

Eric Croft (Alaska Bar No. 9406031)
THE CROFT LAW OFFICE
738 H Street
Anchorage, AK 99501
T: 907-272-3508 | F: 907-274-0146
eric@croftlawoffice.com

Peter C. Renn (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
4221 Wilshire Boulevard, Ste. 280
Los Angeles, CA 90010
T: 213-382-7600 | F: 213-351-6050
prenn@lambdalegal.org

Tara L. Borelli (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
730 Peachtree St. NE, Ste. 640
Atlanta, GA 30308
T: 470-225-5341 | F: 404-897-1884
tborelli@lambdalegal.org

Attorneys for Plaintiff Jennifer Fletcher

JAHNA LINDEMUTH
ATTORNEY GENERAL

William Milks (Alaska Bar No. 0411094)
Kevin Dilg (Alaska Bar No. 1406053)
Assistant Attorneys General
Department of Law
P.O. Box 110300
Juneau, AK 99801
Telephone: (907) 465-3600
Facsimile: (907) 465-2075
Email: bill.milks@alaska.gov

Attorneys for Defendant State of Alaska

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JENNIFER FLETCHER,

Plaintiff,

v.

THE STATE OF ALASKA,

Defendant.

Case No. 1:18-cv-00007-HRH

**JOINT MOTION FOR ENTRY OF
STIPULATED PROTECTIVE
ORDER**

The parties, pursuant to Fed. R. Civ. P. 26 (c) and D.Ak. L.R. 37.1, jointly move the Court for the entry of the parties' proposed Stipulated Protective Order, which governs certain confidential information and documents related to this case. The proposed Stipulated Protective Order specifies the conditions under which confidential documents and information in possession of the parties must be exchanged, used, and protected in this litigation, and authorizes the parties to disclose that information in furtherance of this litigation. The proposed Stipulated Protective Order is justified by Rule 26(c) of the Federal Rules of Civil Procedure and is necessary in order for the parties to timely proceed with discovery.

The Ninth Circuit has affirmed "district courts have broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002). This case involves, among other things, issues related to Plaintiff's medical information. Recognizing the inherently sensitive nature of confidential information such as this, the parties have agreed to a procedure for handling such information as set forth in the Stipulated Protective Order accompanying this Motion. The parties accordingly move this Court to exercise its "wide

discretion in controlling discovery,” and enter their accompanying proposed Stipulated Protective Order. *Jeff D. v. Otter*, 643 F.3d 278, 289 (9th Cir. 2011) (quoting *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir.1988)).

Dated: September 28, 2018

/s/ Peter C. Renn

Peter C. Renn (admitted *pro hac vice*)
Tara L. Borelli (admitted *pro hac vice*)
Eric Croft (Alaska Bar No. 9406031)

Attorneys for Plaintiff Jennifer Fletcher

/s/ Kevin M. Dilg

William E. Milks (Alaska Bar No. 0411094)
Kevin M. Dilg (Alaska Bar No. 1406053)
Assistant Attorneys General
Department of Law

Attorneys for Defendant State of Alaska

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, causing a copy of the foregoing and all attachments to be served on all counsel of record.

/s/ Peter C. Renn

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FUND, INC.
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Telephone: 213-382-7600
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Kevin Dilg (Alaska Bar No. 1406053)
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Department of Law
P.O. Box 110300
Juneau, AK 99801
Telephone: (907) 465-3600
Facsimile: (907) 465-2075
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UNITED STATES DISTRICT COURT
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THE STATE OF ALASKA,

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Case No. 1:18-cv-00007-HRH

**STIPULATED PROTECTIVE
ORDER**

Jennifer Fletcher (“Plaintiff”) and the State of Alaska (“Defendant”) (collectively, the “parties”), by and through their undersigned counsel and pursuant to of the Federal Rule of Civil Procedure 26(c), hereby enter into this Stipulated Protective Order (the “Order”) with respect to certain confidential documents and information produced in the above-captioned case (“*Fletcher v. Alaska*”). The parties agree that the Order shall control the disclosure, dissemination, and use of material produced in discovery in *Fletcher v. Alaska*. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosures and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1. Scope of Order: This order shall govern the production, use, and disclosure of all information produced by any party or non-party, including in response to any discovery request, in *Fletcher v. Alaska* (including but not limited to documents, answers to interrogatories, answers to request for admission, responses to requests for production of documents, deposition transcripts, and deposition exhibits), all information contained in those materials, and all copies, excerpts, or summaries of those materials and any testimony, conversations, or presentations by

Parties or their Counsel that might reveal protected information (collectively, “Discovery Material”). The parties recognize the Defendant’s responsibility to preserve the confidentiality of non-public documents held by the State to the maximum extent possible.

