

EXHIBIT A

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

SULEIMAN ABDULLAH SALIM,
MOHAMED AHMED BEN SOUD,
OBAID ULLAH (as personal
representative of GUL RAHMAN),

Plaintiffs,

vs.

JAMES ELMER MITCHELL and
JOHN "BRUCE" JESSEN,

Defendants.

NO. 2:15-CV-286-JLQ

**DISCOVERY
CONFIDENTIALITY
AGREEMENT**

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 parties hereby stipulate to this Discovery Confidentiality Agreement. This agreement does not address or encompass any use of "Confidential" information at a trial or other merits hearing. It does not confer blanket protection on all disclosures or responses to discovery; instead, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment, and it does not presumptively entitle parties to file confidential information under seal. This agreement does not address, encompass, or contemplate the exchange or treatment in this litigation of information that the United States government contends is not subject to, or is prohibited from, disclosure or production, such as national security information determined by the United States government to be classified under Executive Order No. 13,526. This agreement does not modify the

1 Stipulation Re Discovery, ECF No. 47, entered into by the Parties and the United
2 States.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material protected under this agreement is limited to
5 nonpublic material, which, if disclosed publicly, would work a clearly defined and
6 specific harm to the party seeking protection. Material entitled to protection under
7 the terms of this agreement shall be limited to: (1) social security numbers; (2)
8 birthdates; (3) account numbers; (4) manuscripts that are pending publication; (5)
9 non-final drafts of such manuscripts and emails and other documents related to
10 such manuscripts; (6) individual medical information; and (7) any additional
11 category of information that the Court determines is entitled to protection upon (a)
12 joint submission by the parties if uncontested, or (b) notice and motion by the
13 designating party and an opportunity to respond by the opposing party, if
14 contested.

15 3. SCOPE

16 The protections conferred by this agreement cover not only Confidential
17 material (as defined above), but also (1) any information copied or extracted from
18 Confidential material; (2) all copies, notes, excerpts, summaries, or compilations
19 of Confidential material; and (3) any testimony, conversations, or presentations by
20 parties or their counsel that would reveal Confidential material to third parties.
21 However, the protections conferred by this agreement do not cover the following
22 information: (a) any information that is in the public domain at the time of
23 disclosure to a receiving party or becomes part of the public domain after its
24 disclosure to a receiving party as a result of publication not involving a violation
25 of this agreement, including becoming part of the public record through trial or
26 otherwise; and (b) any information known to the receiving party prior to the
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1 disclosure or obtained by the receiving party after the disclosure from a source
2 who obtained the information lawfully and under no obligation of confidentiality
3 to the designating party. Any use of Confidential material at trial shall be
4 governed by a separate agreement or order.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use Confidential material
7 that is disclosed or produced by another party or by a non-party in connection with
8 this case only for prosecuting, defending, or attempting to settle this litigation.
9 Confidential material may be disclosed only to the categories of persons and under
10 the conditions described in this agreement. Confidential material must be stored
11 and maintained by a receiving party at a location and in a secure manner that
12 ensures that access is limited to the persons authorized under this agreement.
13 When the litigation has been terminated, a receiving party must comply with the
14 provisions of section 10 below.

15 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the Court or permitted in writing by the designating party, a
17 receiving party may disclose any Confidential material only to:

18 (a) the receiving party's counsel of record in this action, as well as
19 that counsel's United States based employees, contractors, and investigators
20 assisting in the conduct of the lawsuit, to whom it is reasonably necessary to
21 disclose the information for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (b) experts and consultants, as well as their employees and support
24 staff, to whom disclosure is reasonably necessary for this litigation and who have
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (c) the Court, Court personnel, and court reporters and their staff.
2 Independent court reporters (i.e., those not employed by the Court) shall sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) copy or imaging services retained by counsel to assist in the
5 duplication of Confidential material, provided that counsel for the party retaining
6 the copy or imaging service instructs the service not to disclose any Confidential
7 material to third parties and to immediately return all originals and copies of any
8 Confidential material and the person responsible for the duplication signs the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (e) deponents during their depositions to whom disclosure is
11 reasonably necessary and who have signed the “Acknowledgment and Agreement
12 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
13 ordered by the Court. If a deponent refuses to sign the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A), Confidential information may be disclosed
15 to a deponent who was the author or recipient of a document, or who was a
16 participant in the activity described in a document. A deponent who refuses to
17 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A) may not
18 receive or retain a copy of the Confidential information following the deposition.
19 Pages of transcribed deposition testimony or exhibits to depositions that reveal
20 Confidential material must be separately bound by the court reporter and may not
21 be disclosed to anyone except as permitted under this agreement;

22 (f) the author or recipient of a document containing the
23 information or a custodian or other person who otherwise possessed or knew the
24 information.

