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12 by and through her Guardian *Ad Litem*  
13 HECTOR NUÑO

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

16 V.N., a Minor, by and through her )  
17 Guardian *Ad Litem* HECTOR NUÑO, )  
18 Plaintiff, )

19 vs. )

20 UPLAND UNIFIED SCHOOL )  
21 DISTRICT; DR. NANCY KELLY, in her )  
22 official capacity as Superintendent of )  
23 Upland Unified School District; and )  
24 DOES 1-10, inclusive, )  
25 Defendants. )

Case No. 5:16-CV-1958 GHK (KKx)

**ORDER GRANTING STIPULATED**

**PROTECTIVE ORDER**

*[DISCOVERY MATTER REFERRED TO  
U.S. MAGISTRATE JUDGE]*

Complaint Filed: September 12, 2016  
FAC Filed: November 4, 2016

U.S. Magistrate Judge Kenly Kiya Kato

Location: George E. Brown Jr.  
Federal Building and  
United States Courthouse  
3470 Twelfth Street  
Courtroom 3 or 4, 3rd Fl  
Riverside, CA 92501-3801

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**STIPULATED PROTECTIVE ORDER**  
Case No. 5:16-CV-1958 GHK (KKx)

1. A. PURPOSES AND LIMITATIONS

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

B. GOOD CAUSE STATEMENT

This action is likely to involve certain confidential information related to minors, as well as medical information relating to the Plaintiff's disabilities, and employment and personnel records pertaining to Defendants and their employees. Such confidential materials and information consist of, among other things, academic records, medical records, Section 504 plans, employment records, and personnel records. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonably necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of

1 this case.

2 2. DEFINITIONS

3 2.1 Action: This pending federal law suit.

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

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

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

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

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

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

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

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

25 2.10 Outside Counsel of Record: Attorneys who are not employees of a party to  
26 this Action but are retained to represent or advise a party to this Action and have  
27 appeared in this Action on behalf of that party or are affiliated with a law firm which has  
28 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  
5 Discovery 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  
13 from a Producing Party.

14           3.     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           4.     DURATION

23           Even after final disposition of this litigation, the confidentiality obligations  
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in  
25 writing or a court order otherwise directs. Final disposition shall be deemed to be the  
26 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;  
27 and (2) final judgment herein after the completion and exhaustion of all appeals,  
28 rehearings, remands, trials, or reviews of this Action, including the time limits for filing

1 any motions or applications for extension of time pursuant to applicable law.

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 that  
8 other portions of the material, documents, items, or communications for which protection  
9 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, that 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 documents, but  
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
24 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 the  
13 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 for any  
16 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
17 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 Failures 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 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
27 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

28 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution

1 process under Local Rule 37.1, *et seq.*

2           6.3 The burden of persuasion in any such challenge proceeding shall be on the  
3 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
4 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
5 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
6 the confidentiality designation, all parties shall continue to afford the material in question  
7 the level of protection to which it is entitled under the Producing Party’s designation until  
8 the Court rules on the challenge.

9           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

19           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
21 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

27           (c) Experts (as defined in this Order) of the Receiving Party who have signed the  
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff;

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

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

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

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

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
20 IN OTHER LITIGATION

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

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

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



1 Protective Order; and

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

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

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

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

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

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

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

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

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

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
21 PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
23 produced material is subject to a claim of privilege or other protection, the obligations of  
24 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
25 This provision is not intended to modify whatever procedure may be established in an e-  
26 discovery order that provides for production without prior privilege review. Pursuant to  
27 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
28 effect of disclosure of a communication or information covered by the attorney-client

1 privilege or work product protection, the parties may incorporate their agreement in the  
2 stipulated protective order submitted to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order no Party waives any right it otherwise would have to object to disclosing  
8 or producing any information or item on any ground not addressed in this Stipulated  
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
10 evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected  
12 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
13 under seal pursuant to a court order authorizing the sealing of the specific Protected  
14 Material at issue. If a Party's request to file Protected Material under seal is denied by  
15 the court, then the Receiving Party may file the information in the public record unless  
16 otherwise instructed by the court.

17 13. FINAL DISPOSITION

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

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
2 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
4 consultant and expert work product, even if such materials contain Protected Material.  
5 Any such archival copies that contain or constitute Protected Material remain subject to  
6 this Protective Order as set forth in Section 4 (DURATION).

7 14. Any violation of this Order may be punished by any and all appropriate  
8 measures including, without limitation, contempt proceedings and/or monetary sanctions.  
9

10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11  
12 DATED: January 6, 2017

**FOLEY & LARDNER LLP**  
A. Joel Richlin  
Kimberly A. Klinsport  
John J. Atallah

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16           /S/ A. JOEL RICHLIN            
A. Joel Richlin  
Attorneys for Plaintiff V.N., a Minor,  
17 by and through her Guardian Ad Litem  
HECTOR NUNO

18  
19 DATED: January 6, 2017

**POLLAK, VIDA & FISHER**  
Judy L. McKelvey

22           /S/ JUDY L. McKELVEY            
Judy L. McKelvey  
23 Attorneys for Defendants Upland Unified  
24 School District and Nancy Kelley, Ed.D.

25 \*Pursuant to Local Rule 5-4.3.4(a)(2)(i), I (A. Joel Richlin) attest that the other  
26 signatories listed, and on whose behalf this filing is submitted, concur in the filing  
27 content and have authorized this filing.  
28

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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4 Dated: January 9, 2017

5 HONORABLE KENLY KIYA KATO  
6 UNITED STATES MAGISTRATE JUDGE  
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
6 have read in its entirety and understand the Stipulated Protective Order that was issued by  
7 the United States District Court for the Central District of California on \_\_\_\_\_  
8 [date] in the case of *V.N. v. Upland Unified School District, et al.*, Case No. 5:16-CV-  
9 1958 GHK (KKx). I agree to comply with and to be bound by all the terms of this  
10 Stipulated Protective Order and I understand and acknowledge that failure to so comply  
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly  
12 promise that I will not disclose in any manner any information or item that is subject to  
13 this Stipulated Protective Order to any person or entity except in strict compliance with  
14 the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for  
16 the Central District of California for the purpose of enforcing the terms of this Stipulated  
17 Protective Order, even if such enforcement proceedings occur after termination of this  
18 action. I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone  
20 number] as my California agent for service of process in connection with this action or  
21 any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

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

24  
25 Printed name: \_\_\_\_\_

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