

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

LORCAN T. KILROY, an individual,
Plaintiff,
v.
LOS ANGELES UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION;
JOHN PLEVACK, individually and in official capacity as Principal of Millikan Middle School; PAULA GREENE, individually and in official capacity as Assistant Principal of Millikan Middle School; JUSTO AVILA, individually and in official capacity as Chief of Human Resources for the LAUSD; MICHEL VEZINA, individually as a school parent; GEORGE MCKENNA, SCOTT SCHMERELSON, MONICA RATLIFF and REF RODRIGUEZ, individually and in their official capacities as members of the Los Angeles Unified School District Board of Education; DOES 1-10, inclusive.
Defendants.

CASE No.: CV 16-09068-DMG (JDE)

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential,

1 proprietary or private information for which special protection from public
2 disclosure and from use for any purpose other than pursuing this litigation may be
3 warranted. Accordingly, Defendants petition the Court to enter the following
4 Protective Order. This Order does not confer blanket protections on all disclosures
5 or responses to discovery and that the protection it affords from public disclosure
6 and use extends only to the limited information or items that are entitled to
7 confidential treatment under the applicable legal principles.

8 2. GOOD CAUSE STATEMENT

9 The above entitled action is likely to involve confidential and sensitive minor-
10 student information, personnel information from the files of employees with the Los
11 Angeles Unified School District (“LAUSD “), and investigatory files from the
12 LAUSD and local law enforcement agencies. One of the central fact issues in this
13 case centers upon the truth or falsity of sexual allegations by LAUSD individuals
14 such that Plaintiff has loathsome disease of pedophilia, and the truth or falsity of
15 those LAUSD individuals’ statement in as yet undeclared documents that two
16 female seventh grade students made sexual pedophilia related allegations against
17 Plaintiff. Also at issue is whether those allegations by LAUSD individuals honestly
18 formed part of the basis, or were in truth deliberate pedophilia falsifications that
19 were the decisive “trigger,” for their terminating Plaintiff’s employment with
20 LAUSD. The discovery surrounding these sexual misconduct allegations will
21 encompass confidential, private, sensitive, and/or privileged information, including,
22 but not limited to, the identifying information of minors, personnel information, and
23 information contained in criminal investigatory files, all of which implicate the
24 privacy rights of third parties, including third party minors, and would otherwise be
25 protected from disclosure under state or federal statutes, court rules, case decisions,
26 or common law. Accordingly, to expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential, to ensure

1 that the parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end of the
3 litigation, and serve the ends of justice, a protective order for such information is
4 justified in this matter. Information shall not be designated as confidential for
5 tactical reasons and nothing be so designated without a good faith belief that it has
6 been maintained in a confidential, non-public manner, and there is good cause why
7 it should not be part of the public record of this case.

8 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

9 As set forth in Section 12.3, below, this Protective Order does not entitle any
10 party to file confidential information under seal; Local Civil Rule 79-5 sets forth the
11 procedures that must be followed and the standards that will be applied when a party
12 seeks permission from the court to file material under seal. There is a strong
13 presumption that the public has a right of access to judicial proceedings and records
14 in civil cases. In connection with nondispositive motions, good cause must be
15 shown to support a filing under seal. *See Kamakana v. City and County of*
16 *Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307
17 F.3d 1206, 1210-11 (9th Cir. 2002), *MakarWelbon v. Sony Electronics, Inc.*, 187
18 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
19 cause showing), and a specific showing of good cause or compelling reasons with
20 proper evidentiary support and legal justification, must be made with respect to
21 Protected Material that a party seeks to file under seal. The parties' mere
22 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
23 without the submission of competent evidence by declaration, establishing that the
24 material sought to be filed under seal qualifies as confidential, privileged, or
25 otherwise protectable—constitute good cause.

26 Further, if a party requests sealing related to a dispositive motion or trial, then
27 compelling reasons, not only good cause, for the sealing must be shown, and the
28 relief sought shall be narrowly tailored to serve the specific interest to be protected.

1 *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
2 each item or type of information, document, or thing sought to be filed or introduced
3 under seal, the party seeking protection must articulate compelling reasons,
4 supported by specific facts and legal justification, for the requested sealing order.
5 Again, competent evidence supporting the application to file documents under seal
6 must be provided by declaration.

7 Any document that is not confidential, privileged, or otherwise protectable in
8 its entirety will not be filed under seal if the confidential portions can be redacted.
9 If documents can be redacted, then a redacted version for public viewing, omitting
10 only the confidential, privileged, or otherwise protectable portions of the document,
11 shall be filed. Any application that seeks to file documents under seal in their
12 entirety should include an explanation of why redaction is not feasible.

13 4. DEFINITIONS

14 4.1 Action: This pending federal lawsuit.

15 4.2 Challenging Party: a Party or Non-Party that challenges the designation
16 of information or items under this Order.

17 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
20 the Good Cause Statement.

21 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
22 their support staff).

23 4.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 4.6 Disclosure or Discovery Material: all items or information, regardless
27 of the medium or manner in which it is generated, stored, or maintained (including,
28 among other things, testimony, transcripts, and tangible things), that are produced or

1 generated in disclosures or responses to discovery in this matter.

2 4.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
4 an expert witness or as a consultant in this Action.

5 4.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 4.9 Non-Party: any natural person, partnership, corporation, association or
9 other legal entity not named as a Party to this action.

10 4.10 Outside Counsel of Record: attorneys who are not employees of a party
11 to this Action but are retained to represent or advise a party to this Action and have
12 appeared in this Action on behalf of that party or are affiliated with a law firm that
13 has appeared on behalf of that party, and includes support staff.

