

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

DAVID KOENIG

Plaintiff

vs

**EVANS CLINCHY
JENNIFER CLINCHY and
BRIANNA (LOLA) McKISSEN**

Defendants

Case No. 23CV15424

**STIPULATED
PROTECTIVE ORDER**

(Honorable Kelly Skye)

One or more of the parties has requested the production of documents or information that at least one party considers to be or to contain confidential information, and that are subject to protection under ORCP 36 C.

The parties agree that good cause exists to protect the confidential nature of the information contained in documents, responses to requests for admission, or deposition testimony. This action concerns alleged reports of predatory behavior by plaintiff and allegations that plaintiff threatened violence against others.

The parties expect to exchange documents and information relating to plaintiff's mental health and relating to personal information and communications that could be used by plaintiff to carry out future acts of predatory behavior or violence.

1
2 The parties agree that the entry of this Stipulated Protective Order
3 (“Protective Order”) is warranted to protect against disclosure of such documents
4 and information. Based upon the above stipulation of the parties, and the Court
5 being duly advised,
6

7 **IT IS HEREBY ORDERED** as follows:

- 8
- 9 1. All documents, testimony, and other materials produced by the parties in this
10 case and labeled “Confidential” or “Attorneys’ Eyes Only” shall be used only
11 in this proceeding, and shall be promptly and permanently destroyed by the
12 parties at the conclusion of the litigation.
 - 13 2. Use of any information or documents labeled “Confidential” or “Attorneys’
14 Eyes Only” and subject to this Protective Order, including all information
15 derived therefrom, shall be restricted solely to the litigation of this case and
16 shall not be used by any party for any business, commercial, competitive or
17 other personal purpose. This Protective Order, however, does not restrict the
18 disclosure or use of any information or documents lawfully obtained by the
19 receiving party through means or sources outside of this litigation. Should a
20 dispute arise as to any specific information or document, the burden shall be
21 on the party claiming that such information or document was lawfully
22 obtained through means and sources outside of this litigation.
 - 23 3. The parties, and third parties subpoenaed by one of the parties, may designate
24 as “Confidential” or “Attorneys’ Eyes Only” documents, testimony, written
25 responses, or other materials produced in this case if they contain information
26
27
28

1
2 that the producing party has a good faith basis for asserting is confidential
3 under the applicable legal standards. The party shall designate each page of
4 the document with a stamp identifying it as “Confidential” or “Attorneys’ Eyes
5 Only,” if practical to do so.
6

7 **4.** A party seeking to file under seal documents designated as CONFIDENTIAL
8 under this protective order must file a motion to file documents under seal
9 that specifies: (a) the statutory authority for sealing the documents; (b) the
10 reasons for protecting the documents from public inspection; and (c) a
11 description of the documents to be sealed. The judge hearing the motion may
12 require the moving party to submit the documents to the court for in camera
13 review.
14
15

16 **5.** Within thirty (30) days after receipt of the final transcript of the deposition of
17 any party or witness in this case, a party or the witness may designate as
18 “Confidential” or “Attorneys’ Eyes Only” any portion of the transcript that the
19 party or witness contends discloses confidential information. If a transcript
20 containing any such material is filed with the Court, it shall be filed under
21 seal and marked in the manner described in paragraph 4. Unless otherwise
22 agreed, all deposition transcripts shall be treated as “Confidential” and
23 “Attorneys’ Eyes Only” until the expiration of the thirty-day period.
24
25

26 **6.** Use of any information, documents, or portions of documents marked
27 “Confidential” including all information derived therefrom, shall be restricted
28 solely to the following persons, who agree to be bound by the terms of this

1
2 Protective Order, unless additional persons are stipulated by counsel or
3 authorized by the Court:

- 4 **a.** Outside counsel of record for the parties, and the administrative staff
5 of outside counsel's firms.
6
- 7 **b.** In-house counsel for the parties, and the administrative staff for each
8 in-house counsel.
9
- 10 **c.** Any party to this action who is an individual, and every employee,
11 director, officer, or manager of any party to this action who is not an
12 individual, but only to the extent necessary to further the interest of
13 the parties in this litigation.
14
- 15 **d.** Independent consultants or expert witnesses (including partners,
16 associates and employees of the firm which employs such consultant or
17 expert) retained by a party or its attorneys for purposes of this
18 litigation, but only to the extent necessary to further the interest of the
19 parties in this litigation.
20
- 21 **e.** The Court and its personnel, including, but not limited to, stenographic
22 reporters regularly employed by the Court and stenographic reporters
23 not regularly employed by the Court who are engaged by the Court or
24 the parties during the litigation of this action,
25
- 26 **f.** The authors and the original recipients of the documents,
27
- 28 **g.** Any court reporter or videographer reporting a deposition.

1
2 **h.** Employees of copy services, microfilming or database services, trial
3 support firms and/or translators who are engaged by the parties during
4 the litigation of this action.

5
6 **7.** Use of any information, documents, or portions of documents marked
7 “Attorneys’ Eyes Only” including all information derived therefrom, shall be
8 restricted solely to the persons listed in paragraphs 6(a), 7(b), 7(d), 7(e), 7(g)
9 and 7(h), unless additional persons are stipulated by counsel or authorized by
10 the Court.

11
12 **8.** Prior to being shown any documents produced by another party marked
13 “Confidential” or “Attorneys’ Eyes Only” any person listed under paragraph
14 6(c) or 6(d) shall agree to be bound by the terms of this Order by signing the
15 agreement attached as Exhibit A.

