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Hon. Ronald B. Leighton



09-CV-05797-ORD

FILED _____ LODGED _____
RECEIVED
MAY 10 2010
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAX J. ANDERSON,)
)
Plaintiff,)
v.)
)
CITY OF BAINBRIDGE ISLAND, et al.,)
)
Defendants.)

No. C09-05797-RBL
STIPULATION PROTECTING
CONFIDENTIALITY OF
DOCUMENTS AND
INFORMATION AND
[PROPOSED] ORDER

Pursuant to Fed. R. Civ. P. 26(c), the parties, by and through their respective counsel of record, hereby stipulate that the following provisions shall apply to all discovery in this litigation.

1. The Complaint alleges that the defendant police officers and the City of Bainbridge Island caused or contributed to the injuries to plaintiff. Plaintiff claims damages for his own injuries and losses, arising from the defendants' actions and civil rights violations. Defendants deny these claims.

STIPULATION PROTECTING CONFIDENTIALITY OF
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1 2. It may be necessary for plaintiff to provide confidential financial information
2 and confidential medical records through discovery in this lawsuit , all of which are entitled
3 to protection against improper disclosure to the general public. It may be necessary for
4 defendants to produce confidential personnel files and disciplinary records of defendants
5 Christopher and Roche, which, if disclosed to the public, may affect the privacy interests
6 of those employees, and/or may cause embarrassment. Further, it may be necessary for
7 defendants to produce confidential non-conviction data under RCW 10.97, and "Brady"
8 or "potential impeachment disclosure" files and related records regarding specific officers.
9

10 3. This Stipulation, when and as approved by the Court, is intended to govern
11 all productions of confidential information and documents pertaining to this litigation.

12 4. The following definitions shall apply to this Stipulation and Order:

13 4.1 "Party" or "parties" shall mean and refer to any party, plaintiff or
14 defendants, in the above-captioned matter signatory to this Stipulation, including counsel
15 of record for any party signatory to this Stipulation.

16 4.2 "Confidential Information" shall mean and refer to the plaintiff's
17 medical and psychological records and information, and personal financial information and
18 records, including bank account numbers and social security numbers and criminal and/or
19 juvenile offender records confidential under Washington law and records of child
20 protective services. It shall also refer to confidential personnel or disciplinary records and
21 information, of the individual defendants and other employees of the agency defendants.
22 It also refers to documents relating to criminal investigations that may cause
23 embarrassment.
24

25 4.3 It also refers to "Brady" or "potential impeachment disclosure" records and
26 information regarding specific officers. It also refers to information that a party in good
27

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1 faith designates as "Confidential" as set forth below. Upon good cause shown and/or a
2 compelling reason, the Court may determine that certain information the parties designate
3 as "Confidential" shall be redacted or filed under seal, as set forth below.

4 4.4 "Qualified persons" shall mean and refer to:

5 (a) The Court and Court personnel, including stenographic reporters
6 engaged in such proceedings as are necessarily incident to the preparation for trial and/or
7 trial of this action;

8 (b) Counsel of record for any party signatory to this Stipulation,
9 including all partners and associate attorneys of that counsel's law firm;

10 (c) Employees, paralegal assistants, stenographic and clerical employees
11 of counsel for the parties signatory to this Stipulation only when operating under the direct
12 supervision of counsel;

13 (d) Plaintiff Max Anderson, defendants Guy Roche and Richard
14 Christopher, and any other subsequently-named individual defendants;

15 (e) Defendants, and all managing agents of the agency defendants, who
16 become involved in this litigation at the request of counsel of record and whose review of
17 protected documents is specifically controlled by counsel;

18 (f) Potential witnesses who become involved in this litigation at the
19 request of counsel of record and whose review of protected documents is specifically
20 controlled by counsel;

21 (g) Experts or consultants employed by counsel of record for the
22 purpose of assisting in these proceedings, preparation for trial and/or trial of this action;

23 (h) Defendants' risk managers and claims examiners of the defendants'
24 insurance company or pool.
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1 5. Any party to this action may proffer into evidence any Confidential
2 Information at time of trial or by motion or otherwise and such Confidential Information
3 may be introduced or shown to jurors and witnesses at the time of trial or on motion of
4 any party, subject to normal evidentiary objections. In the event that any material
5 designated as Confidential is used in any court proceeding in this action, it shall not lose
6 its confidential status through such use, and the party using such confidential material shall
7 maintain its confidentiality during such use, subject to the Court's guidance.
8

9 6. All documents, information and things deemed to contain Confidential
10 Information under paragraph 4.2 above shall be brought within the protection of this
11 Stipulation and Order by placing in a conspicuous place on every page containing
12 confidential information the word "Confidential". The designating party shall specifically
13 designate only those portions of records to be deemed confidential by highlighting sensitive
14 information intended for protection with due regard to the Court's presumption favoring
15 public access. Any such Confidential Information and documents shall be kept
16 confidential and shall not be disclosed, used or copied except as set forth hereafter and in
17 connection with preparation for the proceedings in the above-captioned matter and shall
18 not be used for any other purpose. The term "documents" shall be defined to include all
19 written, photographic, or electronic media, including computer printouts and computer
20 storage devices such as floppy disks, extracts, summaries, attachments, and answers to
21 requests for production.
22

23 7. Any deposition testimony deemed to contain Confidential Information shall
24 be brought within the protection of this Stipulation and Order by orally designating on the
25 deposition record the protected portion or portions or, within ten (10) business days of
26 receipt of the transcript, by designating such portions by page and line number.
27

28 STIPULATION PROTECTING CONFIDENTIALITY OF
DOCUMENTS AND INFORMATION AND
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1 8. The designating party shall have the burden of proof regarding the
2 confidential nature of designated documents and/or information.

