

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, *et al.*,
Plaintiffs,
STATE OF WASHINGTON,
Plaintiff-Intervenor,
v.
DONALD TRUMP, *et al.*,
Defendants.

Case No: 2:17-cv-1297-MJP

**STIPULATED UNIFORM
PROTECTIVE ORDER AND
CROSS-USE AGREEMENT**

NOTE ON MOTION CALENDAR:
February 23, 2018

Pursuant to Federal Rule of Civil Procedure 26(c) and 5 U.S.C. § 552a(b)(11), and for good cause shown, the Court hereby enters the following Stipulated Uniform Protective Order and Cross-Use Agreement:

WHEREAS, pursuant to discovery or otherwise during the course of the above-captioned action (“*Karnoski v. Trump*”); *Doe v. Trump*, No. 1:17-cv-1597 (D.D.C.); *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.); and *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal.); (collectively, the “Named Actions”); the parties may be required to disclose confidential and sensitive information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure and information subject to the Privacy Act; and

WHEREAS, a protective order pursuant to Rule 26(c) and 5 U.S.C. § 552a(b)(11) is necessary in the Named Actions to prevent unnecessary disclosure or dissemination of such

1 confidential and sensitive information held by the parties;

2 WHEREAS, there exists substantial overlap between the subject matter of the Named
3 Actions, making it efficient and appropriate to permit discovery produced by parties and non-
4 parties in any of the Named Actions to be used in *Karnoski v. Trump*;

5 THEREFORE, IT IS HEREBY ORDERED that the following provisions of this Uniform
6 Protective Order and Cross-Use Agreement (hereafter the “Order”) shall control the disclosure,
7 dissemination, and use of material produced in discovery in *Karnoski v. Trump*:

8 1. **Scope of Order:** This Order shall govern the production, use, and disclosure of
9 all information and materials produced by any party or non-party in response to any discovery
10 request in *Karnoski v. Trump* (including, but not limited to, documents, interrogatory answers,
11 responses to requests to admit, and deposition transcripts and exhibits), all information contained
12 in those materials, and all copies, excerpts, or summaries of those materials (collectively,
13 “Discovery Material”).

14 2. **Designation of Protected Material:** A party or non-party may, in good faith,
15 designate as CONFIDENTIAL and therefore subject to the protections and requirements of this
16 Order, any Discovery Material that the designating party reasonably believes contains
17 confidential information, including personal, proprietary, or sensitive information not generally
18 disclosed to the public. Subject to the exceptions set forth in Paragraph 6, Discovery Material
19 designated CONFIDENTIAL (“Protected Material”) shall be used by the receiving parties solely
20 for the prosecution or defense of the Named Actions and shall not be disclosed to any person or
21 entity unless specifically authorized by the terms of this Order or by further order of the Court.
22 Consistent with the requirements of this paragraph, a party may, within fifteen (15) business days
23 of receipt of the Discovery Materials, by written notice to the other parties, designate as
24 CONFIDENTIAL any Discovery Materials produced or given by the other parties or by a non-
25 party but not designated CONFIDENTIAL by that other party or non-party.

26 3. **Limitations on Use:** Subject to the exceptions set forth in Paragraph 6, Protected
27 Material and its contents, as well as copies, summaries, notes, memoranda, and computer
28 databases relating thereto, shall be used solely for the purpose of the Named Actions, shall be

1 and remain confidential, and shall not be disclosed in any fashion, nor be used for any purpose
2 other than litigating the Named Actions.

