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9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 EASTERN DIVISION
 13

14 LINDA RICHCREEK; SHAWN
 ERIC RICHCREEK; HEATHER
 15 LYNN RUEN; SARAH LEANNE
 HERNHOLM; LISA ANNE
 16 RICHCREEK; Z.R., a minor, by and
 through his Guardian ad Litem Lisa
 17 Anne Richcreek; BENJAMIN
 DAVID RICHCREEK; ESTATE OF
 18 ROGER WILLIAM RICHCREEK,
 by and through his successor in
 19 interest, Linda Richcreek,

No. CV 15-02535 JGB (SPx)

STIPULATED PROTECTIVE ORDER

20 Plaintiffs,

21 v.

22 UNITED STATES OF AMERICA;
 DOES 1 through 100, Inclusive,

23 Defendants.
 24

25
 26 **1. A. PURPOSES AND LIMITATIONS**

27 Discovery in this action is likely to involve production of confidential, proprietary,
 28 or private information for which special protection from public disclosure and from use

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

11 **B. GOOD CAUSE STATEMENT**

12 This action concerns an automobile incident and medical care received by Roger
13 Richcreek (“Richcreek”) at the VA Medical Center in Loma Linda, California.
14 Richcreek’s medical records are at issue and will be the subject of discovery. In
15 addition, the identity of potential witnesses who are patients at the VA Medical Center is
16 sought by Plaintiffs. The parties wish to safeguard the private nature of the identity of
17 patients and of the medical records and information contained therein.

18
19 **2. DEFINITIONS**

20 2.1 Action: Linda Richcreek, et al. v. United States, Central District of
21 California Case No. CV 15-02535-JGB SPx.

22 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
23 information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
25 it is generated, stored or maintained) or tangible things that qualify for protection under
26 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
27 Statement.

28 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their

1 support staff).

2 2.5 Designating Party: a Party or Non-Party that designates information or
3 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including, among
6 other things, testimony, transcripts, and tangible things), that are produced or generated
7 in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
17 this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm which has
19 appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
28 their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is designated
2 as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5
6 **3. SCOPE**

7 The protections conferred by this Stipulated Protective Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or extracted
9 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
10 Protected Material; and (3) any testimony, conversations, or presentations by Parties or
11 their Counsel that might reveal Protected Material. Protected Material, however, does
12 not include information and evidence that is lawfully obtained by the Receiving Parties
13 by means other than through production by the Producing Party, or which information is
14 otherwise publicly available information, although the Producing Party reserves the right
15 to seek to have such information deemed confidential and privileged by the Court.

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

18
19 **4. DURATION**

20 Once a case proceeds to trial, all of the information that was designated as
21 confidential or maintained pursuant to this protective order becomes public and will be
22 presumptively available to all members of the public, including the press, unless
23 compelling reasons supported by specific factual findings to proceed otherwise are made
24 to the trial judge in advance of the trial. See Kamakana v. City and County of Honolulu,
25 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for
26 sealing documents produced in discovery from “compelling reasons” standard when
27 merits-related documents are part of court record). Accordingly, the terms of this
28 protective order do not extend beyond the commencement of the trial.

1
2 **5. DESIGNATING PROTECTED MATERIAL**

3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
4 Party or Non-Party that designates information or items for protection under this Order
5 must take care to limit any such designation to specific material that qualifies under the
6 appropriate standards. The Designating Party must designate for protection only those
7 parts of material, documents, items, or oral or written communications that qualify so
8 that other portions of the material, documents, items, or communications for which
9 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
19 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
20 must be clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

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

1 A Party or Non-Party that makes original documents available for inspection need
2 not designate them for protection until after the inspecting Party has indicated which
3 documents it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions
7 thereof, qualify for protection under this Order. Then, before producing the specified
8 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
9 that contains Protected Material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins).

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

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

20 5.3 Inadvertent Failure to Designate. If timely corrected, an inadvertent failure
21 to designate qualified information or items does not, standing alone, waive the
22 Designating Party’s right to secure protection under this Order for such material. Upon
23 timely correction of a designation, the Receiving Party must make reasonable efforts to
24 assure that the material is treated in accordance with the provisions of this Order.

25 26 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
28 designation of confidentiality at any time that is consistent with the Court’s Scheduling

1 Order.

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
3 resolution process under Local Rule 37.1 et seq.

4 6.3 The burden of persuasion in any such challenge proceeding shall be on the
5 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
6 to harass or impose unnecessary expenses and burdens on other parties) may expose the
7 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
8 the confidentiality designation, all parties shall continue to afford the material in
9 question the level of protection to which it is entitled under the Producing Party's
10 designation until the Court rules on the challenge.

11
12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
24 may disclose any information or item designated "CONFIDENTIAL" only to:

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

28 (b) the parties in this action, including the officers, directors, and

1 employees (including House Counsel) of the government, corporate or business entity
2 parties, where disclosure is reasonably necessary for their defense or prosecution of this
3 Action (this section is understood to mean that items designated as “CONFIDENTIAL”
4 may be disclosed to all parties to this action, without the need of their executing Exhibit
5 A attached hereto, and that said parties shall be bound by all terms of this Protective
6 Order);

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

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

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

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

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

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

28

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION**

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

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

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

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

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

22
23 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
24 **PRODUCED IN THIS LITIGATION**

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the remedies
28 and relief provided by this Order. Nothing in these provisions should be construed as

1 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

22
23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
2 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
3 that is attached hereto as Exhibit A.
4

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection, the
9 Receiving Parties will make reasonable efforts to assure that the material is treated in
10 accordance with the provisions of this Order, as provided above in paragraph 5.3, and
11 said Protected Material will thereafter be subject to, and treated in accordance with the
12 provisions of this Stipulated Protective Order as Protected Material or as set forth in
13 Federal Rule of Civil Procedure 26(b)(5)(B), as appropriate. This provision is not
14 intended to modify whatever procedure may be established in an e-discovery order that
15 provides for production without prior privilege review. Pursuant to Federal Rule of
16 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
17 disclosure of a communication or information covered by the attorney-client privilege or
18 work product protection, the parties may incorporate their agreement in the stipulated
19 protective order submitted to the court.
20

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
28 to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
3 under seal pursuant to a court order authorizing the sealing of the specific Protected
4 Material at issue. If a Party’s request to file Protected Material under seal is denied by
5 the court, then the Receiving Party may file the information in the public record unless
6 otherwise instructed by the court.

7
8 **13. FINAL DISPOSITION**

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

1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED _____
7

8 _____
9 Lynn Whitlock
10 Attorney for Plaintiffs

11 DATED: _____

12 EILEEN M. DECKER
13 United States Attorney
14 DOROTHY A. SCHOUTEN
15 Chief, Civil Division

16 _____
17 Beth Maxwell Stratton
18 Assistant United States Attorney
19 Attorneys for Defendant

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
21

22 DATED: June 8, 2016
23

24 

25 _____
26 Hon. Sheri Pym
27 United States Magistrate Judge
28