14 4.11 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 4.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 4.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as “CONFIDENTIAL.”

25 4.15 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 5. SCOPE

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also (1) any information copied or
2 extracted from Protected Material; (2) all copies, excerpts, summaries, or
3 compilations of Protected Material; and (3) any testimony, conversations, or
4 presentations by Parties or their Counsel that might reveal Protected Material. Any
5 use of Protected Material at trial shall be governed by the orders of the trial judge.
6 This Order does not govern the use of Protected Material at trial.

7 6. DURATION

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

17 7. DESIGNATING PROTECTED MATERIAL

18 7.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

1 unnecessary expenses and burdens on other parties) may expose the Designating
2 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

7 7.2 Manner and Timing of Designations.

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

12 Designation in conformity with this Order requires:

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

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

1 portion of the material on a page qualifies for protection, the Producing Party also
2 must clearly identify the protected portion(s) (e.g., by making appropriate markings
3 in the margins).

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

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

13 7.3 Inadvertent Failures to Designate.

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

19 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 8.1 Timing of Challenges.

21 Any Party or Non-Party may challenge a designation of confidentiality at any
22 time that is consistent with the Court’s Scheduling Order.

23 8.2 Meet and Confer.

24 The Challenging Party shall initiate the dispute resolution process under
25 Local Rule 37-1 et seq.

26 8.3 Joint Stipulation.

27 Any challenge submitted to the Court shall be via a joint stipulation pursuant
28 to Local Rule 37-2

1 8.4 The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party’s designation until the Court rules on the
8 challenge.

9 9. ACCESS TO AND USE OF PROTECTED MATERIAL

10 9.1 Basic Principles.

11 A Receiving Party may use Protected Material that is disclosed or produced
12 by another Party or by a Non-Party in connection with this Action only for
13 prosecuting, defending, or attempting to settle this Action. Such Protected Material
14 may be disclosed only to the categories of persons and under the conditions
15 described in this Order. When the Action has been terminated, a Receiving Party
16 must comply with the provisions of section 15 below (FINAL DISPOSITION).

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

20 9.2 Disclosure of “CONFIDENTIAL” Information or Items.

21 Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item
23 designated “CONFIDENTIAL” only to:

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

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

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

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional
7 Vendors to whom disclosure is reasonably necessary for this Action and who have
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

20 (i) any mediators or settlement officers and their supporting personnel,
21 mutually agreed upon by any of the parties engaged in settlement discussions.

22 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
23 PRODUCED IN OTHER LITIGATION

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

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

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

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

15 11. A NON-PARTY’S PROPOSED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

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

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

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

1 (2) promptly provide the Non-Party with a copy of the Stipulated
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 by
5 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 Receiving
8 Party may produce the Non-Party's confidential information responsive to the
9 discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject to
11 the confidentiality agreement with the Non-Party before a determination by the
12 Court. Absent a Court order to the contrary, the Non-Party shall bear the burden
13 and expense of seeking protection in this court of its Protected Material.

14 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
24 OTHERWISE PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever

1 procedure may be established in an e-discovery order that provides for production
2 without prior privilege review.

3 14. MISCELLANEOUS

4 14.1 Right to Further Relief.

5 Nothing in this Order abridges the right of any person to seek its modification
6 by the Court in the future.

7 14.2 Right to Assert Other Objections.

8 No Party waives any right it otherwise would object to disclosing or
9 producing any information or item on any ground not addressed in this Protective
10 Order. Similarly, no Party waives any right to object on any ground to use in
11 evidence of any of the material covered by this Protective Order

12 14.3 Filing Protected Material.

13 A Party that seeks to file under seal any Protected Material must comply with
14 Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a
15 Court order authorizing the sealing of the specific Protected Material at issue. If a
16 Party's request to file Protected Material under seal is denied by the Court, then the
17 Receiving Party may file the information in the public record unless otherwise
18 instructed by the Court.

19 15. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 6, within 60
21 days of a written request by the Designating Party, each Receiving Party must return
22 all Protected Material to the Producing Party or destroy such material. As used in
23 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
24 summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving
26 Party must submit a written certification to the Producing Party (and, if not the same
27 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
28 (by category, where appropriate) all the Protected Material that was returned or

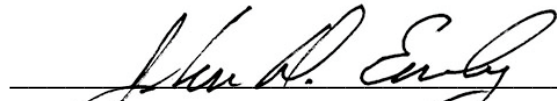
1 destroyed and (2) affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or any other format reproducing or capturing any
3 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
4 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
5 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
6 reports, attorney work product, and consultant and expert work product, even if such
7 materials contain Protected Material. Any such archival copies that contain or
8 constitute Protected Material remain subject to this Protective Order as set forth in
9 Section 6 (DURATION).

10 16. VIOLATION

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

13
14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15
16 DATED: October 5, 2017

17
18 
19 HONORABLE JOHN D. EARLY
20 United States Magistrate Judge
21
22
23
24
25
26
27
28

1 I further agree to submit to the jurisdiction of the United States District Court,
2 Central District of California for the purpose of enforcing the terms of this
3 Confidentiality Agreement and Protective Order, even if such enforcement
4 proceedings occur after termination of this action.

5

6 Dated:

7

Signature

8

9

10

Name (Printed)

11

12

13

Street Address

14

15

16

City State Zip

17

18

19

Occupation or Business

20

21

22

23

24

25

26

27

28