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 27 Dufresne Spencer Group, LLC

28 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

Joss Pursley
 Plaintiff,
 v.
 VIA Productions, LLC; Dufresne
 Spencer Group, LLC
 Defendant.

Case No. 2:16-cv-16-03745-RGK-(SKx)
 Hon. R. Gary Klausner

STIPULATED PROTECTIVE ORDER

Action Filed: April 26, 2016
 Trial Date: September 19, 2017
 Removal Date: May 26, 2016

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth in
11 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks
14 permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve information otherwise generally unavailable to
17 the public, or which may be privileged or otherwise protected from disclosure under
18 state or federal statutes, court rules, case decisions, or common law. Specifically,
19 after June 1, 2017, certain medical records were produced from Plaintiff's treating
20 psychiatrist (Dr. Doryann Lebe) were produced in unredacted form. Further, Dr.
21 Lebe provided testimony regarding Plaintiff's medical history, as well as the medical
22 history and personal lifestyle of third parties. The Parties reasonably anticipate that
23 the upcoming deposition of Plaintiff's psychotherapist Dr. Sandy Peace (to be held
24 on June 22, 2017) will elicit testimony and the production of documents which
25 contain the medical history and/or personal lifestyle of Plaintiff and third parties
26 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
27 of disputes over confidentiality of discovery materials, to adequately protect
28 information the parties are entitled to keep confidential, to ensure that the parties are

1 permitted reasonable necessary uses of such material in preparation for and in the
2 conduct of trial, to address their handling at the end of the litigation, and serve the
3 ends of justice, a protective order for such information is justified in this matter to
4 cover testimony and/or documents regarding Plaintiff's medical history and/or
5 treatment produced after June 1, 2017 from Dr. Doryann Lebe and Dr. Sandy Peace.
6 It is the intent of the parties that information will not be designated as confidential
7 for tactical reasons and that nothing be so designated without a good faith belief that
8 it has been maintained in a confidential, non-public manner, and there is good cause
9 why it should not be part of the public record of this case.

10 2. DEFINITIONS

11 2.1 Action: This pending federal law suit..

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
17 Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 "CONFIDENTIAL." For the purposes of this Protective Order, "Designating Party"
23 includes Plaintiff.

24 2.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

28 2.7 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as
2 an expert witness or as a consultant in this Action.

3 2.8 House Counsel: attorneys who are employees of a party to this Action.
4 House Counsel does not include Outside Counsel of Record or any other outside
5 counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a party
9 to this Action but are retained to represent or advise a party to this Action and have
10 appeared in this Action on behalf of that party or are affiliated with a law firm which
11 has appeared on behalf of that party, and includes support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL.”

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs. Final disposition shall be
9 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
10 or without prejudice; and (2) final judgment herein after the completion and
11 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
12 including the time limits for filing any motions or applications for extension of time
13 pursuant to applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under
17 this Order must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The Designating Party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify so that other portions of the material, documents, items,
21 or communications for which protection is not warranted are not swept unjustifiably
22 within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper
25 purpose (e.g., to unnecessarily encumber the case development process or to impose
26 unnecessary expenses and burdens on other parties) may expose the Designating
27 Party to sanctions.

28 If it comes to a Designating Party's attention that information or items that it

1 designated for protection do not qualify for protection, that Designating Party must
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced, or by a Designating Party within 24 hours of the material's production to
8 the Designating Party.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
14 contains protected material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection and
20 before the designation, all of the material made available for inspection shall be
21 deemed "CONFIDENTIAL." After the inspecting Party has identified the
22 documents it wants copied and produced, the Producing Party and/or the Designating
23 Party must determine which documents, or portions thereof, qualify for protection
24 under this Order. Then, before producing the specified documents, the Producing
25 Party must affix the "CONFIDENTIAL legend" to each page that contains Protected
26 Material. If only a portion or portions of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the protected portion(s)
28 (e.g., by making appropriate markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identify the Disclosure or Discovery Material on the record, before the close of the
3 deposition all protected testimony.

4 (c) for information produced in some form other than documentary
5 and for any other tangible items, that the Producing Party affix in a prominent place
6 on the exterior of the container or containers in which the information is stored the
7 legend "CONFIDENTIAL." If only a portion or portions of the information
8 warrants protection, the Producing Party, to the extent practicable, shall identify the
9 protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such material.
13 Upon timely correction of a designation, the Receiving Party must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions of this
15 Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq., or through appropriate *ex parte*
22 procedures if warranted given the proximity of trial.

23 6.3 The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
26 parties) may expose the Challenging Party to sanctions. Unless the Designating
27 Party has waived or withdrawn the confidentiality designation, all parties shall
28 continue to afford the material in question the level of protection to which it is

1 entitled under the Producing Party’s designation until the Court rules on the
2 challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a
9 Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a secure manner that ensures that access is limited to the persons
13 authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this Action,
19 as well as employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this Action;

21 (b) Don McFarlane and Marva Steed as representatives of the
22 Receiving Party, after signing the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A). As it pertains to other employees and officers of Defendants,
24 Defendants reserve the right to share Confidential information with John Haun only,
25 and no other employees or officers, where disclosure is reasonably necessary. Prior
26 to sharing the Confidential information with John Haun, Defendants shall first notify
27 Plaintiff of Defendants’ intent, and engage in good faith meet and confer efforts with
28 Plaintiff. Defendants will not provide the Confidential Information to John Haun

1 without first obtaining either, (1) Plaintiff’s signature authorizing the release, (which
2 Plaintiff will not unreasonably withhold), or (2) a court order allowing the disclosure
3 of Confidential Information to John Haun.

