

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTATE OF ADAM CHRISTOPHER
JENSEN, by the Personal Representative
PAULA DOW, *et al.*,

CASE NO. C20-1320-JCC

ORDER

Plaintiffs,

v.

COUNTY OF SNOHOMISH, *et al.*,

Defendants.

This matter comes before the Court on the parties’ motion for the Court to enter the parties’ stipulated protective order (Dkt. Nos. 30). Having considered the motion and the relevant record and finding good cause, the Court hereby GRANTS the motion and ENTERS the following 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

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:

- 7 a. Video footage of the incident scene containing images of minor children, unless
8 all images of minor children are redacted;
- 9 b. Medical records for Adam Jensen, deceased, protected under RCW 70.02;
- 10 c. Financial records for Adam Jensen, deceased;
- 11 d. Snohomish County Medical Examiner’s Office autopsy records for Adam Jensen,
12 including graphic photographs of the deceased;
- 13 e. SMART incident scene photographs depicting graphic images of Adam Jensen,
14 deceased;
- 15 f. All records related to any Federal Medicare/Medicaid benefit and services records
16 for Adam Jensen, deceased;
- 17 g. All records related to any State of Washington Department of Health and Human
18 Services benefit and services records for Adam Jensen, deceased;
- 19 h. Sensitive information contained in Snohomish County Sheriff’s Office employee
20 or personnel records, such as medical and/or psychological records, home addresses, personal
21 telephone numbers, social security information, date of birth, or any other personal information;
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1 i. Sensitive information contained in independent agency employee or personnel
2 records, such as medical and/or psychological records, home addresses, personal telephone
3 numbers, social security information, date of birth, or any other personal information;

4 j. Personal information regarding children under the age of eighteen; and

5 k. Any other information to be requested in discovery that has an equivalent need for
6 protection from disclosure as the items identified in paragraph 2.

7
8 l. Records that are marked confidential shall not be disclosed in response to public
9 records requests.

10 **3. SCOPE**

11 The protections conferred by this agreement cover not only confidential material (as
12 defined above), but also (1) any information copied or extracted from confidential material; (2)
13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
14 conversations, or presentations by parties or their counsel that might reveal confidential material.
15 However, the protections conferred by this agreement do not cover information that is in the
16 public domain or becomes part of the public domain through trial or otherwise.

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

18 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
19 or produced by another party or by a non-party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
21 the categories of persons and under the conditions described in this agreement. Confidential
22 material must be stored and maintained by a receiving party at a location and in a secure manner
23 that ensures that access is limited to the persons authorized under this agreement.
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1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the designating party, a receiving party may
3 disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
5 of 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
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
9 designated;
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11 (c) experts and consultants to whom disclosure is reasonably necessary for
12 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
13 A);

14 (d) claims representatives for insurance carriers reasonably necessary for
15 purposes of coverage and indemnity evaluation;

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

17 (f) 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 service
19 instructs the service not to disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

21 (g) during their depositions, witnesses in the action to whom disclosure is
22 reasonably 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. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
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1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this agreement;

3 (h) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or
6 referencing such material in court filings, the filing party shall confer with the designating party,
7 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
8 remove the confidential designation, whether the document can be redacted, or whether a motion
9 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
10 designating party must identify the basis for sealing the specific confidential information at issue,
11 and the filing party shall include this basis in its motion to seal, along with any objection to
12 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from the court to
14 file material under seal. A party who seeks to maintain the confidentiality of its information must
15 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
16 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
17 in accordance with the strong presumption of public access to the Court's files.
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20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify, so that other portions of the
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1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement. Mass, indiscriminate, or routinized
3 designations are prohibited. Designations that are shown to be clearly unjustified or that have
4 been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case
5 development process or to impose unnecessary expenses and burdens on other parties) expose
6 the designating party to sanctions. If it comes to a designating party's attention that information
7 or items that it designated for protection do not qualify for protection, the designating party must
8 promptly notify all other parties that it is withdrawing the mistaken designation.
9

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
13 be clearly so designated before or when the material is disclosed or produced.

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

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

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

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8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party’s
10 right to secure protection under this agreement for such material. Upon timely correction of a
11 designation, the receiving party must make reasonable efforts to ensure that the material is
12 treated in accordance with the provisions of this agreement.

13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

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21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
22 regarding confidential designations without court involvement. Any motion regarding
23 confidential designations or for a protective order must include a certification, in the motion or in
24 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
25 conference with other affected parties in an effort to resolve the dispute without court action. The
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1 certification must list the date, manner, and participants to the conference. A good faith effort to
2 confer requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the challenging party to sanctions. All parties shall continue to
9 maintain the material in question as confidential until the court rules on the challenge.
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11 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
12 **PRODUCED IN OTHER LITIGATION**

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

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

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

21 (c) cooperate with respect to all reasonable procedures sought to be pursued
22 by the designating party whose confidential material may be affected.
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a
4 designating party agrees otherwise in writing or a court order otherwise.

5 It is so ORDERED.

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7 DATED this 3rd day of January 2021.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT 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 February 3,
7 2021 in the case of *Paula Dow, as P.R. for the Estate of Adam Christopher Jensen, v. Snohomish*
8 *County, et al.*, C20-1320-JCC, I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any 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 Date: _____

17
18 City and State where
19 sworn and signed: _____

20 Printed name: _____

21 Signature: _____