

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SEALED PLAINTIFF 1 and)	
SEALED PLAINTIFF 2,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 3:22-cv-00670
)	
PATRIOT FRONT, <i>et al.</i> ,)	
)	
Defendants.)	

STIPULATED PROTECTIVE ORDER AND NON-WAIVER ORDER

Plaintiffs Sealed Plaintiff 1 and Sealed Plaintiff 2 (“Plaintiffs”) and Defendants Nathan Noyce, Thomas Dail, Paul Gancarz, Daniel Turechi, and Aedan Tredinnick (“Defendants”) (collectively “the Parties”), recognize that discovery in this case may call for the disclosure of personal and confidential records pertaining to the Parties and non-parties. The Parties also recognize that the unrestricted disclosure of such private and confidential information would be prejudicial to the Parties and non-parties and would compromise the rights of the Parties and non-parties alike.

The Parties acknowledge there exists a possibility that a Party may produce documents which would otherwise be subject to a claim of privilege. The Parties acknowledge and agree that the protections of Federal Rule of Evidence 502(d) shall govern the production of such documents and prevent the waiver of any privileges or protections.

THEREFORE, this Court orders as follows:

1. **Scope.** This Order shall govern the use, handling, and disclosure of all documents, testimony, or information produced or given in this action.

2. **Confidential and Highly Confidential Material.** “Confidential Material” means any document, electronically stored information, testimony, or thing being produced in this litigation, whether formally or informally, that any Party or non-party from whom discovery is sought (the “Designating Party”) reasonably believes constitutes confidential information or is otherwise entitled to protection under the Federal Rules of Civil Procedure. “Highly Confidential Material” means only any Confidential Material that counsel in good faith believes should be restricted to an “attorneys eyes only” designation.

3. **Designation.** Documents or information may be designated as Confidential Material or Highly Confidential Material under this Stipulated Protective Order by the person or entity producing it or by any party to this action (the “Designating Party”) by placing or affixing the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” on the document or information in a manner that will not interfere with its legibility or readability. For information produced in native format, it may be designated as Confidential Material by including the designation in the filename and/or affixing the designation on a corresponding image slipsheet for the document.

4. **Protection of Confidential Material.**

a. Confidential Material may be used by the Party or Parties to whom it is produced only for the prosecution and/or defense of claims asserted in this action. It may not be used by such Party or Parties for any other purpose, including but not limited to any use in any other state, federal, local and/or municipal, administrative or legal proceeding, lawsuit, enforcement action, arbitration, mediation or other proceeding, regardless in nature of the relationship to the claims asserted to this action. All complete or partial copies of Confidential Material, and written materials summarizing or derived

from Confidential Material, are also subject to the term of this Stipulated Protective Order.

b. Confidential Material may be disclosed by a non-Designating Party only to the following:

- i. Persons who appear on the face of the Confidential Material as an author, addressee, or recipient thereof, or participated in events described or contained in the Confidential Material, or in whose files the Confidential Material was found;
- ii. The Parties, but only after they have executed a written document in the Form of Exhibit A;
- iii. Counsel of record for the Parties and their associates, legal assistants, or other support employees who have a demonstrable need for such disclosure in order to conduct this litigation;
- iv. Any expert or consultant consulted or retained for the purposes of this litigation, consistent with the terms of Paragraph 3(c) below;
- v. any non-party deponent during the course of a deposition (so long as he/she is informed that the information is confidential pursuant to this Order) or trial witness;
- vi. Personnel of third-party vendors engaged by the Parties to assist in (i) the coding, imaging, or other management of documents for purposes of this litigation; or (ii) the preparation of demonstrative exhibits or other visual aids for presentation at a hearing or trial; and
- vii. The Court and authorized Court personnel, including court reporters and videographers at any deposition taken in this case.
- viii. Plenary use of Confidential Material inside a courtroom during trial will not be restricted by this Protective Order.

c. Before any Confidential Material may be disclosed to any person in Paragraph 3(b)(iv), each such person must (i) state under oath in a written document in the form of Exhibit A (attached) or (ii) state under oath in a deposition that he or she is fully familiar and agrees to comply with the terms of this Stipulated Protective Order and

further agrees to submit to the jurisdiction of this Court with respect to any disputes arising under this Stipulated Protective Order. Counsel must maintain a file of each signed Exhibit A.

