

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03204-RBJ

LORI FRANK,

Plaintiff,

v.

CITY OF FORT COLLINS, a municipality;
TERENCE F. JONES, former Interim Chief of Police, in his individual capacity; and
JEROME SCHIAGER, former Deputy Chief of Police, in his individual capacity;

Defendants.

STIPULATED MOTION FOR PROTECTIVE ORDER

Each party and each Counsel of Record stipulate and move the Court for a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure concerning the treatment of Confidential Information (as hereinafter defined) and, as grounds therefore, state as follows:

1. The parties have reviewed this Court's judicial practice standards with respect to Protective Orders. This Protective Order generally governs how "confidential" information will be treated by the parties through the course of discovery. The parties agree that if truly "confidential" information must be filed with the Court, the information will be redacted. If the Court must review "confidential" information, the party submitting same will request a narrow order restricting public access and show good cause. By entering into this Stipulated Motion for

Protective Order, no party waives any right that they have to assert that any document or information is not discoverable due to privilege or any other reason.

2. In this action, at least one of the Parties will produce or has sought and/or may seek Confidential Information (as defined in paragraph 3 below). The Parties also anticipate seeking additional Confidential Information during discovery and that there will be questioning concerning Confidential Information in the course of depositions. The Parties assert the disclosure of such information outside the scope of this litigation could result in significant injury to one or more of the Parties' security, safety, or privacy interests. Defendants provide the following examples of the type of records that a party may seek to designate as confidential to keep from public disclosure: individual Defendants' personnel documents; personnel documents of non-parties to this lawsuit, investigations by Lori Greening and Lori Karl of Mountain States Employers Council and Jody Luna of Flynn Investigations related to complaints by Plaintiff Frank; disciplinary and performance records regarding non-parties to this lawsuit; and personal phone numbers and residential addresses of law enforcement witnesses. Plaintiff agrees that confidential documents may be produced in this case but confidentiality must be determined on a case-by-case basis and no broad categories of documents identified in the above examples should be considered confidential with out a document specific review. The Parties have entered into this Stipulation and request the Court enter the within Protective Order for the purpose of preventing the disclosure and use of Confidential Information except as set forth herein.

3. Any information designated by a party as CONFIDENTIAL will first be reviewed by counsel who will confirm that the designation as CONFIDENTIAL is based on a good faith belief that the information is confidential or otherwise entitled to protection.

4. “Confidential Information” shall be information, documents, or materials that are protected by a statutory, regulatory, or common law right of privacy or protection, or otherwise contain nonpublic personal, personnel, employment, private, medical, security-sensitive, proprietary, trade secret, financial, personal, or other information implicating privacy interests, proprietary interests, or safety and security concerns of the Plaintiff, any of the Defendants, or other persons, including non-parties, providing discovery in this case. Designation of information as CONFIDENTIAL shall not affect its discoverability. CONFIDENTIAL information shall not be disclosed or used for any purpose except the preparation and trial (including any appeal) of this case and no other matter.

5. Where Confidential Information is produced, provided or otherwise disclosed by the Parties in response to any discovery request, it will be designated in the following manner:

- a. By imprinting the word “Confidential” on the first page or cover of any document produced;
- b. By imprinting the word “Confidential” next to or above any response to a discovery request; and
- c. **With respect to deposition or other transcribed testimony not in**

open court: Whenever a deposition involves the disclosure of CONFIDENTIAL information, the deposition or portions thereof shall be designated as CONFIDENTIAL and shall be subject to the provisions of this Protective Order. Such designation shall

be made on the record during the deposition whenever possible, but (1) a party may designate portions of depositions as CONFIDENTIAL after transcription, provided written notice of the designation is promptly given to all counsel of record within thirty (30) days after notice by the court reporter of the completion of the transcript or (2) the **parties may stipulate otherwise on the record at a deposition.**

6. Confidential Material is subject to the following restrictions. Confidential Material may be used only for the limited purpose of preparing for and conducting this civil action (including any appeals), and must not be disclosed in any way to anyone except:

- a. attorneys actively working on this case;
- b. persons regularly employed by the attorneys who have entered their appearances in the case;
- c. the parties, including Defendants' designated representatives and insurers;
- d. stenographic reporters who are engaged in proceedings in this action;
- e. deposition witnesses questioned by counsel for a Party in connection with this action, but only to the extent necessary to assist such counsel in the prosecution or defense of this action;
- f. an author or recipient of the Confidential Information to be disclosed, summarized, described, characterized or otherwise communicated or made available, but only to the extent necessary to assist counsel in the prosecution of this action;
- g. the Court and its employees ("Court Personnel");
- h. retained expert witnesses and consultants; and

- i. other persons by written agreement of the parties.

