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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

EDDIE TATE,

Plaintiff,

vs.

TRE SMITH, SHAUN HILTON, AND THE
CITY OF SEATTLE,

Defendants.

No. 2:18-CV-00141-RSL

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

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER - 1

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things produced
3 or otherwise exchanged: (1) police personnel files (excluding personal financial, medical,
4 psychological or family related materials, which will be redacted separately); (2) unsustained police
5 internal investigations and disciplinary files; (3) unsustained complaints of police misconduct; (4)
6 medical, psychological, and financial records of Plaintiffs or non-parties; (5) non-public tactical
7 policies and procedures and training protocols; and (6) records that could implicate the privacy rights
8 of the plaintiff or third parties, including, but not limited to, personal identifying information (“PII”)
9 such as date(s) of birth, social security number(s), personal home address(es), phone number(s), and
10 e-mails; driver’s license or state identification number(s); personal financial information; passport
11 information; immigration status; criminal history and/or criminal record number(s); and other
12 unspecified PII.

12 3. SCOPE

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

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

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
20 produced by another party or by a non-party in connection with this case only for prosecuting,
21 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
22 categories of persons and under the conditions described in this agreement. Confidential material
23 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
that access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
2 the court or permitted in writing by the designating party, a receiving party may disclose any
3 confidential material only to:

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

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

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

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

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

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

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

 4.3 Filing Confidential Material. Before filing confidential material or discussing or
referencing such material in court filings, the filing party shall confer with the designating party, in
accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will

1 remove the confidential designation, whether the document can be redacted, or whether a motion to
2 seal or stipulation and proposed order is warranted. During the meet and confer process, the
3 designating party must identify the basis for sealing the specific confidential information at issue,
4 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
5 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
6 the standards that will be applied when a party seeks permission from the court to file material under
7 seal. A party who seeks to maintain the confidentiality of its information must satisfy the
8 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
9 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
10 the strong presumption of public access to the Court's files.

11 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

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

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

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

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

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 burdens,
5 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the original
7 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 confidential
10 designations or for a protective order must include a certification, in the motion or in a declaration
11 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
12 affected parties in an effort to resolve the dispute without court action. The certification must list the
13 date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face
14 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 Local
17 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion
18 in any such motion shall be on the designating party. Frivolous challenges, and those made for an
19 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
20 expose the challenging party to sanctions. All parties shall continue to maintain the material in
21 question as confidential until the court rules on the challenge.

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

 If a party is served with a subpoena or a court order issued in other litigation that compels
disclosure of any information or items designated in this action as "CONFIDENTIAL," that 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
4 in 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
7 the 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 disclosures,
12 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
13 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
14 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
15 Bound” that is attached hereto as Exhibit A.

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

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

10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

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

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: January 4, 2019

s/ Jesse Valdez
James Bible, WSBA# 33985
Jesse Valdez, WSBA# 35378
Attorneys for Plaintiff

12 DATED: January 4, 2019

s/ Susan Park
Ghazal Sharifi, WSBA# 47750
Susan Park, WSBA# 53857
Erika Evans, WSBA# 51159
Attorneys for Defendant

13 PURSUANT TO STIPULATION, IT IS SO ORDERED

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

20 DATED: Jan. 10, 2019

21 
22 _____
The Honorable Robert S. Lasnik
23 United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
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 issued
6 by the United States District Court for the Western District of Washington on [date] in the case of
7 *Tate v. City of Seattle, et al.*, Case No. 2:18-CV-00141-RSL. I agree to comply with and to be bound
8 by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to
9 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
12 of this Order.

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

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____