5. Protection of Highly Confidential Material.

a. Material designated as Highly Confidential may only be disclosed to the individuals referenced in 4(b)(i), 4(b)(iii), 4(b)(iv), 4(b)(v), 4(b)(vi), and 4(b)(vii).

b. Notwithstanding the above, nothing in this Stipulated Protective Order shall restrict the pre-existing rights of each Party to access and disseminate their own Highly Confidential Material, including information held by third parties.

Notwithstanding the above and except with regard to Plaintiffs' real names, nothing in this Stipulated Protective Order shall prevent any Parties' counsel from describing the contents of Highly Confidential Material to their clients as reasonably necessary to advise them in conjunction with this case.

c. If a document is marked as "HIGHLY CONFIDENTIAL," the Designating Party shall also produce a version of the document with redaction(s) of the Highly Confidential Material so that the receiving party may provide the redacted version to its client.

d. Plenary use of Highly Confidential Material inside a courtroom during trial will not be restricted by this Protective Order.

6. Use of Real Names. Pursuant to the Court's order dated November 1, 2022 (ECF No. 24), the Parties will use "Sealed Plaintiff 1" and "Sealed Plaintiff 2" in all public filings.

7. Depositions. Unless all Parties agree on the record at the time the deposition testimony is taken, all deposition testimony taken in this case must be treated as Confidential

Material until the fourteenth (14th) calendar day after the final deposition transcript is delivered to any party or the witness, with the exception of Plaintiffs' deposition testimony, which must be treated as Highly Confidential Material until the fourteenth (14th) calendar day after the final deposition transcript is delivered to any party or witness. Within the 14-day time period, a Designating Party may serve a Notice of Designation upon the Parties, identifying the specific portions of testimony that are designated Confidential Material or Highly Confidential Material. Such material may be identified in writing or by underlining the relevant portions of the deposition transcript or the exhibits and marking such portions "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." After the expiration of the 14-day time period, only those portions of the deposition transcript will be protected by the terms of this Stipulated Protective Order.

8. Filing of Confidential/Highly Confidential Material.

a. If any party intends to file or use at trial any materials designated as Confidential or Highly Confidential, that party shall take steps reasonably necessary, in accordance with the Federal Rules of Civil Procedure and the Local Rules, to protect their confidentiality during such filing or usage. This Stipulated Protective Order does not, by itself, authorize the filing of any document under seal.

b. Nothing in this Stipulated Protective Order limits or determines what a Party may do with its own Highly Confidential or Confidential Information.

9. Challenges to Confidentiality Designations.

a. A party may challenge the propriety of any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation under this Protective Order at any time. A challenge may be made by serving the Designating Party with a captioned notice of

objection, which must identify which designation is challenged and state the basis for each challenge (“Notice of Objection”).

b. Following service of a Notice of Objection, the Parties must confer or make a good faith attempt to confer in person or by telephone in good faith to resolve the challenge. In the event that the Parties are unable to resolve the challenge informally, the party challenging the designation may file, on or before the fourteenth calendar day after service of a Notice of Objection, a motion to re-designate the challenged material.

c. The burden will be on the Designating Party under such circumstances to establish that the challenged information is Confidential Material or Highly Confidential Material within the meaning of this Stipulated Protective Order.

d. The original designation remains effective until the Court has ruled on the motion and during the period while any timely-filed objections are under consideration by the Court, as provided in Fed. R. Civ. P. 72(a).

10. **Modification of this Order.** The Parties reserve the right to seek modification of this Stipulated Protective Order at any time for good cause. The Parties agree to meet and confer before seeking to modify this Stipulated Protective Order for any reason. The restrictions imposed by this Stipulated Protective Order may be modified or terminated only by written stipulation of all Parties or by order of this Court.

