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 in his official capacity as the Acting Secretary of the Army

11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13 EASTERN DIVISION

14 ROSIE CAMACHO,  
 15 Plaintiff,  
 16 v.  
 17 RYAN McCARTHY, in his official  
 18 capacity as the Acting Secretary of the  
 Army,<sup>1</sup>  
 19 Defendant.

No. EDCV 15-02043-JGB (KKx)  
**STIPULATED PROTECTIVE ORDER**  
 Honorable Jesus G. Bernal

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 27 <sup>1</sup> Under Fed. R. Civ. P. 25(d), Acting Secretary of the Army RYAN McCARTHY,  
 28 as the current successor to John McHugh, is automatically substituted as the named party.

1 **I. PURPOSES AND LIMITATIONS.**

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

14 **A. GOOD CAUSE STATEMENT.**

15 This action is likely to involve production and disclosure of medical information,  
16 including mental health records, which may include private and sensitive information  
17 otherwise generally unavailable to the public. Accordingly, to expedite the flow of  
18 information, to facilitate the prompt resolution of disputes over confidentiality of  
19 discovery materials, to adequately protect information the parties are entitled to keep  
20 confidential, to ensure that the parties are permitted reasonable necessary uses of such  
21 material in preparation for and in the conduct of trial, to address their handling at the end  
22 of the litigation, and serve the ends of justice, a protective order for such information is  
23 justified in this matter. It is the intent of the parties that information will not be  
24 designated as confidential for tactical reasons and that nothing be so designated without  
25 a good faith belief that it has been maintained in a confidential, non-public manner, and  
26 there is good cause why it should not be part of the public record of this case.

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1 **II. DEFINITIONS.**

2 2.1 Action: this pending federal law suit.

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
6 generated, stored or maintained) or tangible things that qualify for protection under  
7 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
8 Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
10 support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or items  
12 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
14 medium or manner in which it is generated, stored, or maintained (including, among  
15 other things, testimony, transcripts, and tangible things), that are produced or generated  
16 in disclosures or responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a matter  
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
19 expert witness or as a consultant in this Action.

20 2.8 House Counsel: attorneys who are employees of a party to this Action. House  
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.9 Non-Party: any natural person, partnership, corporation, association, or other  
23 legal entity not named as a Party to this action.

24 2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
25 this Action but are retained to represent or advise a party to this Action and have  
26 appeared in this Action on behalf of that party or are affiliated with a law firm which has  
27 appeared on behalf of that party, and includes support staff.

1           2.11 Party: any party to this Action, including all of its officers, directors,  
2 employees, consultants, retained experts, and Outside Counsel of Record (and their  
3 support staffs).

4           2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
5 Material in this Action.

6           2.13 Professional Vendors: persons or entities that provide litigation support  
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
9 their employees and subcontractors.

10          2.14 Protected Material: any Disclosure or Discovery Material that is designated  
11 as “CONFIDENTIAL.”

12          2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from  
13 a Producing Party.

### 14 **III. SCOPE.**

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

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

### 22 **IV. DURATION**

23          Once a case proceeds to trial, all of the information that was designated as  
24 confidential or maintained pursuant to this protective order becomes public and will be  
25 presumptively available to all members of the public, including the press, unless  
26 compelling reasons supported by specific factual findings to proceed otherwise are made  
27 to the trial judge in advance of the trial. *See Kamakana v. City and County of Honolulu*,  
28 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for

1 sealing documents produced in discovery from “compelling reasons” standard when  
2 merits-related documents are part of court record). Accordingly, the terms of this  
3 protective order do not extend beyond the commencement of the trial.

#### 4 **V. DESIGNATING PROTECTED MATERIAL.**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
6 Party or Non-Party that designates information or items for protection under this Order  
7 must take care to limit any such designation to specific material that qualifies under the  
8 appropriate standards. The Designating Party must designate for protection only those  
9 parts of material, documents, items, or oral or written communications that qualify so  
10 that other portions of the material, documents, items, or communications for which  
11 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
20 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
21 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
22 must be clearly so designated before the material is disclosed or produced. All mental  
23 health records produced in response to executed authorizations for release are hereby  
24 designated as documents which qualify for protection under this Order.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but  
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
28 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter

1 “CONFIDENTIAL legend”), to each page that contains protected material. If only a  
2 portion or portions of the material on a page qualifies for protection, the Producing Party  
3 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
4 in the margins). The “Confidential Legend” shall not block out or obliterate any  
5 document.