25 4.3 Filing Confidential Material. Before filing confidential material or
26 discussing or referencing such material in court filings, the filing party shall
27 confer with the designating party to determine whether the designating party will
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1 remove the confidential designation, whether the document can be redacted, or
2 whether a motion to seal or stipulation and proposed order is warranted. To the
3 extent that the parties stipulate that evidentiary material designated "Confidential"
4 under this agreement may be filed under seal, the party seeking to protect
5 documents in whole or in part must submit an unopposed motion to permit the
6 filing of such a pleading under seal. If the parties do not agree to so stipulate, the
7 party seeking authority to file a pleading under seal must file a motion to permit
8 such filing which demonstrates good cause, as defined by pertinent precedent, to
9 seal documents. If a party seeks to unseal material that has been filed under seal
10 with leave of Court pursuant to this agreement, the party must file a motion to
11 show why good cause no longer exists to maintain the material under seal. The
12 Parties shall comply with the provisions of the Local Rules regarding motions and
13 the Electronic Case Filing rules, General Order No. 100-04-1. VI. B.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each party or non-party that designates information or items for protection under
17 this agreement must take care to limit any such designation to specific material
18 defined as Confidential. The designating party must designate for protection only
19 those parts of material, documents, items, or oral or written communications that
20 qualify as Confidential, so that other portions of the material, documents, items, or
21 communications for which protection is not warranted are not swept unjustifiably
22 within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited.

24 Designations that are shown to be clearly unjustified or that have been made for an
25 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development
26 process or to impose unnecessary expenses and burdens on other parties) expose
27 the designating party to sanctions.

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

4 5.2 Manner and Timing of Designations. Except as otherwise provided
5 in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
6 otherwise stipulated or ordered, disclosure of discovery material that qualifies for
7 protection under this agreement must be clearly so designated before or when the
8 material is disclosed or produced, except for material produced pending approval
9 of this agreement. For material produced prior to signature by the Parties' counsel
10 of record, such material must be designated as Confidential within five days of
11 signature by the Parties' counsel of record.

12 (a) Information in documentary form: (*e.g.*, paper or electronic
13 documents and deposition exhibits, but excluding transcripts of depositions or
14 other pretrial or trial proceedings). A party or non-party that makes original
15 documents or materials available for inspection need not designate them for
16 protection until after the inspecting party has indicated which material it would
17 like copied and produced. During the inspection and before the designation, all of
18 the material made available for inspection shall be deemed "CONFIDENTIAL."
19 After the inspecting party has identified the documents it wants copied and
20 produced, the producing party must determine which documents, or portions
21 thereof, qualify for protection under this agreement. Then, before producing the
22 specified documents, the producing party must affix the word "CONFIDENTIAL"
23 to each page that contains Confidential material. If only a portion or portions of
24 the material on a page qualifies for protection, the producing party also must
25 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in
26 the margins).

1 (b) Testimony given in deposition or in other pretrial proceedings:
2 the parties must identify on the record, during the deposition, hearing, or other
3 proceeding, all protected testimony, without prejudice to their right to so designate
4 other testimony after reviewing the transcript. Any party or non-party may,
5 within fifteen days after receiving a deposition transcript, designate portions of the
6 transcript, or exhibits thereto, as Confidential.

7 (c) Other tangible items: the producing party must affix in a
8 prominent place on the exterior of the container or containers in which the
9 information or item is stored the word "CONFIDENTIAL." If only a portion or
10 portions of the information or item warrant protection, the producing party, to the
11 extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive
14 the designating party's right to secure protection under this agreement for such
15 material. Upon timely correction of a designation, the receiving party must make
16 reasonable efforts to ensure that the material is treated in accordance with the
17 provisions of this agreement.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge, in
20 writing, a designation of confidentiality at any time. Unless a prompt challenge to
21 a designating party's confidentiality designation is necessary to avoid foreseeable,
22 substantial unfairness, unnecessary economic burdens, or a significant disruption
23 or delay of the litigation, a party does not waive its right to challenge a
24 confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

26 6.2 Meet and Confer. The parties must make every attempt to resolve
27 any dispute regarding Confidential designations without court involvement. Any
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1 motion regarding Confidential designations or for an order must include a
2 certification, in the motion or in a declaration or affidavit, that the movant has met
3 and conferred in good faith with other affected parties in an effort to resolve the
4 dispute without court action. The certification must list the date, manner, and
5 participants to the conference. A good faith effort to meet and confer requires a
6 face-to-face meeting or a telephone conference.

