

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

JULIAN DELMORE, an individual,

Plaintiff,

V.

WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS,  
an agency of the State of Washington,  
and LISA FLYNN, in individual  
capacity and/or official capacity,

## Defendants.

NO. 3:21-cv-05625-RSL

## **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 Court enters the following Protective Order. The Order 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 applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1      2.    "CONFIDENTIAL" MATERIAL

2      2.1    "Confidential" material shall include the following documents and tangible  
3 things produced or otherwise exchanged:

- 4      a.    Documents contained in party and non-party employment files which would  
5              not otherwise be subject to public disclosure;
- 6      b.    Documents contained in party and non-party investigation or grievance files  
7              that would not otherwise be subject to public disclosure;
- 8      c.    Financial records;
- 9      d.    Medical records; and
- 10     e.    Psychological or mental health records.

11     2.2    The parties are permitted to redact from all records produced:

- 12     a.    All social security numbers;
- 13     b.    Criminal background information of non-parties, except those confined at  
14              Larch Corrections Center at any point between 5 January 2012 and 6  
15              September 2017;
- 16     c.    Information and records covered by attorney-client privilege/work product.

17     2.4    A privilege log will be included in all productions noting documents  
18 withheld/redacted and the reason for the withholding/redacting.

19     3.    SCOPE

20     The protections conferred by this agreement cover not only confidential material (as  
21 defined above), but also (a) any information copied or extracted from confidential material; (b)  
22 all copies, excerpts, summaries, or compilations of confidential material; and (c) any testimony,  
23 conversations, or presentations by parties or their counsel that might reveal confidential material.

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

26     4.    ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

1       4.1    Basic Principles. A receiving party may use confidential material that is disclosed  
2 or produced by another party or by a non-party in connection with this case only for prosecuting,  
3 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
4 the categories of persons and under the conditions described in this agreement. Confidential  
5 material must be stored and maintained by a receiving party at a location and in a secure manner  
6 that ensures that access is limited to the persons authorized under this agreement.

7       4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
8 ordered by the court or permitted in writing by the designating party, a receiving party may  
9 disclose any confidential material only to:

- 10       a.      The receiving party’s counsel of record in this action, as well as employees  
11            of counsel to whom it is reasonably necessary to disclose the information for  
12            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,  
15            unless the parties agree that a particular document or material produced is for  
16            Attorney’s Eyes Only and is so designated;
- 17       c.      Experts and consultants to whom disclosure is reasonably necessary for this  
18            litigation and who have signed the “Acknowledgment and Agreement to Be  
19            Bound” (Exhibit 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  
23            or imaging service instructs the service not to disclose any confidential  
24            material to third parties and to immediately return all originals and copies of  
25            any confidential material;

- f. During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement; or
- g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

10       4.3     Filing Confidential Material. Before filing confidential material or discussing or  
11 referencing such material in court filings, the filing party shall confer with the designating party  
12 to determine whether the designating party will remove the confidential designation, whether the  
13 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
14 warranted. During the meet and confer process, the designating party must identify the basis for  
15 sealing the specific confidential information at issue, and the filing party shall include this basis  
16 in its motion to seal, along with any objection to sealing the information at issue.

## 17 || 5. DESIGNATING PROTECTED MATERIAL

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

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1      unnecessarily encumber or delay the case development process or to impose unnecessary  
2      expenses and burdens on other parties) may expose the designating party to sanctions.

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

6      5.2    Manner and Timing of Designations. Except as otherwise provided in this  
7      agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
8      ordered, disclosure or discovery material that qualifies for protection under this agreement must  
9      be clearly so designated before or when the material is disclosed or produced.

10     a.     Information in documentary form: (*e.g.*, paper or electronic documents and  
11       deposition exhibits, but excluding transcripts of depositions or other pretrial  
12       or trial proceedings) The designating party must affix the word  
13       "CONFIDENTIAL" to each page that contains confidential material.

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

23     c.     Other tangible items: The producing party must affix in a prominent place on  
24       the exterior of the container or containers in which the information or item is  
25       stored the word "CONFIDENTIAL."

1       5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6       6.      CHALLENGING CONFIDENTIALITY DESIGNATIONS

7       6.1    Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13       6.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
14 regarding confidential designations without court involvement. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or  
16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
17 conference with other affected parties in an effort to resolve the dispute without court action.  
18 The certification must list the date, manner, and participants to the conference. A good faith  
19 effort to confer requires a face-to-face meeting or a telephone conference.

20       6.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
21 intervention, the designating party may file and serve a motion to retain confidentiality. The  
22 burden of persuasion in any such motion shall be on the designating party. Frivolous challenges  
23 and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and  
24 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
25 continue to maintain the material in question as confidential until the court rules on the challenge.

1      7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2      LITIGATION

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

- 6      a. Promptly notify the designating party in writing and include a copy of the  
7      subpoena or court order;
- 8      b. Promptly notify in writing the party who caused the subpoena or order to issue  
9      in the other litigation that some or all of the material covered by the subpoena  
10     or order is subject to this agreement. Such notification shall include a copy of  
11     this agreement; and
- 12     c. Cooperate with respect to all reasonable procedures sought to be pursued by  
13     the designating party whose confidential material may be affected.

14     8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22     9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
23     MATERIAL

24     When a producing party gives notice to receiving parties that certain inadvertently  
25     produced material is subject to a claim of privilege or other protection, the obligations of the  
26     receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5). This provision is not intended to  
   modify whatever procedure may be established in an e-discovery order or agreement that

1 provides for production without prior privilege review. The parties agree to the entry of a non-  
2 waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 10. NON-TERMINATION AND RETURN OF DOCUMENTS

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

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

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

14 Pursuant to the parties' stipulation, it is so ORDERED.

15  
16 Dated this 18th day of November, 2022.

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18 Robert S. Lasnik  
19 United States District Judge  
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1      Presented By:

2      BRESKIN, JOHNSON & TOWNSEND

3  
4      /s Cynthia Heidelberg  
5      Cynthia J. Heidelberg, WSBA No. 44121  
6      Attorney for Plaintiff

ROBERT W. FERGUSON  
Attorney General

s/ Mark J. Rachel  
Mark J. Rachel, WSBA No. 54395  
Assistant Attorney General  
Attorney for Defendants

**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the protective order that was issued by the United States District Court for the Western District of Washington on [redacted], 2022, in the case of *Delmore v. Washington State Department of Corrections et al.*, Case No. 3:21-CV-05625. I agree to comply with and to be bound by all the terms of that court order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the protective order to any person or entity except in strict compliance with the provisions of the order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of the protective order, even if such enforcement proceedings occur after termination of the lawsuit.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my agent for service of process in connection with this action or any proceedings related to enforcement of the protective order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Signature:

Printed name: