

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

SEMINOLE TRIBE OF FLORIDA,

Plaintiffs,

CONSOLIDATED CASE

CASE NO.: 4:15-CV-516-RH/CAS

v.

STATE OF FLORIDA,

Defendant.

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**SEMINOLE TRIBE'S EMERGENCY MOTION FOR  
PROTECTIVE ORDER**

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The Seminole Tribe of Florida (the "Tribe") moves, pursuant to Federal Rule of Civil Procedure 26(c)(1)(F) and (G), for entry of a protective order and respectfully states:

**BACKGROUND**

The Tribe commenced this litigation on October 26, 2016 by the filing of a Complaint against the State of Florida seeking declaratory and other relief arising from the State of Florida's breach of the Seminole Compact and failure to negotiate in good faith as required by federal law.

During the course of this action the parties have stipulated to a series of reasonable procedures and protections to preserve confidential and trade secret protected information of the Tribe, while permitting full access to information

necessary for effective litigation. To that end, on or about March 9, 2016, the parties entered into a confidentiality stipulation regarding Seminole Tribe Production of Documents. A true and correct copy of the confidentiality stipulation is attached hereto as **Exhibit A**. Among other things, the confidentiality stipulation required records designated as trade secrets to be exempted from the public records laws, and prohibited the State from releasing the records except pursuant to an order issued by a court of competent jurisdiction. Confidentiality stipulation ¶ 5a-c.

Several depositions have transpired since entry into the confidentiality stipulation and the parties have stipulated that all deposition testimony is to be subject to the same protections set forth in the confidentiality stipulation. More specifically, the Seminole Tribe of Florida is to be permitted a reasonable opportunity to designate portions of deposition testimony as containing confidential or otherwise trade secret information following each deposition. Information so designated is to be exempted from the public records laws, and the State prohibited from releasing the records, except pursuant to an order issued by a court of competent jurisdiction.

The stipulation among the parties has been described on the record during the course of depositions, as follows:

**Counsel for The Tribe:** Before we continue today, I guess I would like to just note for the record that we have an agreement with opposing counsels that since there are going to be a number of

documents discussed that have been designated as trade secret by the Tribe that we'll have the opportunity to review the transcript and designate those portions of the transcript that are considered by the Tribe to be trade secret as well.

**Counsel for the State of Florida:** That's correct.

Deposition Transcript of Gordon Dickie, March 21, 2016 (5:14-23). No dispute exists that the same stipulation was reached with respect to each deposition that has been conducted in this case.

Notwithstanding the stipulations, counsel for The State of Florida has advised the Tribe that an unredacted copy of at least one deposition transcript that contains trade secret information, specifically the deposition transcript of James F. Allen, was inadvertently provided to a third-party in response to a public records request to the State, without providing the Seminole Tribe an opportunity to designate portions of the deposition transcript as trade secret or otherwise confidential.

**RELIEF REQUESTED**

By this motion, the Tribe seeks for the Court to enter a protective order requiring that all copies of the James F. Allen deposition transcript in the hands of any person be sealed and opened only on court order after the Tribe has had an adequate opportunity to assert claims of trade secret or confidentiality in accordance with the confidentiality stipulation, and requiring that all such trade

secret or other confidential information not be revealed or disseminated to any party.

### **AUTHORITY FOR RELIEF REQUESTED**

Pursuant to Rule 26(c)(1) “The court may, for good cause, issue an order protecting a party from annoyance, embarrassment, oppression, or undue burden and expense,” including by (F) “requiring that a deposition [transcript] be sealed and opened only on court order;” or (G) “requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.”

