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NOTE: CHANGES MADE BY THE COURT

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

SHAINIE LINDSEY, as Guardian ad Litem for minors: "PT", "BT", "RT1" "RT2", & "X", SHENIA ELDRIDGE as Guardian ad Litem for "RT3" & "RT4", DOMINIQUE KEATON as Guardian ad Litem for "DT", and ANNIE HARRIS for the Estate of Reginald THOMAS,

Plaintiffs,

vs.

CITY OF PASADENA, PASADENA POLICE CHIEF PHILLIP SANCHEZ, OFFICERS: MATHEW GRIFFIN, JEFFREY NEWLEN, THOMAS BUTLER, ROBERT GRIFFITH, MICHAEL OROSCO, PHILLIP POIRIER, RAFAEL SANTIAGO, AARON VILLACANA, SGT. AGUILAR & CORPORAL SUSAN GOMEZ individually and in their official capacity and DOES 1-10 inclusive,

Defendants.

Case No.: 2:16-cv-08602-SJO-RAOx

**PROTECTIVE ORDER
REGARDING MEDICAL RECORDS
TO BE PRODUCED PURSUANT TO
COURT ORDER DATED JANUARY
9, 2018**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may

1 be warranted. This Order does not confer blanket protections on all disclosures or
2 responses to discovery, and the protection it affords from public disclosure and use
3 extends only to the limited information or items that are entitled to confidential
4 treatment under the applicable legal principles.

5 B. GOOD CAUSE STATEMENT

6 GOOD CAUSE exists to enter the protective order to balance concerns that
7 the documents consist of confidential, private, and privileged information
8 concerning the Parties to this litigation as well as third parties who are not parties
9 to this litigation. Furthermore, this protective order was created for the purpose of
10 protecting certain information that may be subject to the official information
11 privilege, law enforcement privilege, and the right to privacy, as protected by the
12 California and United States Constitutions, the federal Health Insurance Portability
13 and Accountatbility Act of 1996 (“HIPAA”) and its implementing regulations, the
14 California Confidentiality of Medical Act (“CMIA”) (including but not limited to
15 the CMIA’s limitations on redisclosure), and other federal and state protections of
16 health and medical information in general, and substance abuse and mental health
17 information in particular, as well as to prevent against the broadcast or
18 dissemination of videotaped deposition testimony by any party, balanced with
19 plaintiffs’ right to discovery in this litigation. All documents, tangible things, and
20 videos marked confidential and produced pursuant to this protective order are
21 subject to the terms of this protective order unless otherwise ordered by the Court.

22 Accordingly, to expedite the flow of information, to facilitate the prompt
23 resolution of disputes over confidentiality of discovery materials, to adequately
24 protect information the Parties and Non-Parties are entitled and/or required to keep
25 confidential, to ensure that the Parties are permitted reasonable necessary uses of
26 such material in preparation for and in the conduct of trial, to address their
27 handling at the end of the litigation, and serve the ends of justice, a protective
28 order for such information is justified in this matter. Information will not be

1 designated as confidential for tactical reasons and nothing will be so designated
2 without a good faith belief that it has been maintained in a confidential, non-public
3 manner, and there is good cause why it should not be part of the public record of
4 this case.

5 C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER
6 SEAL

7 As set forth in Section 12.3, below, this Protective Order does not entitle the
8 Parties to file confidential information under seal; Local Civil Rule 79-5 sets forth
9 the procedures that must be followed and the standards that will be applied when a
10 Party seeks permission from the court to file material under seal.

11 There is a strong presumption that the public has a right of access to judicial
12 proceedings and records in civil cases. In connection with non-dispositive
13 motions, good cause must be shown to support a filing under seal. See Kamakana
14 v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v.
15 Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v.
16 Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
17 protective orders require good cause showing), and a specific showing of good
18 cause or compelling reasons with proper evidentiary support and legal justification,
19 must be made with respect to Protected Material that a party seeks to file under
20 seal. The Parties' mere designation of Disclosure or Discovery Material as
21 CONFIDENTIAL does not—without the submission of competent evidence by
22 declaration, establishing that the material sought to be filed under seal qualifies as
23 confidential, privileged, or otherwise protectable—constitute good cause.
24 Further, if a Party requests sealing related to a dispositive motion or trial, then
25 compelling reasons, not only good cause, for the sealing must be shown, and the
26 relief sought shall be narrowly tailored to serve the specific interest to be protected.
27 See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For
28 each item or type of information, document, or thing sought to be filed or

1 introduced under seal in connection with a dispositive motion or trial, the party
2 seeking protection must articulate compelling reasons, supported by specific facts
3 and legal justification, for the requested sealing order. Again, competent evidence
4 supporting the application to file documents under seal must be provided by
5 declaration.

6 2. DEFINITIONS

7 2.1 “Action”: this pending federal law suit.