2. Designation of Protected Material: A party or non-party may, in good faith, designate as CONFIDENTIAL and therefore subject to the protections and requirements of this Order, any Discovery Material that the designating party reasonably believes contains confidential information, including sensitive personal information not generally disclosed to the public (such as medical records, health information, and social security numbers).¹ Subject to the exceptions set forth in Paragraph 6, Discovery Material designated CONFIDENTIAL (“Protected Material”) shall be used by the receiving parties solely for the prosecution or defense of *Fletcher v. Alaska* and shall not be disclosed by any person or entity unless specifically authorized by the terms of this Order or by further order of the Court. Consistent with the requirements of this paragraph, a party may, by written notice to the other parties, designate as CONFIDENTIAL any Discovery Materials produced or given by the other parties or by a non-party but not designated as CONFIDENTIAL by that other party or non-party. The parties may redact or withhold from production such materials that they believe are subject to privilege or are otherwise precluded from disclosure and shall serve a privilege log describing the documents or materials withheld, or information redacted, with sufficient detail to enable a test of the claimed privilege.

¹ This includes records protected from public disclosure under AS 40.25 *et seq.*; AS 39.25.080; Article 1, Section 22 of the Alaska Constitution, and any other state or federal law, rule, policy, or procedure, including common law and evidentiary privileges.

3. Limitations on Use: Protected Material and its contents, as well as copies, summaries, notes, memoranda, and computer databases relating thereto, shall be used solely for the purpose of *Fletcher v. Alaska*, shall be and remain confidential, and shall not be disclosed in any fashion not in accordance with this Order, nor be used for any purpose other than litigating *Fletcher v. Alaska*.

4. Limited Disclosure of Protected Material: Protected Material may be disclosed, subject to the specific procedures and provisions contained in this Order, to the following persons and/or entities only:

a. The court (including appellate) and the officers, employees, and any stenographic reporters of such courts;

b. Counsel representing the parties in *Fletcher v. Alaska* and their support personnel whose functions require access to Protected Material (collectively “Attorney Professionals”);

c. Experts consulted or retained by counsel for assistance in the preparation or prosecution of claims or defenses in *Fletcher v. Alaska*, to the extent reasonably necessary for such experts to prepare a written opinion or prepare to testify or to assist counsel in *Fletcher v. Alaska*;

d. Upon advanced written notice to the other party and with an opportunity to object, a witness who has been noticed or subpoenaed for deposition or a court appearance in *Fletcher v. Alaska* to the extent reasonably necessary for the preparation or giving of their testimony about Protected Material;

e. Any other person who is so designated by order of the Court (including appellate) or by written agreement of the producing party.

No Protected Material may be disclosed to a person identified in subparagraphs (d), (e), or (f) until they have reviewed this Order and have executed a written agreement in the form attached hereto as Exhibit A. Executed agreements shall be maintained by the counsel of record for the party making the disclosure to such persons.

5. 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 use. 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 the production of requested documents on the grounds that they are not discoverable, including, but not limited to, objections based on any applicable privilege, undue burden, overbreadth, relevance, proportionality to the needs of the case, and protection under state or federal law, including decisional law. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purpose 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, specifically including the attorney-client privilege and attorney work-product privilege. Any party may seek an order from the Court determining that specified Protected material is not entitled to be treated as CONFIDENTIAL.

6. 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 page of such Protected Material a marking of "CONFIDENTIAL," or unless the party identifies in writing the Protected Material by Bates number, page (and if applicable, line number), or

equivalent means. In the case of electronic documents produced in native format, such designation may be made on the physical media (e.g., disk, flash drive) containing such electronic documents and on a slipsheet accompanying the native file if the file is served electronically. Testimony may be designated CONFIDENTIAL after receipt of a transcript of said testimony by furnishing to counsel for the other parties a detailed statement of the specific portions of any such information, by page and paragraph number or exhibit number, by designating lines and pages as confidential by highlighting or digital marking, or by a statement on the record at the time the testimony is given. In addition to the requirements of this Order, the court reporter before whom a deposition or other testimony relating to Protected Material is taken shall, at the request of any party, designate a portion of the deposition or any exhibits containing Protected Material as CONFIDENTIAL.

7. No Waiver; Late Designation: The failure of a party to promptly designate information or documents as CONFIDENTIAL in accordance with this Order, and the failure to object to such a designation, is not a waiver of the right to do so and shall not preclude a party at a later time from subsequently designating or objecting to the designation of such information or documents as CONFIDENTIAL. The parties understand and acknowledge that a party's failure to designate information or documents as CONFIDENTIAL relieves the other parties of any obligation of confidentiality until such a designation is made. Written notice to the receiving parties of any such subsequent designation by the producing party shall specifically identify the documents or information to be designated by Bates number, page (and if applicable, line number), or equivalent means. All documents containing any such subsequently designated information will be thereafter treated in accordance with this Order.