### **ARGUMENT**

Third parties to this litigation have no common-law right to examine the discovery materials at issue prior to the Tribe’s review and designation of appropriate materials as confidential or trade secret in accordance with the confidentiality stipulation amongst the parties. *See, e.g., In re Alexander Grant and Co. Litigation*, 820 F.2d 352, 354 (11th Cir. 1987). Further, third parties to this litigation do not have a first amendment right to protected information which overrides the provisions of the federal rules of civil procedure. *Id.* at 355. “The discovery process, as a ‘matter of legislative grace,’ is a statutorily created forum not traditionally open to the public.” *Id. citing Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 (1984). “Although information exchanged in pretrial discovery would often generate considerable public interest if publically disseminated, private

litigants have protectable privacy interests in confidential information disclosed through discovery.” *Id.* citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 at 35. “In order to preserve the confidentiality of sensitive materials, a district court may regulate access to the information by issuing a protective order pursuant to Rule 26(c).” *Id.*

In this case the Tribe and the State of Florida agreed to reasonable confidentiality provisions to expedite the flow of discovery material, promote the prompt resolution of disputes over confidentiality, and facilitate the preservation of material deemed worthy of protection. The terms are clear and precisely drawn. Good cause exists for entering an order permitting the parties to honor the provisions of the confidentiality stipulation because allowing third-parties to receive pretrial discovery materials prior to the Tribe’s review and redaction of trade secret or confidential information will do nothing to advance the litigation, and would likely cause the Tribe annoyance, embarrassment, and oppression.

Further, permitting third parties to invade the pre-trial discovery process and publish confidential and/or trade secret information may cause the Tribe to incur undue burden and expense by prosecuting claims for violation of Florida’s Uniform Trade Secrets Act, Chapter 866 and 815, Florida Statutes, which enables a court to enjoin any actual or threatened misappropriation of trade secrets.

## **CONCLUSION**

Because the Tribe has not been afforded an opportunity to review and redact confidential and/or trade secret information as agreed upon between the parties in the confidentiality stipulation and subsequent stipulations during each deposition in this case, and third parties have asked for and obtained at least one unredacted deposition transcript containing trade secrets and confidential information, good cause exists for entry of a protective order as permitted by Rule 26(c)(1)(F) and (G). The protective order should seal all deposition transcripts in the hands of any person until the Tribe has had a reasonable opportunity to review and mark confidential and/or trade secret information, and prohibit anyone from disseminating or disclosing the contents thereof to third parties, except pursuant to an order from a court of competent jurisdiction.

## **CERTIFICATE OF CONFERENCE**

Prior to the filing of this Motion, the undersigned conferred with counsel for The State of Florida, who could not take a position, but will advise the court by tomorrow as to The State of Florida's position as to the relief requested herein. Counsel has also conferred with the third-party, POLITICO Florida, who requested and obtained a copy of the unredacted transcript of James F. Allen. Politico refused to comply with requests by both the Tribe and the State of Florida to return the transcript and to permit the Tribe to replace it with a version that is redacted, and is actively threatening to publish the contents thereof.

**WHEREFORE**, The Seminole Tribe of Florida respectfully requests entry of an Order requiring that all copies of the James F. Allen deposition transcript in the hands of any person be sealed and opened only on court order after the Tribe has had an adequate opportunity to assert claims of trade secret or confidentiality in accordance with the confidentiality stipulation, and requiring that all such trade secret or other confidential information not be revealed or disseminated to any party.

S/ MICHAEL H. MOODY

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**CERTIFICATE OF SERVICE**

I hereby certify that on May \_\_, 2016, a true and correct copy of the foregoing was served via electronic mail to the following counsel of record:

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**EXHIBIT A**

**CONFIDENTIALITY STIPULATION**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

SEMINOLE TRIBE OF FLORIDA,

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STATE OF FLORIDA,

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**STIPULATION REGARDING SEMINOLE TRIBE  
PRODUCTION OF DOCUMENTS**

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The Parties stipulate as follows:

1. The Seminole Tribe has informed the State of Florida that a number of the documents encompassed by the State's request for production are trade secrets within the meaning of Chapters 688 and 815, Florida Statutes.