3 4. **Limited Disclosure of Protected Material:** Except as stated in paragraphs 5 and
4 6 below, Protected Material may be disclosed, subject to the specific procedures and provisions
5 contained in this Order, to the following persons and/or entities only:

6 a) This Court and the officers, employees, and any stenographic reporters of such
7 courts;

8 b) Counsel representing the parties in the Named Actions and their support
9 personnel whose functions require access to Protected Material (collectively “Attorney
10 Professionals”);

11 c) Outside vendors who perform scanning, photocopying, computer classification,
12 translation, or similar clerical functions, retained by the parties or their counsel in the Named
13 Actions, but only for the purposes of performing such services and only so long as necessary to
14 perform those services;

15 d) Independent experts consulted or retained by counsel for assistance in the
16 preparation or prosecution of claims or defenses in the Named Actions, to the extent reasonably
17 necessary for such experts to prepare a written opinion or to prepare to testify or to assist counsel
18 in the Named Actions;

19 e) A witness who has been noticed or subpoenaed for deposition or a court
20 appearance in the Named Actions to the extent reasonably necessary for the preparation or giving
21 of his or her testimony about Protected Material;

22 f) Any other person who is so designated by order of this Court or by written
23 agreement of the producing party.

24 No Protected Material may be disclosed to persons identified in subparagraphs (d), (e) or
25 (f) until they have reviewed this Order and have executed a written agreement in the form
26 attached hereto as Exhibit A, which executed agreements shall be maintained by counsel of
27 record for the party making the disclosure to such persons (provided that Counsel who makes
28 such disclosure shall retain the written agreement but shall not be required to produce it to

opposing counsel until the deposition of the person or without order of the Court).

5. **Order Affecting Pseudonym Plaintiff:** Use and disclosure of the Pseudonym Plaintiff's identity in *Stone v. Trump* remain governed by the protective order entered by the *Stone* Court on September 29, 2017 ("*Stone* Pseudonym Order"). Use and disclosure of the Pseudonym Plaintiffs' identities in *Doe v. Trump* remain governed by the September 13, 2017 protective order entered in *Doe v. Trump* ("*Doe* Pseudonym Order"). Use and disclosure of the Pseudonym Plaintiff's identity in *Karnoski v. Trump* remain governed by the Order Granting Motion to Proceed Under Pseudonym entered by the Court on October 10, 2017 ("*Karnoski* Pseudonym Order"). Insofar as there is any conflict between this Order and the *Stone*, *Karnoski* and *Doe* Pseudonym Orders, the Pseudonym Orders shall prevail.

6. **Cross-Use of Discovery Material:** Any Discovery Material produced or provided by any party or non-party in any of the Named Actions shall be deemed produced in the other Named Actions and shall be treated consistently with the terms of this Order, with the exception of any Discovery Materials that include personally identifying information in the Named Actions, including information that would lead to the discovery of the identities of plaintiffs proceeding anonymously or other information protected by the Pseudonym Orders.

7. **Effect of Designation:** The designation of Protected Material pursuant to the Order shall not be construed as a waiver of any objection or a concession by any party that such Protected Material is relevant or material to any issue. Nor shall a failure to object to the designation of any such Protected Material be construed as a concession by the receiving parties that such Protected Material is, in fact, confidential or otherwise entitled to protection under the terms of this Order. All parties maintain their respective rights to object to production of any requested documents on the grounds that they are otherwise not discoverable, including, but not limited to, objections based on any applicable privilege, undue burden, overbreadth, relevance, and proportionality to the needs of the case. Any party may seek an order from the Court determining that specified Protected Material is not entitled to be treated as CONFIDENTIAL.

8. **Mechanics of Designation:** No designation of CONFIDENTIAL shall be effective as to a particular page of Protected Material unless there is placed on or affixed to each

1 page of such Protected Material a marking of “CONFIDENTIAL.” In the case of electronic
2 documents produced in native format, such designation may be made on the physical media (e.g.,
3 disk, flash drive) containing such electronic documents and on a slipsheet accompanying the
4 native file if the file is served electronically. Testimony may be designated CONFIDENTIAL
5 within ten (10) business days after receipt of a transcript of said testimony by furnishing to
6 counsel for the other parties a detailed statement of the specific portions of any such information,
7 by page and line number or exhibit number, by designating lines and pages as confidential by
8 highlighting or digital marking, or by a statement on the record at the time the testimony is
9 given. Pending the expiration of said ten (10) business days, all parties shall presumptively treat
10 the entire deposition transcript as CONFIDENTIAL. In addition to the requirements of this
11 Order, the court reporter before whom a deposition or other testimony relating to Protected
12 Material is taken shall, at the request of any party, designate a portion of the deposition or any
13 exhibits containing Protected Material as CONFIDENTIAL.

