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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

SULEIMAN ABDULLAH SALIM, et
al.,

Plaintiffs,

vs.

JAMES E. MITCHELL and JOHN
JESSEN,

Defendants.

NO. CV-15-0286-JLQ

**DEFENDANTS' UNOPPOSED
MOTION TO SEAL DOCUMENTS**

Without Oral Argument
December 16, 2016

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I. INTRODUCTION

Comes now the Defendants, James Mitchell and John Jessen, by and through their attorneys, requesting that this Court grant their Motion to Seal Documents. On November 16, 2016, Defendants filed a redacted Motion to Compel IMEs and Depositions and for Relief from Related Deadlines (“Motion to Compel”). That Motion to Compel was accompanied by redacted declarations and exhibits. Some of the exhibits, declarations, and arguments within the brief include or relate to material designated as confidential in accordance with the Discovery Confidentiality Agreement (“Confidentiality Agreement”) previously executed by the parties. The documents contain confidential individual medical information about the Plaintiffs. Moreover, Plaintiffs have not agreed to waive the confidential nature of the documents. *See* Declaration of Charrise L. Alexander submitted in support of this motion (“Alexander Decl.”) ¶5, **Ex. 1** at 1-2. Therefore, in compliance with the Confidentiality Agreement, Defendants now bring this Unopposed Motion to Seal Documents. Because Defendants present good cause for sealing, Defendants respectfully request the Court grant this Motion to Seal.

II. STATEMENT OF FACTS

A. The Parties’ Confidentiality Agreement

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Pursuant to the Court’s June 15, 2016 Order re: Case Management Procedures (ECF No. 51), Defendants and Plaintiffs worked diligently to achieve

1 an agreement regarding confidentiality, which was executed on September 26,
2 2016, and entitled the Discovery Confidentiality Agreement. ECF No. 83-1. The
3 Confidentiality Agreement defines “Confidential Material” as “non-public
4 material, which if disclosed publicly, would” create a “clearly defined and specific
5 harm to the party seeking protection” and which is limited to, *inter alia*,
6 “individual medical information.” ECF No. 83-1 at 2. Among other things, the
7 Confidentiality Agreement outlines the procedure for the filing of material that has
8 been designated confidential. *Id.* at 4. The Confidentiality Agreement provides:

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11 Before filing confidential material or discussing or referencing such
12 material in court filings, the filing party shall confer with the
13 designating party to determine whether the designating party will
14 remove the confidential designation, whether the document can be
redacted, or whether a motion to seal or stipulation and proposed
order is warranted.

15 *Id.* at 4-5.

16 On November 15, 2016, counsel for Plaintiffs and counsel for Defendants
17 engaged in an e-mail exchange regarding the confidential nature of certain medical
18 reports subject to the Confidentiality Agreement. Alexander Decl. **Ex. 1**.
19 Plaintiffs’ counsel did not agree to waive the confidential designation of those
20 medical reports. *Id.* ¶5. Defendants now seek this Unopposed Motion to Seal the
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aforementioned medical reports and any reference to such material in Defendants’

1 Motion to Compel, as well as the accompanying declarations, in accordance with
2 the parties' Confidentiality Agreement.

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4 **B. Confidential Materials Filed by Defendants**

5 Consistent with its obligations under the Confidentiality Agreement,
6 Defendants filed under seal the following documents (collectively, the
7 "Confidential Information"):

- 8 • Defendants' unredacted Motion to Compel, as **Ex. 2** to Alexander
9 Decl.;
- 10 • **Exhibits B and C** to the Declaration of Charrise L. Alexander in
11 Support of Defendants' Motion to Compel ("Compel Alexander
12 Decl."), included as a part of **Ex. 3** to Alexander Decl.;
- 13 • The unredacted Compel Alexander Decl., included as a part of **Ex. 3**
14 to Alexander Decl.;
- 15 • The unredacted Declaration of Dr. Joseph Zuckerman in Support of
16 Defendants' Motion to Compel ("Zuckerman Decl."), included as a
17 part of **Ex. 3** to Alexander Decl.; and
- 18 • The unredacted Declaration of Dr. Joseph Carter in Support of
19 Defendants' Motion to Compel ("Carter Decl."), included as a part of
20 **Ex. 3** to Alexander Decl.
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1 The Compel Alexander Decl. contains exhibits of confidential medical reports
2 outlining Plaintiffs' alleged injuries, which have been designated as confidential by
3 the Plaintiffs in accordance with the parties' Confidentiality Agreement. The
4 Zuckerman Decl. and Carter Decl. contain references to injuries and medical
5 examinations in response to allegations contained within the confidential medical
6 reports.
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8 III. ARGUMENT