2. The Parties have agreed that the State will inspect documents responsive to the State's request for production at a mutually agreed upon location and will identify for the Tribe those documents that it wishes to retain copies of.

3. If the requested documents include documents that the Tribe claims are trade secrets, the Tribe will mark such documents with the label “TRADE SECRET”. Designations as “TRADE SECRET” under this stipulation shall be made with care and shall not be made absent a good faith belief that the designated material satisfies the criteria for trade secrets within the meaning of Chapters 688 and 815, Florida Statutes.

4. The State will maintain confidentiality of documents marked “TRADE SECRET” and will keep such documents in a separate file that can be accessed only by:

- a. the State’s legal counsel Tim Cerio, Ben Gibson, William Spicola, Joe Helton, William Hall, Dennis Whittlesey, Robert Stocker, Patrick Sullivan, Carter Andersen, and Anne-Leigh Moe, and such counsel’s immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff;
- b. the State’s employees Secretary Ken Lawson, Leon Biegalski, Jonathan Zachem, and Joseph Dillmore;
- c. witnesses in this action;

- d. any outside expert or consultant retained to assist in this action, provided that disclosure is only to the extent necessary to perform such work, and provided that such expert or consultant has agreed to be bound by the provisions of this stipulation;
  - e. court reporters, stenographers and videographers retained to record testimony taken in this action;
  - f. the Court, jury, and court personnel; and
  - g. any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this stipulation.
5. In the event that the State receives a Public Records request for any documents designated “TRADE SECRET”, the State will take the following action:
- a. Immediately notify counsel of record in this action that the request has been made.
  - b. Continue to maintain confidentiality of the “TRADE SECRET” documents.

- c. Inform the party making the Public Records request that the Tribe has designated such records as subject to the “TRADE SECRETS” exemption from the Public Records law and that the State cannot release the records except pursuant to an order issued by a court of competent jurisdiction.

However, the State will not be required to take a position in any litigation in which the Tribe attempts to prevent the disclosure of any document produced hereunder, nor will the State bear any expense in any such litigation.

6. In the event that the State receives a Public Records request for any documents designated “TRADE SECRET”, the Tribe will indemnify and hold harmless the State regarding litigation relating to such request.

7. Nothing in this stipulation shall be construed to prejudice any Party’s right to use any documents marked “TRADE SECRET” in court or in any court filing. This stipulation is without prejudice to the right of any Party to seek further or additional protection of any document from the Court or to move the Court to modify this stipulation in any way.

8. Nothing in this stipulation shall be construed to prevent any counsel from advising their clients with respect to this case based in whole or in part upon documents marked “TRADE SECRET”, provided counsel does not disclose the “TRADE SECRET” itself except as provided in this stipulation.

9. Nothing in this Order shall restrict in any way the use or disclosure of a document marked “TRADE SECRET”: (i) that is or has become publicly known through no fault of the receiving party; (ii) that is lawfully acquired by or known to the receiving party independent of the producing party; (iii) previously produced, disclosed and/or provided by the producing party to the receiving party or a non-party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to order of the Court.

10. This stipulation is subject to further court order based upon public policy or other considerations, and the Court may modify this stipulation *sua sponte* in the interests of justice. The United States District Court for the Northern District of Florida, or any other Federal Court of competent jurisdiction during the pendency of this litigation, is responsible for the interpretation and enforcement of this stipulation. All disputes

concerning documents marked “TRADE SECRET”, however designated, produced under the protection of this stipulation shall be resolved by the United States District Court for the Northern District of Florida or other Federal Court of competent jurisdiction during the pendency of this litigation.

11. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern District of Florida, or the Court’s own orders. Identification of any individual pursuant to this stipulation does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern District of Florida, or the Court’s own orders.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2016, a true and correct copy of the foregoing was filed via the CM/ECF system and served via electronic mail to all counsel of record.

/s Barry Richard  
BARRY RICHARD