For any disclosures to a person identified under Paragraph 6(a) through (c), prior to disclosing any Confidential Information, counsel shall provide such person with a copy of this Protective Order and obtain verbal or written agreement from such person that he or she will be bound by its provisions.

7. Individuals authorized to review Confidential Information pursuant to this Protective Order shall hold Confidential Information in confidence and shall not divulge the Confidential Information, either verbally or in writing, to any other person, entity or government agency unless authorized to do so by court order. The Parties recognize that the available sanctions for the violation of the protective order include, but are not limited to, the sanctions available under Fed.R.Civ.P. 37(b)(2)(A).

8. By producing any Confidential Information or testifying on any matter later designated as “Confidential,” no Party to this protective order waives any objection or challenge to the admissibility of any such Confidential Information.

9. Each party shall be responsible for assuring compliance with the terms of this Protective Order with respect to persons to whom such Confidential Information is disclosed and shall maintain a list of all persons to whom any Confidential Information is disclosed.

10. Upon a showing of substantial need, each party has the right to seek court intervention, including in camera review, to determine whether the terms of the Protective Order are being complied with.

11. No copies of Confidential Information shall be made except by or on behalf of counsel in this litigation for work product purposes, including for review by experts in this case. Any such copies shall be made and used solely for purposes of this litigation.

12. During pendency of this litigation, counsel shall retain custody of Confidential Information and copies made therefrom pursuant to paragraph 11 above.

13. A Party may object to the designation of particular Confidential Information by giving written notice to the attorney for the party designating the disputed information. The written notice shall identify the information to which the objection is made. If the parties cannot resolve the objection within ten business days after the time the notice is received, it shall be the obligation of the attorney for the party designating the information as confidential to file an appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order. If such a motion is timely filed, the disputed information shall be treated as confidential under the terms of this Protective Order until the Court rules on the motion. If the designating party fails to file such a motion within the prescribed time, the disputed information shall lose its designation as confidential and shall not thereafter be treated as confidential in accordance with this Protective Order. In connection with a motion filed under this provision, the party designating the information as confidential shall bear the burden of establishing that good cause exists for the disputed information to be treated as confidential.

14. In the event it is necessary for the Parties to file Confidential Information with the Court in connection with any proceeding or motion, the Confidential Information shall be filed as a restricted document in accordance with the requirements of D.C.COLO.LCivR 7.2. The

Parties agree that any such motion will be narrowly tailored and only filed with good cause in accord with this Court's practice standards.

15. By agreeing to the entry of this Protective Order, the Parties adopt no position as to the authenticity or admissibility of documents produced subject to it. Neither the taking of any action in accordance with the provisions of this Protective Order, nor the failure to object thereto, shall be construed as a waiver of any claim or defense in this action.

16. The termination of this action shall not relieve counsel or other persons obligated hereunder from their responsibility to maintain the confidentiality of Confidential Information pursuant to this Protective Order, and the Court shall retain continuing jurisdiction to enforce the terms of this Protective Order, even after this action is terminated.

17. When this litigation has been fully decided, including completion of all possible appellate procedures, such protected material shall be destroyed or returned to the party that produced the Confidential Information. If destroyed, counsel for the party responsible for destroying the Confidential Information will provide written verification to the producing party that the Confidential Information has been destroyed.

18. Nothing in this Protective Order shall preclude any Party from filing a motion seeking further or different protection from the Court under Rule 26(c) of the Federal Rules of Civil Procedure, or from filing a motion with respect to the manner in which Confidential Information shall be treated at trial.

19. The protections afforded by Fed.R.Evid. 502(d) shall apply to this matter so that attorney-client privilege or work-product protection are not waived by inadvertent disclosure connected with this litigation.

WHEREFORE, the parties respectfully request that this Court enter the attached Stipulated Proposed Protective Order as an Order of the Court

Dated this 7th day of May, 2019.

STIPULATED AND AGREED TO:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 7, 2019, a true and correct copy of the above and foregoing **STIPULATED MOTION FOR PROTECTIVE ORDER** was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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