11. **Disclosure of Privileged or Otherwise Protected Information.**

a. The disclosure of information subject to a claim of attorney-client privilege, work product protection, or other applicable privilege or protection—whether inadvertent or otherwise—is not a waiver of privilege or of protection from discovery in this case or in any other federal or state proceeding. For example, the mere disclosure of

privileged or work product protected documents in this case as part of a mass production will be considered inadvertent and will not, by itself, constitute a waiver in this case or in any other federal or state proceeding. This Order should be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). To properly assert a privilege over produced information, the producing party will not have to satisfy the elements of Federal Rule of Evidence 502(b)—i.e., it will not have to show that the production was inadvertent, it will not have to show it took reasonable precautions to prevent the production, and it will not have to show that it took reasonably prompt measures to rectify the error once it knew or should have known of the production.

b. If a Producing Party or its counsel becomes aware that it has produced to a Receiving Party any document, information or material that is, or contains information, protected by the attorney-client privilege, work product doctrine and/or any other applicable privilege or immunity (a “Potentially Privileged Document”), then the Producing Party must promptly notify counsel for each Receiving Party in writing and identify each Potentially Privileged Document with sufficient particularity to enable each Receiving Party to locate and return them to the Producing Party. The Receiving Party, upon receiving notice that privileged or protected documents have been produced (a “clawback” notice), (1) must promptly return or destroy the specified information and any copies it may have including by deleting or otherwise permanently removing the specified information from any systems used to house documents, including document review databases, e-rooms, and any other locations that store the document; (2) must not use or disclose the information until the claim is resolved; and (3) must take reasonable steps to retrieve the information if the party disclosed it before being notified.

Notwithstanding this provision, no Receiving Party shall be required to return or destroy any Potentially Privileged Documents that may exist on any disaster recovery backup systems. Such materials should be overwritten and destroyed in the normal course of business.

c. The Party or Non-Party seeking protection for the documents subject to the clawback notice must provide a privilege log for the documents subject to the notice within five business days, from which the Receiving Party can determine whether or not to challenge the claim of privilege or other protection for those documents. However, such a challenge may not allege that privilege was waived for the challenged documents because they were inadvertently produced.

d. The Receiving Party may make no further use of the privileged or protected documents during any aspect of this matter or any other matter, including in depositions or at trial, unless the privileged or protected documents are later designated by a court as not, or no longer, privileged or protected. The contents of the privileged or protected documents must not be disclosed to anyone, except that, should the Receiving Party file a motion challenging the privilege designation of a document on grounds other than inadvertent production, the Producing Party may submit the challenged document under seal for the Court's *in camera* review when it files its response to that motion. If the Receiving Party has any notes or other work product reflecting the contents of the privileged or protected documents, the Receiving Party may not review or use those

materials unless a court later designates the privileged or protected documents as not, or no longer, privileged or protected.

e. Pursuant to Rule 4.4 of the Virginia Rules of Professional Conduct, any lawyer to a Party who receives any information that the lawyer knows or reasonably should know was inadvertently sent by a Producing Party shall promptly notify the sender.

12. **Latent Confidentiality Claims.** To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential Material or Highly Confidential Material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, will not be deemed a waiver in whole or in part of a Party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all Parties to whom the material was disclosed that the material should have been designated Confidential or Highly Confidential within a reasonable time after disclosure. Such notice will constitute a designation of the information, document or thing as Confidential or Highly Confidential under this Stipulated Protective Order.

13. **Prior Production of Documents.** If a Producing Party produced any information or document prior to the effective dates of this Order, then the Producing Party may designate, within fourteen (14) days from the date of this Order, any information or documents. In the event that a Party seeks to designate, or change the designation of, previously produced material (including material produced by third-parties) within this period, the Party seeking the post-production designation must reproduce that material with the correct designation. The

provisions of Paragraph 8 (Challenges to Confidentiality Designations) still apply to the designation of prior produced documents as Confidential or Highly Confidential. The Parties agree that, pending the resolution of any such disputed matter, under Paragraph 7, they will treat the information or document as Confidential under the terms of this Order.

14. **Seeking Additional Relief.** Nothing herein prevents any party from seeking additional relief from the Court not specified in this Stipulated Protective Order.

15. **Asserting Privacy Rights.** Nothing herein prevents any non-party from asserting privacy rights as to documents or information held by the Parties.

16. Within 60 days of termination of this litigation, whether by settlement, dismissal with prejudice (voluntary or otherwise), final judgment in favor of any party, all Parties, both themselves and their counsel of record, shall destroy and/or return all highly confidential and confidential materials.

17. **Jurisdiction.** The Court retains jurisdiction to make such amendments, modifications, and additions to this Stipulated Protective Order as it may from time to time deem appropriate.

IT IS SO ORDERED.

~~_____
M. Hannah Lauck
United States District Judge~~
M. Hannah Lauck
United States District Judge

/s/ MHL
10/01/24

WE ASK FOR THIS:

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