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R.A., a minor, by and through his *guardian ad litem* Adrienne Penrose, individually and as a successor in interest to John C. Armes, deceased.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

R.A., a minor, by and through his *guardian ad litem* Adrienne Penrose, individually and as a successor in interest to John C. Armes, deceased,

Plaintiff,

vs.

C. MORRIS, an individual, et al.

Defendants.

Case No. 5:14-cv-00077-ODW(PJWx)

Hon. Patrick J. Walsh

**JOINT STIPULATION AND
PROTECTIVE ORDER**

1 **PROTECTIVE ORDER**

2 1. **PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production
4 of confidential, proprietary, or private information for which special protection from
5 public disclosure and from use for any purpose other than prosecuting this litigation
6 may be warranted. Accordingly, the parties have jointly petitioned the Court to enter
7 the following Protective Order. Good cause appearing, the Court ORDERS as follows:

8 This Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. As set forth in Section 12.3, below, this
12 Protective Order does not entitle the parties to file confidential information under seal.

13 2. **DEFINITIONS**

14 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation
15 of information or items under this Order.

16 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for protection
18 under Federal Rule of Civil Procedure 26(c).

19 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House
20 Counsel (as well as their support staff).

21 2.4 **Designating Party**: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.5 **Disclosure or Discovery Material**: all items or information, regardless of
25 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

1 2.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a party
10 to this action but are retained to represent or advise a party to this action and have
11 appeared in this action on behalf of that party or are affiliated with a law firm which
12 has appeared on behalf of that party.

13 2.10 Party: any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Order cover not only Protected Material (as
3 defined above), but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
5 and (3) any testimony, conversations, or presentations by Parties or their Counsel that
6 might reveal Protected Material. However, the protections conferred by this Order do
7 not cover the following information: (a) any information that is in the public domain
8 at the time of disclosure to a Receiving Party or becomes part of the public domain
9 after its disclosure to a Receiving Party as a result of publication not involving a
10 violation of this Order, including becoming part of the public record through trial or
11 otherwise; and (b) any information known to the Receiving Party prior to the
12 disclosure or obtained by the Receiving Party after the disclosure from a source who
13 obtained the information lawfully and under no obligation of confidentiality to the
14 Designating Party. Any use of Protected Material at trial shall be governed by a
15 separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
21 without prejudice; and (2) final judgment herein after the completion and exhaustion
22 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
23 limits for filing any motions or applications for extension of time pursuant to
24 applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards.

2 In connection with discovery proceedings in this action, the parties may
3 designate any document, thing, material, testimony, or other information derived
4 from them, as “Confidential” under the terms of this Order. Confidential
5 information is information that has not been made public or that concerns or relates
6 to the processes, operations, investigations, or other information relating to the
7 California Department of Corrections and Rehabilitation, disclosure of which may
8 have the effect of causing harm to the safety and security of law enforcement
9 officers, the public, or Defendant. Confidential information is also personal
10 information of the Defendant, including but not limited to home address, social
11 security number, telephone number, email address, names or identifying information
12 of family members, the disclosure of which places the safety of Defendant, who is a
13 current peace officer, and his family members at risk. Confidential information also
14 includes all personal identifying information of any current or former California
15 Department of Corrections employee, and any third party entitled to confidential
16 protection of personal identifying information under California and/or applicable
17 federal law. Defendant reserves the right to redact such personal identifying
18 information from any “Confidential” document.

19 By designating a document, thing, material, testimony or other information
20 derived from the record as “Confidential,” under the terms of this Order, the party
21 making the designation is certifying to the Court that there is a good-faith basis both
22 in law and in fact for the designation within the meaning of Federal Rule of Civil
23 Procedure 26.

24 If it comes to a Designating Party’s attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
8 page that contains protected material.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,
10 that the Designating Party identify on the record, before the close of the deposition,
11 hearing, or other proceeding, all protected testimony. Arrangements will be made
12 with the court reporter taking and transcribing the proceeding to separately bind
13 portions of the transcript containing information designated as Confidential, and to
14 label the separately bound portions appropriately. Defendant, and employees of the
15 California Department of Corrections and Rehabilitation, will not be required to
16 disclose confidential personal information, as described in paragraph 5.1, in response
17 to discovery, including questioning at deposition, or trial, without the protections for
18 Protected Material required by this Order.

19 (c) for information produced in some form other than documentary and for
20 any other tangible items, that the Producing Party affix in a prominent place on the
21 exterior of the container or containers in which the information or item is stored the
22 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
23 warrant protection, the Producing Party, to the extent practicable, shall identify the
24 protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive the
27 Designating Party’s right to secure protection under this Order for such material.
28 Upon timely correction of a designation, the Receiving Party must make reasonable