14 **9. No Waiver; Late Designation:** The failure of a party to designate information or
15 documents as CONFIDENTIAL in accordance with this Order, and the failure to object to such a
16 designation, is not a waiver of the right to do so and shall not preclude a party at a later time
17 from subsequently designating or objecting to the designation of such information or documents
18 as CONFIDENTIAL. The parties understand and acknowledge that a party’s failure to designate
19 information or documents as CONFIDENTIAL relieves the other parties of any obligation of
20 confidentiality until such a designation is made. Promptly after written notice to the receiving
21 parties of any such subsequent designation by the producing party, which notice shall
22 specifically identify the documents or information to be designated, the parties shall confer and
23 agree upon a method to mark as CONFIDENTIAL any such subsequently designated documents.
24 All documents containing any such subsequently designated information will be thereafter
25 treated in accordance with this Order.

26 **10. Objections to Designations:** A party may, at any time, make a good faith
27 challenge to the propriety of a Confidential Information designation. In the event a party objects
28 in writing to the designation of any material under this Order, the objecting party shall consult

1 with the designating party to attempt to resolve their differences. If the parties are unable to
2 reach an accord as to the proper designation of the material, after giving notice to the designating
3 party, either party may apply to the Court for a ruling regarding the designation. If such a motion
4 is made, the designating party has the burden of establishing that the designation is proper. If a
5 timely motion is made, any documents or other materials that have been designated
6 CONFIDENTIAL that are the subject of the motion shall be treated as Confidential until such
7 time as the Court rules that such materials should not be treated as Confidential.

8 11. **Control of Protected Material:** All Protected Material shall be maintained under
9 the direct control of counsel of record of the Named Actions, who shall be responsible for
10 preventing any disclosure thereof, except as permitted by the terms of this Order. Attorney
11 Professionals may review and make working copies, abstracts, and digests of Protected Material
12 for use in connection with the Named Actions, and such working copies, abstracts, and digests
13 shall be deemed Protected Material under the terms of this Order provided that access to
14 Protected Material, in whatever form stored or reproduced, shall be limited to those persons
15 entitled to receive such information pursuant to the terms of this Order and shall be appropriately
16 marked in accordance with the terms of this Order.

17 12. **Return:** Unless otherwise instructed by the Court, and subject to any applicable
18 document retention requirements, at the conclusion of this action, including any appeals, all
19 Protected Material, in whatever form stored or reproduced, shall be returned to counsel of record
20 for the party who produced said Protected Material, or the receiving parties shall certify that all
21 such information has been destroyed, except that the attorneys for the parties shall be entitled to
22 retain all litigation documents, including exhibits and their own memoranda, containing
23 Protected Material. Such litigation documents and memoranda shall be used only for the purpose
24 of preserving files this action, and shall not, without the written permission of the designating
25 party or an order of this Court, be disclosed to anyone other than those to whom such
26 information was actually disclosed, in accordance with this Order, during the course of the
27 Named Actions.

1 13. **Filing under Seal:** Any party seeking to file documents containing Protected
2 Material shall file a motion to file under seal pursuant to all applicable Federal Rules of Civil
3 Procedure and the Local Rules of this Court.

4 14. **Subpoena of Protected Material:** If a person in possession of Protected Material
5 who is not the producing party with respect to that Protected Material receives a subpoena or
6 other request that would require production or other disclosure of Protected Material, that person
7 shall immediately give written notice to counsel for the producing party, identifying the
8 Protected Material sought and the date and time that production or other disclosure is required. In
9 no event should production or disclosure be made without written approval by counsel for the
10 producing party or by further order of the Court or another court of competent jurisdiction.