7 6.3 Judicial Intervention. If the parties cannot resolve a challenge
8 without court intervention, a party may file an appropriate motion before the Court
9 requesting that the Court determine whether the agreement covers the document in
10 dispute. Regardless of which party files the motion, the party seeking to protect a
11 document from disclosure bears the burden of establishing good cause for why the
12 document should not be disclosed. All parties shall continue to maintain the
13 material in question as confidential until the court rules on the challenge.
14 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or
15 impose unnecessary expenses and burdens on other parties) may expose the
16 challenging party to sanctions.

17 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

19 If a party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this action as
21 "CONFIDENTIAL," that party must:

22 (a) promptly notify the designating party in writing and include a
23 copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena
25 or order to issue in the other litigation that some or all of the material covered by
26 the subpoena or order is subject to this agreement. Such notification shall include
27 a copy of this agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to
2 be pursued by the designating party whose Confidential material may be affected.

3 If the designating party timely seeks a protective order, the party served
4 with the subpoena or court order shall not produce any information designated in
5 this action as "CONFIDENTIAL" before a determination by the court from which
6 the subpoena or order issued, unless the party has obtained the designating party's
7 permission. The designating party shall bear the burden and expense of seeking
8 protection in that court of its confidential material – and nothing in these
9 provisions should be construed as authorizing or encouraging a receiving party in
10 this action to disobey a lawful directive from another court.

11 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

23 When a producing party gives notice to receiving parties that certain
24 inadvertently produced material is subject to a good faith claim of privilege or
25 other protection, the obligations of the receiving parties are those set forth in
26 Federal Rule of Civil Procedure 26(b)(5)(A). Upon receipt of such notice, the
27 receiving party or parties shall immediately cease any further review or use of the
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1 subject materials including any work product that may rely upon or summarize the
2 subject materials. Within five (5) business days of receiving written notice from
3 the producing party, the receiving party shall: (i) return or destroy all such
4 privileged or protected information and all copies thereof; (ii) retrieve and destroy
5 all descriptions of the privileged or protected information; and (iii) confirm in
6 writing to the producing party that steps (i) and (ii) have been accomplished.
7 Return of the documents shall not constitute or be interpreted as an admission that
8 the returned documents or materials are properly subject to a claim of privilege or
9 protection.

10 If a party receiving documents independently discovers that a producing
11 party has produced documents or information that reasonably appear to be subject
12 to a claim of privilege or other protection, the receiving party shall immediately:
13 (i) notify the producing party or parties of the apparent disclosure, and (ii) cease
14 any further review or use of the subject materials including any work product that
15 may rely upon or summarize those materials.

16 This provision is not intended to modify whatever procedure may be
17 established in an e-discovery order or agreement that provides for production
18 without prior privilege review. Parties shall confer on an appropriate non-waiver
19 order under Fed. R. Evid. 502.

20 10. NON TERMINATION AND RETURN OF DOCUMENTS

21 Within 60 days after the termination of this action, including all appeals,
22 each receiving party must return all Confidential material to the producing party,
23 including all copies, extracts and summaries thereof. Alternatively, the parties
24 may agree upon appropriate methods of destruction within that 60-day period.

25 Notwithstanding this provision, counsel are entitled to retain one archival
26 copy of all documents filed with the court, trial, deposition, and hearing
27 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
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1 work product, and consultant and expert work product, even if such materials
2 contain Confidential material.


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

6 Nothing in this agreement shall prejudice any party from seeking
7 amendments to expand or restrict the rights of access to and use of Confidential
8 information, or other modifications, subject to order by the Court.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: 9/26/16


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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, declare under penalty of perjury that I have been advised by counsel of record for _____ in the case of *Suleiman Adbullah Salim, Mohamed Ahmed Ben Soud, and Obaid Ullah (as personal representative of Gul Rahman) v. James Elmer Mitchell and John "Bruce" Jessen*, Case No. 2:15-CV-286-JLQ (E.D. Wash.) of the Discovery Confidentiality Agreement governing the delivery, publication, and disclosure of confidential documents and information produced in this litigation.

I have read a copy of the Discovery Confidentiality Agreement and agree to abide by its terms. I understand that failure to comply with all terms of the Discovery Confidentiality Agreement could expose me to sanctions and punishment for contempt of court. I agree that I will not disclose in any manner any information or item that is subject to the Discovery Confidentiality Agreement to any person or entity except in compliance with the provisions of the Discovery Confidentiality Agreement.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of the Discovery Confidentiality Agreement, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____