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and

10 Professional Vendors to whom disclosure is reasonably necessary for this Action and
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (g) the author or recipient of a document containing the information
13 or a custodian or other person who otherwise possessed or knew the information;

14 (h) during their depositions, witnesses, and attorneys for witnesses, in
15 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
16 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
17 they will not be permitted to keep any confidential information unless they sign the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
19 agreed by the Designating Party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal Protected Material may be
21 separately bound by the court reporter and may not be disclosed to anyone except as
22 permitted under this Stipulated Protective Order; and

23 (i) any mediator or settlement officer, and their supporting
24 personnel, mutually agreed upon by any of the parties engaged in settlement
25 discussions.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
27 OTHER LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this Action as
2 “CONFIDENTIAL,” that Party must:

3 (a) promptly notify in writing the Designating Party. Such
4 notification shall include a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or
6 order to issue in the other litigation that some or all of the material covered by the
7 subpoena or order is subject to this Protective Order. Such notification shall include
8 a copy of this Stipulated Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be
10 pursued by the Designating Party whose Protected Material may be affected.

11 If the Designating Party timely seeks a protective order, the Party served with
12 the subpoena or court order shall not produce any information designated in this
13 action as “CONFIDENTIAL” before a determination by the court from which the
14 subpoena or order issued, unless the Party has obtained the Designating Party’s
15 permission. The Designating Party shall bear the burden and expense of seeking
16 protection in that court of its confidential material and nothing in these provisions
17 should be construed as authorizing or encouraging a Receiving Party in this Action
18 to disobey a lawful directive from another court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by
22 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request,
27 to produce a Non-Party’s confidential information in its possession, and the Party is
28 subject to an agreement with the Non-Party not to produce the Non-Party’s

1 confidential information, then the Party shall:

2 (1) promptly notify in writing the Requesting Party and the
3 Non-Party that some or all of the information requested is subject to a confidentiality
4 agreement with a Non-Party;

5 (2) promptly provide the Non-Party with a copy of the
6 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
7 reasonably specific description of the information requested; and

8 (3) make the information requested available for inspection by
9 the Non-Party, if requested.

10 (c) If the Non-Party fails to seek a protective order from this court
11 within 14 days of receiving the notice and accompanying information, the Receiving
12 Party may produce the Non-Party's confidential information responsive to the
13 discovery request. If the Non-Party timely seeks a protective order, the Receiving
14 Party shall not produce any information in its possession or control that is subject to
15 the confidentiality agreement with the Non-Party before a determination by the
16 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
17 expense of seeking protection in this court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
22 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
23 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
24 persons to whom unauthorized disclosures were made of all the terms of this Order,
25 and (d) request such person or persons to execute the "Acknowledgment and
26 Agreement to Be Bound" that is attached hereto as Exhibit A.

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order that provides for production without prior
8 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
9 parties reach an agreement on the effect of disclosure of a communication or
10 information covered by the attorney-client privilege or work product protection, the
11 parties may incorporate their agreement in the stipulated protective order submitted
12 to the court.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in this
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any
20 ground to use in evidence of any of the material covered by this Protective Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
23 only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. If a Party's request to file Protected Material
25 under seal is denied by the court, then the Receiving Party may file the information
26 in the public record unless otherwise instructed by the court.

27 13. FINAL DISPOSITION

28 After the final disposition of this Action, as defined in paragraph 4, within 60

1 days of a written request by the Designating Party, each Receiving Party must return
2 all Protected Material to the Producing Party or destroy such material. As used in
3 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
4 summaries, and any other format reproducing or capturing any of the Protected
5 Material. Whether the Protected Material is returned or destroyed, the Receiving
6 Party must submit a written certification to the Producing Party (and, if not the same
7 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
8 (by category, where appropriate) all the Protected Material that was returned or
9 destroyed and (2) affirms that the Receiving Party has not retained any copies,
10 abstracts, compilations, summaries or any other format reproducing or capturing any
11 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
12 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
13 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
14 reports, attorney work product, and consultant and expert work product, even if such
15 materials contain Protected Material. Any such archival copies that contain or
16 constitute Protected Material remain subject to this Protective Order as set forth in
17 Section 4 (DURATION).

18 14. Any violation of this Order may be punished by any and all appropriate
19 measures including, without limitation, contempt proceedings and/or monetary
20 sanctions.

21 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

22
23 DATED: PLAINTIFF’S COUNSEL

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26 By: /s/ Annette Morasch
27 Attorney for Plaintiff
28 JOSS PURSLEY

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DATED:

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s/
Laura D. Heckathorn

Attorneys for Defendants
DUFRESNE SPENCER GROUP, LLC and
VIA Productions, LLC

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 07/21/17



Honorable Steve Kim
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT 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 that was issued by the United States District Court for the Central
District of California on [date] in the case of _____
**[insert formal name of the case and the number and initials assigned to it by the
court]**. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject
to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court

1 for the Central District of California for the purpose of enforcing the terms of this
2 Stipulated Protective Order, even if such enforcement proceedings occur after
3 termination of this action. I hereby appoint _____
4 [print or type full name] of _____ [print or type full
5 address and telephone number] as my California agent for service of process in
6 connection with this action or any proceedings related to enforcement of this
7 Stipulated Protective Order.

8 Date: _____

9 City and State where sworn and signed: _____

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Printed name: _____

Signature: _____

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