9 A. The Court Should Seal the Confidential Information on a Showing of 10 "Good Cause"

11 Courts recognize a presumption of public access to judicial records. *See,*
12 *e.g., Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir.
13 2006); LCR 5(g). This presumption, however, does not apply to sealed discovery
14 documents attached to non-dispositive motions:

15 We have . . . "carved out an exception to the presumption of access"
16 to judicial records, *Foltz [v. State Farm Mut. Auto. Ins. Co.]*, 331 F.3d
17 [1122,] 1135 [(9th Cir. 2003)], for a "sealed discovery document
18 [attached] to a **non-dispositive** motion," such that "the usual
19 presumption of the public's right of access is rebutted." *Phillips v.*
20 *General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)
21 (emphasis added). There are, as we explained in *Foltz*, "good reasons
22 to distinguish between dispositive and non-dispositive motions." 331
23 F.3d at 1135. Specifically, the public has less of a need for access to
24 court records attached only to non-dispositive motions because those
25 documents are often "unrelated, or only tangentially related, to the
underlying cause of action." *Id.* (quoting *Seattle Times Co. v.*
Rhinehart, 467 U.S. 20, 33, 104 S. Ct. 2199, 81 L. Ed.2d 17 (1984)).

Kamakana, 447 F.2d at 1179 (emphasis in original). Thus, to seal the confidential
materials filed with Defendants' Motion to Compel, Defendants need show only

1 “good cause.” Here, Defendants provides ample cause to seal the information at
2 issue.

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4 **B. “Good Cause” Exists to Seal the Confidential Information**

5 The Court should seal the Confidential Information because it contains
6 sensitive “individual medical information” and has been designated confidential in
7 accordance with the Confidentiality Agreement between the parties. Under
8 Fed.R.Civ.P. 5.2(d), a court “may order that a filing be made under seal without
9 redaction,” and “may later unseal the filing or order the person who made the filing
10 to file a redacted version for the public record.” *Id.* (“Privacy Protection for
11 Filings Made with the Court”).

12
13 As noted above, Defendants have filed several declarations and numerous
14 exhibits containing or referencing material designated confidential by the
15 Plaintiffs. Moreover, the material contained within the Confidential Information is
16 sensitive in nature, as it involves medical information of the Plaintiffs. The filing
17 of the Confidential Information on the record is necessary for this Court to
18 adequately consider Defendants’ requests for IMEs. First, Plaintiffs have
19 designated one of the authors of the medical reports as an expert in this action.
20 Second, Defendants believe that the IMEs that Defendants propose are necessary
21 based on the lack of medical records provided to the Defendants thus far, the
22 injuries that appear to constitute Plaintiffs’ claimed damages as identified within
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1 the Complaint and the aforementioned Reports, and the sound advice of
2 Defendants' retained doctors. *See* Alexander Decl. **Ex. 1**. Finally, some of the
3 injuries and examinations outlined in the reports are not outlined in such detail
4 anywhere else in the record. *Compare* ECF No. 1 and Compel Alexander Decl.,
5 **Exs. B and C**; Zucker Decl.; Carter Decl.

6
7 Defendants can identify no legitimate public interest in the particulars of the
8 Confidential Information, particularly where the Plaintiffs' allegations have been
9 discussed at length in the public record. *See* ECF No. 1. In fact, the parties require
10 third-parties protect the Confidential Information by requiring third-parties,
11 including experts, to sign confidentiality agreements. *See* ECF No. 83-1 at 13.
12 Thus, Defendants request this Court maintain the confidential nature of the
13 Confidential Information under seal.
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15 16 **IV. CONCLUSION**

17 For the foregoing reasons Defendants respectfully request the Court grant
18 Defendants' Unopposed Motion to Seal Documents.

19 DATED this 16th day of November, 2016.

20
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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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