16
17 **9.** Whenever information designated as “Confidential” or “Attorneys’ Eyes Only”
18 pursuant to this Protective Order is to be discussed by a party or disclosed in
19 a deposition, hearing, or pre-trial proceeding, the designating party may
20 exclude from the room any person, other than persons designated in
21 paragraphs 6 and 7, as appropriate, for that portion of the deposition, hearing
22 or pre-trial proceeding.

23
24 **10.** Each party reserves the right to dispute the confidential status claimed by
25 any other party or subpoenaed party in accordance with this Protective Order.
26 If a party believes that any documents or materials have been inappropriately
27 designated by another party or subpoenaed party, that party shall confer with
28

1
2 counsel for the designating party. As part of that conferral, the designating
3 party must assess whether redaction is a viable alternative to complete non-
4 disclosure. If the parties are unable to resolve the matter informally, a party
5 may file an appropriate motion before the Court requesting that the Court
6 determine whether the Protective Order covers the document in dispute.
7
8 Regardless of which party files the motion, the party seeking to protect a
9 document from disclosure bears the burden of establishing good cause for why
10 the document should not be disclosed. A party who disagrees with another
11 party's designation must nevertheless abide by that designation until the
12 matter is resolved by agreement of the parties or by order of the Court.
13

14
15 **11.** The inadvertent failure to designate a document, testimony, or other material
16 as "Confidential" or "Attorneys' Eyes Only" prior to disclosure shall not
17 operate as a waiver of the party's right to later designate the document,
18 testimony, or other material as "Confidential" or "Attorneys' Eyes Only". The
19 receiving party or its counsel shall not disclose such documents or materials
20 if that party or counsel knows or reasonably should know that a claim of
21 confidentiality would be made by the producing party. Promptly after
22 receiving notice from the producing party of a claim of confidentiality, the
23 receiving party or its counsel shall inform the producing party of all pertinent
24 facts relating to the prior disclosure of the newly-designated documents or
25 materials, and shall make reasonable efforts to retrieve such documents and
26 materials and to prevent further disclosure.
27
28

1
2 **12.** Designation by either party of information or documents as “Confidential” or
3 “Attorneys’ Eyes Only,” or failure to so designate, will not be constitute an
4 admission that information or documents are or are not confidential. Neither
5 party may introduce into evidence in any proceeding between the parties,
6 other than a motion to determine whether the Protective Order covers the
7 information or documents in dispute, the fact that the other party designated
8 or failed to designate information or documents as “Confidential” or
9 “Attorneys’ Eyes Only”.
10
11

12 **13.** Upon the request of the producing party or third party, within 30 days after
13 the entry of a final judgment no longer subject to appeal on the merits of this
14 case, or the execution of any agreement between the parties to resolve
15 amicably and settle this case, the parties and any person authorized by this
16 Protective Order to receive confidential information shall return to the
17 producing party or third party, or destroy, all information and documents
18 subject to this Protective Order. Returned materials shall be delivered in
19 sealed envelopes marked “Confidential” to respective counsel. The party
20 requesting the return of materials shall pay the reasonable costs of
21 responding to its request. Notwithstanding the foregoing, counsel for a party
22 may retain archival copies of confidential documents.
23
24
25

26 **14.** This Protective Order shall not constitute a waiver of any party’s or nonparty’s
27 right to oppose any discovery request or object to the admissibility of any
28 document, testimony or other information.

1
2 **15.** Nothing in this Protective Order shall prejudice any party from seeking
3 amendments to expand or restrict the rights of access to and use of
4 confidential information, or other modifications, subject to order by the Court.
5

6 **16.** The restrictions on disclosure and use of confidential information shall survive
7 the conclusion of this action and this Court shall retain jurisdiction of this
8 action after its conclusion for the purpose of enforcing the terms of this
9 Protective Order.
10

11
12 **Stipulated to by:**

13
14 /s/ Michael Fuller
15 **Michael Fuller**
16 Attorney for Defendant Jennifer Clinchy
17 Attorney for Defendant Evans Clinchy

18 /s/ Marc Mohan
19 **Marc Mohan**
20 Attorney for Plaintiff David Koenig

21 5/25/2023 11:05:09 AM

22
23
24 
25 Circuit Court Judge Kelly Skye

1
2 **CERTIFICATE OF COMPLIANCE WITH UTCR 5.100**

3 I certify that this proposed order is ready for judicial signature because this
4 is a stipulated order.

5
6 May 16, 2023

7 /s/ Michael Fuller
8 **Michael Fuller, OSB No. 09357**
9 Lead Trial Attorney for Defendants
10 OlsenDaines
11 US Bancorp Tower
12 111 SW 5th Ave., Suite 3150
13 Portland, Oregon 97204
14 michael@underdoglawyer.com
15 Direct 503-222-2000
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 **PROOF OF SERVICE**

3 I certify I caused this document to be served on:
4

5 **David Koenig**
6 **c/o attorney Marc Mohan**
7 marc@veritelawcompany.com

8 May 16, 2023
9

10 /s/ Michael Fuller
11 **Michael Fuller, OSB No. 09357**
12 Lead Trial Attorney for Defendants
13 OlsenDaines
14 US Bancorp Tower
15 111 SW 5th Ave., Suite 3150
16 Portland, Oregon 97204
17 michael@underdoglawyer.com
18 Direct 503-222-2000
19
20
21
22
23
24
25
26
27
28