3 9. The parties shall resolve any disputes concerning the designation of any
4 documents as "Confidential" as follows: the non-designating party shall challenge any
5 designation of confidentiality by notifying the designating party in writing, specifically
6 identifying the challenged item(s) as well as the basis for the challenge. If the parties
7 cannot resolve the challenge after engaging in good-faith discussions, the designating party
8 may seek an order of the Court with respect to the challenged information, documents, or
9 things designated as "Confidential". Both plaintiff and defendants will treat all materials
10 or information designated as "Confidential" in accordance with the requirements of this
11 Order for ten (10) days after notice of a challenge to confidentiality and during the
12 pendency of related motions. The parties further agree that before seeking any relief from
13 the Court under this paragraph, they will make a good faith effort to resolve any disputes
14 concerning the confidential treatment of any information.
15

16 10. **Except as provided for herein, confidential documents and confidential**
17 **information contained therein, shall not be communicated or disclosed in any manner,**
18 **either directly or indirectly, to any person or entity.**

19 11. Disclosure of confidential information and confidential documents may be
20 made only to "qualified persons", as defined above, with the following additional
21 limitations:
22

23 11.1 Expert witnesses and consultants retained by plaintiff or defendants
24 must affirmatively agree to the terms and conditions of this Protective Order prior to
25 review of any such documents, and execute a Statement of Confidentiality, identical to
26 Exhibit A. Counsel shall retain such statements and make them available to other counsel
27

28 STIPULATION PROTECTING CONFIDENTIALITY OF
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1 signatory to this Stipulation upon request, if a violation of the Order is reasonably believed
2 to have occurred.

3 11.2 Non-party representatives of plaintiff and defendants may review
4 confidential documents provided by the plaintiff or the defendants only as needed for the
5 prosecution or defense of plaintiff's claims after executing a Statement of Confidentiality,
6 identical to Exhibit A. Counsel for the plaintiff and defendants shall retain such statements
7 and make them available to other counsel signatory to this Stipulation upon request, if a
8 violation of the Order is reasonably believed to have occurred.

9
10 11.3 Potential witnesses may review confidential documents only as
11 needed for litigation of this case and under the supervision of counsel after executing a
12 Statement of Confidentiality, identical to Exhibit A. Counsel shall retain such statements
13 and make them available to other counsel signatory to this Stipulation upon request, if a
14 violation of the Order is reasonably believed to have occurred.

15 12. When documents, briefs or memoranda containing Confidential Information
16 are filed with the Court, the same shall be done in accordance with Local Rule CR 5(g)(1)
17 and the U.S. District Court's CM/ECF procedures for the filing of sealed documents. For
18 confidential documents filed by hard copy, and which the Court has determined should be
19 sealed for "good cause" shown (non-dispositive motions) or a "compelling reason"
20 (dispositive motions), such documents shall be placed in sealed envelopes or other
21 appropriately sealed containers on which shall be endorsed:
22

23 12.1 The words "SEALED CONFIDENTIAL";

24 12.2 The title of the action to which the contents pertain;

25 12.3 An indication of the nature of the contents; and

26 12.4 A statement substantially in the following form:
27

28 STIPULATION PROTECTING CONFIDENTIALITY OF
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1 "This envelope [or container] is filed pursuant to court order
2 and protective order by [name of party] and contains
3 confidential information. It is not to be opened or the
4 contents thereof to be displayed or revealed except to the
5 Court and to counsel of record signatory to the Stipulated
6 Protective Order. The contents shall not be displayed or
7 revealed to third parties except by Court order or by written
8 agreement of all the parties."

9 The envelope or container shall not be opened, except as set forth above. The envelope
10 shall then be returned to the Clerk of the Court, appropriately sealed, and endorsed as
11 provided above.

12 12.5 Should the Clerk's office require other procedures for filing "sealed"
13 documents than set forth above, the parties shall follow those procedures in lieu of
14 procedures set out in Paragraphs 12.1-12-4.

15 13. In all court filings and use of exhibits, all parties shall comply with "the
16 Privacy Concerns" set forth in the U.S. District Court's CM/ECF Civil and Criminal
17 Procedures and redact documents as necessary. In summary:

- 18 • Minors' names: Use only the minors' initials.
- 19 • Financial account numbers: Identify the name or type of account and the
20 financial institution where maintained, but use only the last four digits of
21 the account number.
- 22 • Social Security numbers: Use only the last four digits.
- 23 • Dates of birth: Use only the year.