8 2.2 “Challenging Party”: a Party or Non-Party that challenges the
9 designation of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for
12 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
13 the Good Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
15 their support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information
17 or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced
22 or generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve
25 as an expert witness or as a consultant in this Action.

26 2.8 House Counsel (i.e., Office of Pasadena City Attorney): attorneys
27 who are employees of a party to this Action. House Counsel does not include
28 Outside Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a
4 party to this Action but are retained to represent or advise a party to this Action
5 and have appeared in this Action on behalf of that party or are affiliated with a law
6 firm that has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 3. SCOPE

21 The protections conferred by this Order cover not only Protected Material
22 (as defined above), but also (1) any information copied or extracted from Protected
23 Material; (2) all copies, excerpts, summaries, or compilations of Protected
24 Material; and (3) any testimony, conversations, or presentations by Parties or their
25 Counsel that might reveal Protected Material.

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

28 Pursuant to the Court’s Standing Order at Paragraph 28, it is acknowledged that it

1 is the Court, not the parties, that determines whether a document can be filed under
2 seal. Thus, this protective order cannot, and does not, attempt to pre-authorize any
3 Party to file documents under seal. The Parties acknowledge that they are to
4 strictly comply with Local Rule 79-5 and its subdivisions.

5 4. DURATION

6 Once a case proceeds to trial, information that was designated as
7 CONFIDENTIAL or maintained pursuant to this protective order used or
8 introduced as an exhibit at trial becomes public and will be presumptively
9 available to all members of the public, including the press, unless compelling
10 reasons supported by specific factual findings to proceed otherwise are made to the
11 trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
12 (distinguishing “good cause” showing for sealing documents produced in
13 discovery from “compelling reasons” standard when merits-related documents are
14 part of court record). Accordingly, the terms of this protective order do not extend
15 beyond the commencement of the trial.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.
18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The Designating Party must designate
21 for protection only those parts of material, documents, items or oral or written
22 communications that qualify so that other portions of the material, documents,
23 items or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to

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1 impose unnecessary expenses and burdens on other Parties) may expose the
2 Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

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

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

1 Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

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

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

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

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37.1 et seq.

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

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

22 (b) the officers, directors, and employees (including House
23 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
24 this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to
26 whom disclosure is reasonably necessary for this Action and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff;
2 (f) professional jury or trial consultants, mock jurors, and
3 Professional Vendors to whom disclosure is reasonably necessary for this Action
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
5 A);

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

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

18 (i) any mediator or settlement officer, and their supporting
19 personnel, mutually agreed upon by any of the Parties engaged in settlement
20 discussions.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
22 IN OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this Action as
25 “CONFIDENTIAL,” that Party must:

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

28 (b) promptly notify in writing the party who caused the subpoena

1 or order to issue in the other litigation that some or all of the material covered by
2 the subpoena or order is subject to this Protective Order. Such notification shall
3 include a copy of this Protective Order; and

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

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

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

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

22 (b) In the event that a Party is required, by a valid discovery
23 request, to produce a Non-Party’s confidential information in its possession, and
24 the Party is subject to an agreement with the Non-Party not to produce the Non-
25 Party’s confidential information, then the Party shall:

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

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

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

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

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other

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

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of
11 any person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections or Protections. No Party waives any
13 right it otherwise would have to object to disclosing or producing any information
14 or item on any ground not addressed in this Protective Order. Similarly, no Party
15 waives any right to object on any ground to use in evidence of any of the material
16 covered by this Protective Order. No Non-Party may be deemed to have waived
17 the independent privacy rights of persons whose Confidential Information is in the
18 possession of the Non-Party, and no Non-Party may be ordered to produce
19 Confidential Information in violation of applicable federal and/or state law.

20 12.3 Filing Protected Material. All Parties and their Counsel agree that if a
21 Party intends to file Protected Material with the Court, for any reason, that Party
22 and Counsel shall request permission from the Court to file the Protected Material
23 under seal. A Party that seeks to file under seal any Protected Material must
24 comply with Local Civil Rule 79-5. Protected Material may only be filed under
25 seal pursuant to a court order authorizing the sealing of the specific Protected
26 Material at issue. If a Party's request to file Protected Material under seal is denied
27 by the court, then the Receiving Party may file the information in the public record
28 unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

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

20 14. VIOLATION

21 Any violation of this Order may be punished by appropriate measures
22 including, without limitation, contempt proceedings and/or monetary sanctions.

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: January 9, 2018

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27 HON. ROZELLA A. OLIVER
28 United States Magistrate Judge

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EXHIBIT "A" TO PROTECTIVE ORDER

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 Protective Order that was issued
by the United States District Court for the Central District of California on January
9, 2018 in the case of *Lindsey, et al. v. City of Pasadena, et al.*, United States
District Court case number 2:16-cv-08602-SJO-RAOx. I agree to comply with
and to be bound by all the terms of this 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 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 for the Central District of California for the purpose of enforcing the terms
of this Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Protective Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____