6 A Party or Non-Party that makes original documents available for inspection need  
7 not designate them for protection until after the inspecting Party has indicated which  
8 documents it would like copied and produced. During the inspection and before the  
9 designation, all of the material made available for inspection shall be deemed  
10 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
11 copied and produced, the Producing Party must determine which documents, or portions  
12 thereof, qualify for protection under this Order. Then, before producing the specified  
13 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page  
14 that 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 With respect to mental health records produced pursuant to an executed release for  
18 authorization, the entirety of the produced records shall be deemed “CONFIDENTIAL,”  
19 even if they do not have an affixed “CONFIDENTIAL legend” at the time of production.

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

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

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1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the Designating  
3 Party's right to secure protection under this Order for such material. Upon timely  
4 correction of a designation, the Receiving Party must make reasonable efforts to assure  
5 that the material is treated in accordance with the provisions of this Order.

6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

7           6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
8 confidentiality at any time that is consistent with the Court's Scheduling Order.

9           6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
10 process under Local Rule 37.1 et seq.

11           6.3 The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
15 the confidentiality designation, all parties shall continue to afford the material in  
16 question the level of protection to which it is entitled under the Producing Party's  
17 designation until the Court rules on the challenge.

18 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL.**

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

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

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1           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
3 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

12           (d) the court and its personnel;

13           (e) court reporters and their staff;

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

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

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

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

3 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
4 **IN OTHER LITIGATION.**

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

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

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

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

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

24 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
25 **PRODUCED IN THIS LITIGATION.**

26 (a) The terms of this Order are applicable to information produced by a Non-Party  
27 in this Action and designated as “CONFIDENTIAL.” Such information produced by  
28 Non-Parties in connection with this litigation is protected by the remedies and relief

1 provided by this Order. Nothing in these provisions should be construed as prohibiting a  
2 Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a  
4 Non-Party's confidential information in its possession, and the Party is subject to an  
5 agreement with the Non-Party not to produce the Non-Party's confidential information,  
6 then the Party shall:

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

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

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

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

23 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
25 Material to any person or in any circumstance not authorized under this Stipulated  
26 Protective Order, the Receiving Party must immediately (a) notify in writing the  
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
28 unauthorized copies of the Protected Material, (c) inform the person or persons to whom

1 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
2 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is  
3 attached hereto as Exhibit A.

4 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
5 **PROTECTED MATERIAL.**

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

15 **XII. MISCELLANEOUS.**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
17 to seek its modification by the Court in the future.

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

23 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected  
24 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
25 under 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 by the  
27 court, then the Receiving Party may file the information in the public record unless  
28 otherwise instructed by the court.

1 **XIII. FINAL DISPOSITION.**

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

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: April 1, 2020

Respectfully submitted,

3 NICOLA T. HANNA  
4 United States Attorney  
5 DAVID M. HARRIS  
6 Assistant United States Attorney  
7 Chief, Civil Division  
8 JOANNE S. OSINOFF  
9 Assistant United States Attorney  
10 Chief, General Civil Section

11 /S/ Mariam Kaloustian  
12 MARIAM KALOUSTIAN  
13 Assistant United States Attorney

14 Attorneys for Defendant

15 Dated: April 1, 2020

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/s/ George A. Shohet  
Attorneys for Plaintiff

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: April 02, 2020

25   
26  
27 HON. KENLY KATO  
28 United States Magistrate Judge

EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
2 [print or type full address], declare under penalty of perjury that I have read in its  
3 entirety and understand the Stipulated Protective Order that was issued by the United  
4 States District Court for the Central District of California on [date] in the case of  
5 \_\_\_\_\_ ROSIE CAMACHO v. RYAN McCARTHY, in his official capacity as  
6 the Acting Secretary of the Army, Case No. EDCV 15-02043-JGB (KKx). I agree to  
7 comply with and to be bound by all the terms of this Stipulated Protective Order and I  
8 understand and acknowledge that failure to so comply could expose me to sanctions and  
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
10 manner any information or item that is subject to this Stipulated Protective Order to any  
11 person or entity except in strict compliance with the provisions of this Order.  
12

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 to the  
15 jurisdiction of the United States District Court for the Central District of California for  
16 the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
17 enforcement proceedings occur after termination of this action. I hereby appoint  
18 \_\_\_\_\_ [print or type full name] of

19 \_\_\_\_\_ [print or type full address and  
20 telephone number] as my California agent for service of process in connection with this  
21 action or any proceedings related to enforcement of this Stipulated Protective Order.  
22

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25 Printed name: \_\_\_\_\_

26 Signature: \_\_\_\_\_