

The Honorable Marsha J. Pechman

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**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 FED. R. EVID.
502(D) ORDER**
NOTE ON MOTION CALENDAR:
February 12, 2018

Upon consideration of the parties’ joint motion pursuant to Federal Rule of Evidence 502(d) and Local Civil Rule 26(c) for entry of an order governing the inadvertent production of documents that may be privileged or protected, it is hereby ORDERED as follows:

I. NO WAIVER BY DISCLOSURE

1. The production of a document, or part of a document, shall not constitute a waiver of any privilege or protection as to any portion of that document, or as to any undisclosed privileged or protected communications or information concerning the same subject matter, in this or in any other proceeding. This Order applies to the attorney-client privilege, work-product protections, and all other protections afforded by Federal Rule of Civil Procedure 26(b) and governmental privileges. Nothing in this Order shall constitute an admission that any document disclosed in this litigation is subject to any of the foregoing privileges or protections, or that any

1 party is entitled to raise or assert such privileges. Additionally, nothing in this Order shall
2 prohibit parties from withholding from production any document covered by any applicable
3 privilege or other protection.

4 2. This Order shall displace the provisions of Fed. R. Evid. 502(b)(1) and (2). That
5 is, the disclosure of privileged or protected information, as described above, in this litigation
6 shall not constitute a subject-matter waiver of the privilege or protection in this or any other
7 federal or state proceeding, regardless of the standard of care or specific steps taken to prevent
8 disclosure. However, nothing in this Order shall limit a party's right to conduct a pre-production
9 review of documents as it deems appropriate.

10 II. DEFINITIONS

11 1. "Document," as used herein, includes all items listed in Fed. R. Civ. P.
12 34(a)(1)(A) and (B).

13 2. "Documents Produced," as used herein, includes all documents made available for
14 review or produced in any manner during this litigation.

15 III. PROCEDURES

16 The procedures applicable to a claim of privilege with respect to a produced document
17 and the resolution thereof shall be as follows:

18 1. If a party discovers a document, or part thereof, produced by another party that is
19 privileged or otherwise protected, the receiving party shall promptly notify the producing party
20 and then return the document or destroy it and certify that it has been destroyed to the producing
21 party. Nothing in this Order is intended to shift the burden to identify privileged and protected
22 documents from the producing party to the receiving party.

23 2. If the producing party determines that a document produced, or part thereof, is
24 subject to a privilege or privileges, the producing party shall promptly give the receiving party
25 notice of the claim of privilege ("privilege notice").

26 3. The privilege notice must contain information sufficient to identify the document
27 including, if applicable, a Bates number as well as an identification of the privilege asserted and
28 its basis.

1 4. Upon receiving the privilege notice, if the receiving party agrees with the
2 privilege assertion made, the receiving party must promptly return the specified document(s) and
3 any copies or destroy the document(s) and copies and certify to the producing party that the
4 document(s) and copies have been destroyed. The receiving party must sequester and destroy
5 any notes taken about the document. If a receiving party disclosed the document or information
6 specified in the notice before receiving the notice, it must take reasonable steps to retrieve it, and
7 so notify the producing party of the disclosure and its efforts to retrieve the document or
8 information.

9 5. Upon receiving the privilege notice, if the receiving party wishes to dispute a
10 producing party's privilege notice, the receiving party shall promptly meet and confer with the
11 producing party. The document(s) shall be sequestered and not be used by the receiving party in
12 the litigation (e.g., filed as an exhibit to a pleading or used in deposition) while the dispute is
13 pending. If the parties are unable to come to an agreement about the privilege assertions made in
14 the privilege notice, the receiving party may make a sealed motion for a judicial determination of
15 the privilege claim.

16 6. Pending resolution of the judicial determination, the parties shall both preserve
17 and refrain from using the challenged information for any purpose and shall not disclose it to any
18 person other than those required by law to be served with a copy of the sealed motion. The
19 receiving party's motion challenging the assertion must not publicly disclose the information
20 claimed to be privileged. Any further briefing by any party shall also not publicly disclose the
21 information claimed to be privileged if the privilege claim remains unresolved or is resolved in
22 the producing party's favor.

23 If a document must be returned or destroyed as determined by the process above, that
24 document, along with copies and notes about the document, that exist on back-up tapes, systems,
25 or similar storage need not be immediately deleted or destroyed, and, instead, such materials
26 shall be overwritten and destroyed in the normal course of business. Until they are overwritten
27 in the normal course of business, the receiving party will take reasonable steps to limit access, if
28 any, to the persons necessary to conduct routine IT and cybersecurity functions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

Respectfully submitted February 12, 2018.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED this ____ day of _____, 2018.

The Honorable Marsha J. Pechman
United States District Court Judge