11 15. **Inadvertent Disclosure:** Should any Protected Material be disclosed, through
12 inadvertence or otherwise, to any person and/or entity not entitled to access or review same, then
13 such person and/or entity:

14 (a) Shall be informed promptly of all provisions of this Order by the responsible party;

15 (b) Shall immediately be identified to all counsel of record in all Named Actions by the
16 responsible party; and

17 (c) Shall be requested, in writing by the responsible party, to return the material to the
18 responsible party.

19 Inadvertent disclosure by the disclosing party of any Protected Material, regardless of
20 whether said Protected Material was so designated at the time of disclosure, shall not be deemed
21 a waiver in whole or in part of the protectability of the Protected Material in accordance with the
22 terms of this Order, either as to the specific Protected Material disclosed, or as to any other
23 information relating thereto or relating to the same or related subject matter.

24 16. **Modification:** This Order is without prejudice to the right of any party to apply at
25 any time for additional protection, or to amend, modify, or rescind the restrictions of this Order.
26 The party must provide written notice to counsel of record for all parties in the Named Actions
27 specifying the portion(s) of this Order it seeks to amend, modify, or rescind and any additional
28 provisions it may seek to add to the Order. The written notice must be served five (5) business

days in advance of filing any such motion. The parties expressly reserve the right to seek modification, amendment, or rescission of this Order by mutual agreement in writing.

17. **Enforcement:** All persons to whom Protected Material is disclosed shall be subject to the jurisdiction of this Court, for the purpose of enforcing this Order. This Order shall continue in full force and effect, and shall be binding upon the parties and all persons to whom Protected Material has been disclosed, both during and after the pendency of this case.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

Respectfully submitted February 12, 2018.

NEWMAN DU WORS LLP

s/Samantha Everett

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this ____ day of _____, 2018.

The Honorable Marsha J. Pechman
United States District Court Judge

EXHIBIT A**ACKNOWLEDGEMENT 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 Stipulated Uniform Protective Order
and Cross-Use Agreement that was issued by the United States District Court for the Western
District of Washington on _____ in the case of *Karnoski, et al. v. Trump, et al.*, Case Number
2:17-CV-1297-MJP. I agree to comply with and to be bound by all the terms of this Stipulated
Uniform Protective Order and Cross-Use Agreement 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
this Stipulated Uniform Protective Order and Cross-Use Agreement to any person or entity
except in strict compliance with the provisions of this 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 this Stipulated Uniform
Protective Order and Cross-Use Agreement, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature _____

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, *et al.*,
Plaintiffs,
STATE OF WASHINGTON,
Plaintiff-Intervenor,
v.
DONALD TRUMP, *et al.*,
Defendants.

Case No: 2:17-cv-1297-MJP

**DECLARATION OF SAMANTHA
EVERETT IN SUPPORT OF
STIPULATED UNIFORM
PROTECTIVE ORDER AND
CROSS-USE AGREEMENT**

NOTE ON MOTION CALENDAR:
February 23, 2018

I, Samantha Everett, declare and affirm as follows:

1. I am an attorney representing Plaintiffs in this matter. I am over the age of 18, competent to testify in this action, and make this declaration from personal knowledge.

2. The attached Stipulated Uniform Protective Order and Cross-Use Agreement (“Protective Order”) was developed jointly by the parties in the above captioned action and the parties in *Doe v. Trump*, No. 1:17-cv-1597 (D.D.C.); *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.); and *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal.); (collectively, the “Named Actions”).

3. The Protective Order was designed to maximize efficiency and ensure uniformity of protections and procedures among the Named Actions.

4. The Protective Order contains substantially similar provisions to this Court’s Model Stipulated Protective Order (“Model Order”), with the exception that the Protective Order

1 expressly permits cross-use of Discovery Material among the Named Actions.

2 5. For the foregoing reasons, the parties deem that a redline comparison of the
3 Protective Order to the Model Order is not an accurate reflection of any departures from the
4 Model Order, and therefore respectfully request entry of the Protective Order without providing
5 the redline required by LCR 26(c)(2).
6

7 I certify under penalty of perjury under the laws of the United States that the foregoing is
8 true and correct.
9

10
11 DATED this 12th day of February, 2018.

12
13 
14 Samantha Everett