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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  
August 14, 2017

## I. INTRODUCTION

Comes now the Defendants, James Mitchell and John “Bruce” Jessen, by and through their attorneys, requesting that this Court grant their Motion to Seal Documents. On July 14, 2017, Defendants filed a Motion to Exclude Expert Opinions (“Motion to Exclude”). That Motion to Exclude was accompanied by a redacted declaration and exhibits. Portions of the redacted declaration, exhibits thereto, 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 Ariel S. Glasner submitted in support of this motion (“Glasner Decl.”) ¶ 5, **Ex. A** 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

Pursuant to the Court’s June 15, 2016 Order re: Case Management Procedures (ECF No. 51), Defendants and Plaintiffs worked diligently to achieve an agreement regarding confidentiality, which was executed on September 26, 2016, and entitled the Discovery Confidentiality Agreement. ECF No. 83-1. The Confidentiality Agreement defines “Confidential Material” as “non-public material, which if disclosed publicly, would” create a “clearly defined and specific

1 harm to the party seeking protection” and which is limited to, *inter alia*,  
2 “individual medical information.” ECF No. 83-1 at 2. Among other things, the  
3 Confidentiality Agreement outlines the procedure for the filing of material that has  
4 been designated confidential. *Id.* at 4. The Confidentiality Agreement provides:

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

9 *Id.* at 4-5.

10 On July 13 and 14, 2017, counsel for Plaintiffs and counsel for Defendants  
11 engaged in an e-mail exchange regarding the confidential nature of certain medical  
12 and expert reports subject to the Confidentiality Agreement. Glasner Decl., **Ex. A.**  
13 Plaintiffs’ counsel did not agree to waive the confidential designation of those  
14 medical and expert reports. *Id.* ¶ 5. Defendants now seek this Unopposed Motion  
15 to Seal the aforementioned medical and expert reports and any reference to such  
16 material in Defendants’ Motion to Exclude, as well as the accompanying  
17 declarations, in accordance with the parties’ Confidentiality Agreement.

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

19 Consistent with its obligations under the Confidentiality Agreement,  
20 Defendants filed under seal the following documents (collectively, the  
21 “Confidential Information”):

- 22 • Defendants’ unredacted Motion to Exclude, as **Ex. B** to Glasner Decl.;
- 23  
24  
25

- 1 • **Exhibits 1, 3 and 7** to the Declaration of Ariel S. Glasner in Support  
2 of Defendants’ Motion to Exclude (“Motion to Exclude Glasner  
3 Decl.”), included as a part of **Ex. C** to Glasner Decl.;
- 4 • The unredacted Motion to Exclude Glasner Decl., included as a part  
5 of **Ex. C** to Glasner Decl.;

6 The Motion to Exclude Glasner Decl. contains exhibits of confidential medical and  
7 expert reports discussing and referencing Plaintiffs’ alleged injuries, which have  
8 been designated as confidential by the Plaintiffs in accordance with the parties’  
9 Confidentiality Agreement.

### 10 III. ARGUMENT

#### 11 A. The Court Should Seal the Confidential Information on a 12 Showing of “Good Cause”

13 Courts recognize a presumption of public access to judicial records. *See,*  
14 *e.g., Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir.  
15 2006); LCR 5(g). This presumption, however, does not apply to sealed discovery  
16 documents attached to non-dispositive motions:

17 We have . . . “carved out an exception to the presumption of access”  
18 to judicial records, *Foltz [v. State Farm Mut. Auto. Ins. Co.]*, 331 F.3d  
19 [1122,] 1135 [(9th Cir. 2003)], for a “**sealed discovery document**  
20 [attached] to a **non-dispositive** motion,” such that “the usual  
21 presumption of the public’s right of access is rebutted.” *Phillips v.*  
22 *General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)  
23 (emphasis added). There are, as we explained in *Foltz*, “good reasons  
24 to distinguish between dispositive and non-dispositive motions.” 331  
25 F.3d at 1135. Specifically, the public has less of a need for access to  
court records attached only to non-dispositive motions because those  
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)).

1 *Kamakana*, 447 F.2d at 1179 (emphasis in original). Thus, to seal the confidential  
2 materials filed with Defendants’ Motion to Compel, Defendants need show only  
3 “good cause.” Here, Defendants provides ample cause to seal the information at  
4 issue.

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

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

13 As noted above, Defendants have filed a declaration and numerous exhibits  
14 containing or referencing material designated confidential by the Plaintiffs.  
15 Moreover, the material contained within the Confidential Information is sensitive  
16 in nature, as it involves medical information of the Plaintiffs. The filing of the  
17 Confidential Information on the record is necessary for this Court to adequately  
18 consider Defendants’ Motion to Exclude. Moreover, the alleged injuries and  
19 medical conditions of Plaintiffs detailed in the medical and expert reports are not  
20 outlined in such detail anywhere else in the record. *Compare* ECF No. 1 and  
21 Motion to Exclude Glasner Decl., **Exs. 1, 3 and 7.**

22 Defendants can identify no legitimate public interest in the particulars of the  
23 Confidential Information, particularly where the Plaintiffs’ allegations have been  
24 discussed at length in the public record. *See* ECF No. 1. In fact, the parties require  
25

1 third-parties protect the Confidential Information by requiring third-parties,  
2 including experts, to sign confidentiality agreements. See ECF No. 83-1 at 13.  
3 Thus, Defendants request this Court maintain the confidential nature of the  
4 Confidential Information under seal.

5 **IV. CONCLUSION**

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

8 DATED this 14th day of July, 2017.

9 **BETTS, PATTERSON & MINES, P.S.**

10  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of July, 2017, 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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