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 5.4 Nothing in this Order will impose any restrictions on the use or
4 disclosure by a party of material obtained by the party independent of discovery in
5 this action, or from disclosing its own Confidential material as it deems appropriate.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time. Unless a prompt challenge to a Designating
9 Party's confidentiality designation is necessary to avoid foreseeable, substantial
10 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
11 litigation, a Party does not waive its right to challenge a confidentiality designation by
12 electing not to mount a challenge promptly after the original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process by providing written notice of each designation it is challenging
15 and describing the basis for each challenge. To avoid ambiguity as to whether a
16 challenge has been made, the written notice must recite that the challenge to
17 confidentiality is being made in accordance with this specific paragraph of the
18 Protective Order. The parties shall attempt to resolve each challenge in good faith and
19 must begin the process by conferring directly (in voice to voice dialogue; other forms
20 of communication are not sufficient) within 14 days of the date of service of notice. In
21 conferring, the Challenging Party must explain the basis for its belief that the
22 confidentiality designation was not proper and must give the Designating Party an
23 opportunity to review the designated material, to reconsider the circumstances, and, if
24 no change in designation is offered, to explain the basis for the chosen designation. A
25 Challenging Party may proceed to the next stage of the challenge process only if it has
26 engaged in this meet and confer process first or establishes that the Designating Party
27 is unwilling to participate in the meet and confer process in a timely manner.

28

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
2 court intervention, the Challenging Party may file a motion challenging a
3 confidentiality designation at any time prior to the discovery motion deadline if there
4 is good cause for doing so, including a challenge to the designation of a deposition
5 transcript or any portions thereof. Any motion brought pursuant to this provision must
6 be accompanied by a competent declaration affirming that the movant has complied
7 with the meet and confer requirements imposed by the preceding paragraph.

8 In response to a motion brought to challenge a confidentiality designation, the
9 Producing Party may seek to submit the Protected Material to the Court for in camera
10 review. Frivolous challenges, and those made for an improper purpose (e.g., to harass
11 or impose unnecessary expenses and burdens on other parties) may expose the
12 Challenging Party to sanctions. All parties shall continue to afford the material in
13 question the level of protection to which it is entitled under the Producing Party’s
14 designation until the court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case
18 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When the litigation has been terminated, a Receiving Party
21 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

25 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
28 only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
2 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this litigation and who have signed the “Acknowledgment
4 and Agreement to Be Bound” that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this litigation and
7 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants,
13 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
14 for this litigation and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the “Acknowledgment and Agreement to
18 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
19 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
20 reveal Protected Material must be separately bound by the court reporter and may not
21 be disclosed to anyone except as permitted under this Protective Order.

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

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

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

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

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

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

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

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

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

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality agreement
2 with a Non-Party;

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

6 (3) make the information requested available for inspection by the Non-
7 Party.

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

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the court in the future. This Order will be without
12 prejudice to the right of the parties (i) to bring before the Court at any time a question
13 of whether any particular document or information is confidential or whether its use
14 should be restricted or (ii) to present a motion to the Court under FRCP 26(c) for a
15 separate protective order as to any particular document or information, including
16 restrictions differing from those as specified herein.

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

22 12.3 Filing Protected Material. Without written permission from the
23 Designating Party or a court order secured after appropriate notice to all interested
24 persons, a Party may not file in the public record in this action any Protected Material.
25 A Party that seeks to file under seal any Protected Material must comply with the
26 applicable local rules. Protected Material may only be filed under seal pursuant to a
27 court order authorizing the sealing of the specific Protected Material at issue. A
28 sealing order will issue only upon a request establishing that the Protected Material at

1 issue is privileged, protectable as a trade secret, or otherwise entitled to protection
2 under the law. If a Receiving Party's request to file Protected Material under seal is
3 denied by the court, then the Receiving Party may file the information in the public
4 record unless otherwise instructed by the court.

5 12.4 In the event that any Protected Material is used in any court proceeding
6 in this action, it will not lose its confidential status through such use, and the party
7 using the material will take all reasonable steps to maintain its confidentiality during
8 such use.

9 12.5 This Order is entered solely for the purpose of facilitating the exchange
10 of documents and information between the parties to this action. Nothing in this
11 Order, or the production of any information or document under the terms of this
12 Order, or any proceedings under this Order, will be deemed as an admission or a
13 waiver by any party, and will not alter the confidentiality or nonconfidentiality or
14 any such document or information or alter any existing obligation of any party or the
15 absence of obligation.

16 13. FINAL DISPOSITION

17 Within 60 days after the final disposition of this action, as defined in paragraph
18 4, each Receiving Party must return all Protected Material to the Producing Party or
19 destroy such material. As used in this subdivision, "all Protected Material" includes
20 all copies, abstracts, compilations, summaries, and any other format reproducing or
21 capturing any of the Protected Material. Whether the Protected Material is returned or
22 destroyed, the Receiving Party must submit a written certification to the Producing
23 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
24 deadline that (1) identifies (by category, where appropriate) all the Protected Material
25 that was returned or destroyed and (2) affirms that the Receiving Party has not
26 retained any copies, abstracts, compilations, summaries or any other format
27 reproducing or capturing any of the Protected Material. Notwithstanding this
28 provision, Counsel are entitled to retain an archival copy of all pleadings, motion

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Protective Order that was issued by the
6 United States District Court for the Central District of California on [date] in the case
7 of *R.A. v. Chris Morris*, Case No. 5:14-cv-00077-ODW-PJW. I agree to comply with
8 and to be bound by all the terms of this Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment
10 in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Central District of California for the purpose of enforcing the terms of this Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and
18 telephone number] as my California agent for service of process in connection with
19 this action or any proceedings related to enforcement of this Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____