

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BAO XUYEN LE, INDIVIDUALLY, and as the  
Court appointed PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
TOMMY LE, HOAI "SUNNY" LE, Tommy Le's  
Father, DIEU HO, Tommy Le's Mother, UYEN  
LE and BAO XUYEN LE, Tommy Le's Aunts,  
KIM TUYET LE, Tommy Le's Grandmother, and  
QUOC NGUYEN, TAM NGUYEN, DUNG  
NGUYEN, JULIA NGUYEN AND JEFFERSON  
NGUYEN, Tommy Le's Siblings,

Plaintiffs,

vs.

MARTIN LUTHER KING JR. COUNTY as  
sub-division of the STATE of WASHINGTON,  
and KING COUNTY DEPUTY SHERIFF  
CAESAR MOLINA,

Defendants.

No. 2:18-CV-00055-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, including information that is exempt from public disclosure and non-public records as they relate to the King County Sheriff's Department and Cesar Molina. Accordingly, the parties hereby stipulate to and petition the court

1 to enter the following Stipulated Protective Order. The parties acknowledge that this agreement  
2 is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses  
3 to discovery, the protection it affords from public disclosure and use extends only to the limited  
4 information or items that are entitled to confidential treatment under the applicable legal  
5 principles, and it does not presumptively entitle parties to file confidential information under  
6 seal.

7 2. “CONFIDENTIAL” MATERIAL

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

- 10 a. King County’s personnel and employee home addresses, dates of birth, social security  
11 numbers, and names of dependants;  
12 b. King County personnel and employee employment applications, tests, payroll records  
13 and performance evaluations, except if there are specific instances of misconduct or  
14 discipline, and medical files;  
15 c. Any other material enjoying special legal protection from disclosure that is relevant to  
16 this case.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential material (as  
19 defined above), but also (1) any information copied or extracted from confidential material; (2)  
20 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
21 conversations, or presentations by parties or their counsel that might reveal 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. In addition,  
these protections do not apply to information that is already in the public record, such as in a  
publicly accessible court file or trial transcript.

1           4.       ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2           4.1       Basic Principles. A receiving party may use confidential material that is disclosed  
3 or 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  
5 the categories of persons and under the conditions described in this agreement. Confidential  
6 material must be stored and maintained by a receiving party at a location and in a secure manner  
7 that ensures that access is limited to the persons authorized under this agreement.

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

11                   (a)       the receiving party's counsel of record in this action, as well as employees  
12 of counsel to 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  
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
15 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
16 designated;

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

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

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

                 (f)       during their depositions, witnesses in the action to whom disclosure is  
reasonably necessary to the testimony of such witness, including persons designated by a party as

1 a Fed. R. Civ. Proc. 30(b)(6) witness, witnesses who are employed by a party, and persons  
2 identified as witnesses for any of the parties (the court reporter shall be instructed to restrict  
3 dissemination of the deposition transcript and exhibits to the persons authorized to see  
4 “Confidential Material” under this order;

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

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
8 referencing such material in court filings, the filing party shall confer with the designating party  
9 to determine whether the designating party will remove the confidential designation, whether the  
10 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
11 warranted. If the discussion of or filing of confidential material is reasonably necessary in  
12 response to a motion filed by a designating party, the designating party shall make all reasonable  
13 efforts to be immediately available for a meet and confer, or shall cooperate with a request by the  
14 non-designating party for an extension of the time permitted to respond to the motion to  
15 accommodate the meet and confer requirement. Local Civil Rule 5(g) sets forth the procedures  
16 that must be followed and the standards that will be applied when a party seeks permission from  
17 the court to file material under seal.

18 5. DESIGNATING PROTECTED MATERIAL

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

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  
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  
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
13 and 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 that  
15 contains confidential material. If only a portion or portions of the material on a page qualifies for  
16 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
17 making appropriate markings in the margins).

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

(c) Other tangible items: the producing party must affix in a prominent place  
on the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
2 the producing party, to the extent practicable, shall identify the protected 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 agreement for such material. Upon timely correction of a  
6 designation, the receiving party must make reasonable efforts to ensure that the material is  
7 treated in accordance with the provisions of this agreement.

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 in  
18 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  
Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

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 6.4 Trial Exhibits. Confidential material may be introduced into evidence at time of trial  
4 and placed before the trier of fact as permitted by the rules of evidence.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
6 LITIGATION

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

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

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

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

17 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
MATERIAL

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

7           10.    NON TERMINATION AND RETURN OF DOCUMENTS

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

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

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

18                           IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19           DATED: 6-15-18

/s/ Phil Arnold  
Attorney for Plaintiffs

20           DATED: 6-15-18

/s/ Richard Anderson /s/ Tim Gosselin  
Attorneys for Defendants

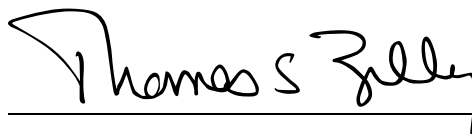
21                           PURSUANT TO STIPULATION, IT IS SO ORDERED

22           IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
23 documents in this proceeding shall not, for the purposes of this proceeding or any other



1 proceeding in any other court, constitute a waiver by the producing party of any privilege  
2 applicable to those documents, including the attorney-client privilege, attorney work-product  
3 protection, or any other privilege or protection recognized by law.

4 DATED this 22nd day of June, 2018.

5  
6 

7 Thomas S. Zilly  
8 United States District Judge

9  
10 Dated this 15 day of June, 2018.

11 /s/ Phil Arnold  
12 Phil Arnold, WSBA #2675  
13 Attorney for Plaintiffs

Dated this 15 day of June, 2018.

14 /s/ Richard L. Anderson  
15 Richard L. Anderson, WSBA #25115  
16 Attorney for Defendants

17  
18 Dated this 15 day of June, 2018.

19 /s/ Tim Gosselin  
20 Tim Gosselin, WSBA #13730  
21 Attorney for Defendant Molina  
22  
23