8. Objections to Designations: A party may at any time, make a good faith challenge to the propriety of a Confidential Information designation. In the event a party objects in writing to the designation of any material under this order, the objecting party shall consult with the designating party to attempt to resolve their differences. If the parties are unable to reach an accord as to the proper designation of the material, after giving notice to the designating party, either party may apply to the Court for a ruling regarding the designation. If such a motion is made, the designating party has the burden of establishing that the designation is proper. If a timely motion is made, any documents or other materials that have been designated CONFIDENTIAL that are the subject of the motion shall be treated as Confidential until such time as the Court rules that such materials should not be treated as Confidential.

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

10. Return of Protected Material: Unless otherwise instructed by the Court, and subject to any applicable document retention requirements, at the conclusion of this action, including all appeals, all Protected Material, in whatever form stored or reproduced, shall be returned to counsel of record for the party who produced said Protected Material, or the receiving

parties shall certify that all such information has been destroyed, except that the attorneys for parties shall be entitled to retain all litigation documents, including exhibits and their own memoranda, containing Protected Material. Such litigation documents and memoranda shall be used only for the purpose of preserving files from this action, and shall not, without the written permission of the designating party or an order of the Court, be disclosed to anyone other than those to whom such information was actually disclosed, in accordance with this Order, during the course of *Fletcher v. Alaska*.

11. Filing under Seal: Any party seeking to file documents containing Protected Material shall file a motion to file under seal pursuant to all applicable Federal Rules of Civil Procedure and applicable local rules.

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

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

- a. Shall be informed promptly of all provisions of this Order by the responsible party;

b. Shall immediately be identified to all counsel of record in *Fletcher v. Alaska* by the responsible party; and

c. Shall be requested, in writing by the responsible party, to return the material to the responsible party.

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

14. Modification: This Order shall not be construed to prejudice to the right of any party to apply at any time for additional protection, or to amend, modify, or rescind the restrictions of this Order. The moving party must provide written notice to counsel of record for all parties in *Fletcher v. Alaska* specifying the portion(s) of this Order it seeks to amend, modify, or rescind and any additional 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.

15. Enforcement: All persons to whom Protected Material is disclosed shall be subject to the jurisdiction of the Court, for the purpose of enforcing the terms of this Order. This Order shall continue in full force and effect, and shall be binding upon the parties and all parties to whom Protected Material has been disclosed, both during and after the pendency of this case unless or until the designating party agrees in writing or the court orders the disclosure of the Protected Material.

Dated: September 28, 2018

/s/ Peter C. Renn

Peter C. Renn (admitted *pro hac vice*)
Tara L. Borelli (admitted *pro hac vice*)
Eric Croft (Alaska Bar No. 9406031)

Attorneys for Plaintiff Jennifer Fletcher

/s/ Kevin M. Dilg

William E. Milks (Alaska Bar No. 0411094)
Kevin M. Dilg (Alaska Bar No. 1406053)
Assistant Attorneys General
Department of Law

Attorneys for Defendant State of Alaska

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 Protective Order in place in the matter of *Fletcher v. The State of Alaska*, Case No. 1:18-cv-00007-HRH. I agree to comply with the Stipulated Protective Order in all respects, and hereby submit and waive any objection to the jurisdiction of the U.S. District Court for the District of Alaska, for the adjudication of any dispute concerning or related to my compliance with the Stipulated Protective Order. I understand that any violation of the terms of the Stipulated Protective Order may be punishable under Federal or Alaska laws.

Signature

Printed Name

City and State where sworn and signed

Date

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, causing a copy of the foregoing and all attachments to be served on all counsel of record.

/s/ Peter C. Renn
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IN THE UNITED STATES DISTRICT COURT
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JENNIFER FLETCHER,

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Case No. 1:18-cv-00007-HRH

**[PROPOSED] ORDER GRANTING
JOINT MOTION FOR STIPULATED
PROTECTIVE ORDER**

This matter having recently come before this Court, and good cause appearing therefore,

IT IS ORDERED:

1. The Joint Motion for Entry of Stipulated Protective Order (Doc. 18) is
GRANTED.
2. The proposed Stipulated Protective Order (Doc. 18-1) is adopted as an order of
the Court, which will be docketed separately, and may be modified by further order of the Court.

DATED: _____, 2018.

The Honorable H. Russel Holland
United States District Judge