24 14. Miscellaneous

25 14.1 The information protected by this Protective Order is the substance
26 of the Confidential Information, no matter what form the information is in or no matter
27 how the information might be communicated, unless it loses its confidential status by
28 becoming public during proceedings herein. The parties do not intend to in any way waive

STIPULATION PROTECTING CONFIDENTIALITY OF
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1 the assertion of confidentiality and hereby expressly reserve their rights to assert and
2 preserve the confidentiality of any information disclosed in this Proceeding that is not
3 designated as Confidential Information pursuant to this Protective Order.

4 14.2 Recipients of Confidential Information pursuant to this Protective
5 Order shall exercise reasonable and appropriate care with regard to such Confidential
6 Information to ensure that the confidential nature of the same is maintained.

7 14.3 If Confidential Information is disclosed to any person other than in
8 the manner authorized by this Protective Order, the person responsible for the disclosure
9 shall immediately bring all the pertinent facts relating to such disclosure to the attention
10 of counsel for all parties, without prejudice to the rights and remedies of any party, and
11 shall make every effort to prevent further disclosure by it or by the person who received
12 such Confidential Information.
13

14 14.4 This Protective Order is made to facilitate discovery and the
15 production of discoverable evidence in this action. Neither the entry of this Protective
16 Order, the designation of any information as Confidential Information under the Order,
17 the failure to make such designation, or the failure to object to such designation by any
18 party shall constitute evidence with respect to any issue in this litigation. This Protective
19 Order shall not abrogate or diminish any contractual, statutory or other legal right or
20 obligation any party may have with respect to information disclosed in this matter.
21

22 14.5 Any party or person who knowingly violates this Protective Order
23 may be held in contempt of this Court. The Court and parties preserve the right to order
24 or seek an award of such other relief a is appropriate for such disclosure.

25 15. No later than sixty (60) days following the conclusion of these proceedings,
26 plaintiff and defendants agree to destroy or return all Confidential Information, documents,
27

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1 and things and all copies of same to the counsel producing such information and
2 documents, at the election of, and expense of, the possessing party. To the extent that the
3 information is embodied in and is inseparable from attorney work product, the recipient
4 party may destroy the document or maintain confidentiality of such material in perpetuity.
5 "Conclusion of these proceedings" refers to the exhaustion of available appeals, or the
6 running of time for taking such appeals, or by settlement and dismissal with prejudice of
7 all claims, as provided by applicable law. In the event that settlement is reached with
8 fewer than all parties, the settling defendant(s) will destroy or return all Confidential
9 Information, documents and things of all other parties within sixty (60) days of that
10 settlement agreement. All other parties shall destroy or return all Confidential
11 Information, documents and things within sixty (60) days of the conclusion of the entire
12 proceedings.
13

14 16. The provisions of this Order shall not affect the admissibility of evidence
15 at trial, summary judgment, or any preliminary evidentiary proceeding in open court.

16 17. The provisions of this Protective Order may be modified by the Court on
17 its own motion after notice to the parties and an opportunity to be heard.

18 18. At this time, the Court specifically finds good cause and compelling reason
19 to require the following information and documents protected from public disclosure, as
20 follows:
21

22 (a) The plaintiff's medical or psychological information and medical or
23 psychological records shall be redacted or filed under seal.

24 (b) All of plaintiff's financial records shall be redacted or filed under
25 seal.
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1 (c) Confidential documents from employees' personnel or disciplinary
2 files shall be redacted or filed under seal.

3 (d) Confidential documents constituting non-conviction data under RCW
4 10.97, and documents from "Brady" or "potential impeachment disclosure" files and
5 related documents that mention specific officers shall be filed under seal.

6 JOINTLY SUBMITTED this the 23rd day of April, 2010.

7 KEATING BUCKLIN & McCORMACK MUENSTER & KOENIG
8

9
10 By: S/Mary Ann McConaughy
11 Mary Ann McConaughy
12 Attorney at Law
13 WSBA No. _____
14 Of Attorneys for Defendants

15
16 By: S/John R. Muenster
17 John R. Muenster
18 Attorney at Law
19 WSBA No. 6237
20 Of Attorneys for Plaintiff Max
21 Anderson

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28 STIPULATION PROTECTING CONFIDENTIALITY OF
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ORDER

IT IS SO ORDERED this the 10th day of ~~April~~^{May} 2010.



Hon. Ronald B. Leighton
United States District Judge

STIPULATION PROTECTING CONFIDENTIALITY OF
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EXHIBIT A

STATEMENT OF CONFIDENTIALITY

The undersigned acknowledges receipt of the attached STIPULATION PROTECTING CONFIDENTIALITY OF DOCUMENTS AND INFORMATION AND ORDER THEREON and that he/she has read and understands and agrees to be bound thereby.

Signed this _____ day of April, 2010.

Signature

Signature

STIPULATION PROTECTING CONFIDENTIALITY OF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 23rd day of April, 2010, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the CM/ECF system, to be served via CM/ECF on opposing counsel upon appearance.

S/Andi Anderson
Andi Anderson, Legal Assistant
Muenster & Koenig

STIPULATION PROTECTING CONFIDENTIALITY OF
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