Judge Robart at: robartorders@wawd.uscourts.gov.

DATED this 28th day of June, 2018, at Seattle, Washington.

s/ Kim Fabel
KIM FABEL
Legal Assistant