

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

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

THE ESTATE OF CLEMENTE
NAJERA-AGUIRRE, and J.S., A.S.,
Y.S.,

Plaintiffs,

v.

COUNTY OF RIVERSIDE; and DOES
1 through 10, inclusive,

Defendants.

Case No. 5:18-cv-00762-DMG-SP
*[Hon. Dolly M. Gee, Dist. Judge;
Hon. Sheri Pym, Magistrate Judge]*

**PROTECTIVE ORDER RE
CONFIDENTIAL DOCUMENTS**

**[NOTE CHANGES MADE BY THE
COURT IN ¶¶ 2.3, 3, 6.3, 6.5, 7.5]**

Complaint Filed: 04/13/2018
Trial Date: 02/04/2020

Pursuant to the prior Order of the Court finding Good Cause under Fed. R. Civ. P. 26(c) for a protective order re confidential documents to issue in this case [Dkt. No. 50], IT IS HEREBY ORDERED that:

1. PURPOSES AND LIMITATIONS.

Disclosure and discovery activity in this action are 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 or defending this litigation would be warranted. Accordingly, the Court has previously found that Good Cause exists for a protective order to issue in this case. [Dkt. No. 50]. This

1 Order does not confer blanket protections on all disclosures or responses to discovery
2 and that the protection it affords extends only to the specified information or items
3 that are entitled to treatment as confidential.

4 As set forth below, this Order creates no entitlement to file confidential
5 information under seal. Central District Local Rules 79-5.1 and 79-5.2 set forth the
6 procedures that must be followed and the standards that will be applied when a party
7 seeks permission from the Court to file material under seal.

8 Nothing in this Order shall be construed so as to require or mandate that any
9 Party disclose or produce privileged information or records that could be designated
10 as Confidential Documents/Protected Material hereunder.

11
12 **2. DEFINITIONS.**

13 2.1. Party: any party to this action, including all of its officers, directors,
14 employees, agents, consultants, retained experts, house counsel and outside counsel
15 (and/or the support staff thereof).

16 2.2. Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner generated, stored or maintained (including, among other
18 things, testimony, transcripts, or tangible things) that are produced – or generated in
19 disclosures or responses to discovery – by any Party in this matter.

20 2.3. “Confidential” Information or Items: information (regardless of the
21 medium or how generated, stored, or maintained) or tangible things that qualify for
22 protection under standards developed under Federal Rule of Civil Procedure 26(c)
23 and/or applicable federal privileges. This material includes, but is not limited to,
24 medical records, psychotherapeutic records, and autopsy photographs; as well as
25 peace officer personnel file records as defined by California Penal Code sections
26 832.8, 832.5, 832.7 and the associated case law; and other similar confidential records
27 protected by the official information privilege.

28 2.4. Receiving Party: a Party that receives Disclosure or Discovery Material

1 from a Producing Party, including a Party that has noticed or subpoenaed and is taking
2 a deposition or comparable testimony.

3 2.5. Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action, including a Party that is defending a deposition
5 noticed or subpoenaed by another Party; additionally, for the limited purpose of
6 designating testimony subject to this Order, a “Producing Party” shall also be
7 construed to include a Party that is attending and/or participating in a non-party
8 deposition noticed/subpoenaed by another Party.

9 2.6. Designating Party: a Party or non-party public entity employer of a Party
10 that designates information or items that it produces in disclosures or in responses to
11 discovery as “CONFIDENTIAL.”

12 2.7. Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL” under the provisions this Protective Order. (The
14 term “Confidential Document” shall be synonymous with the term “Protected
15 Material” for the purposes of this Protective Order.)

16 2.8. Outside Counsel: attorneys who are not employees of a Party but who
17 are retained to represent or advise a Party in this action (as well as their support staffs).

18 2.9. House Counsel: attorneys who are employees of a Party (as well as their
19 support staffs).

20 2.10. Counsel (without qualifier): Outside Counsel and House Counsel (as
21 well as their support staffs).

22 2.11. Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this action and who is not a past or a current
25 employee of a Party and who, at the time of retention, is not anticipated to become an
26 employee of a Party or a competitor of a Party’s; as well as any person retained,
27 designated, or disclosed by a Party as an expert pursuant to Federal Rule of Civil
28 Procedure 26(a)(2) or other applicable discovery Rules or statutes.

1 2.12. Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying; videotaping; translating; preparing exhibits or
3 demonstrations; and/or organizing, storing, retrieving data in any form or medium;
4 etc.); and their employees and subcontractors.

5
6 **3. SCOPE.**

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

21 Any use of Protected Material at trial shall be governed by the Orders of the
22 trial judge: this Protective Order does not govern the use of Protected Material at trial.

23
24 **4. DURATION OF PROTECTION.**

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs.

28 Final disposition shall be deemed to be the later of (1) dismissal of all claims

1 and defenses in this action, with or without prejudice; or (2) final judgment herein
2 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
3 reviews of this action, including the time limits for filing any motions or applications
4 for extension of time pursuant to applicable law.

5
6 **5. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**
7 **DOCUMENTS.**

8 5.1. Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or non-party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. A Designating Party must take care to
12 designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify – so that other portions of the material,
14 documents, items or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routine designations are prohibited. Designations that
17 are shown to be clearly unjustified, or that have been made for an improper purpose
18 (e.g., to unnecessarily encumber or inhibit the case development process, or to impose
19 unnecessary expenses and burdens on other parties), may expose the Designating
20 Party to sanctions.

21 If it comes to a Party's or a non-party's attention that information or items that
22 it designated for protection do not qualify for protection at all, or do not qualify for
23 the level of protection initially asserted, that Party or non-party must promptly notify
24 all other parties that it is withdrawing the mistaken designation.

25 5.2. Manner and Timing of Designations. Except as otherwise provided in
26 this Order, or as otherwise stipulated or ordered, material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of
3 depositions or other pretrial or trial proceedings, and regardless of whether produced
4 in hardcopy or electronic form), that the Producing Party affix the legend
5 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
6 or portions of the material on a page qualifies for protection, the Producing Party also
7 must clearly identify the protected portion(s) (e.g., by making appropriate markings
8 in the margins) and must specify, for each portion that it is “CONFIDENTIAL.” The
9 placement of such “CONFIDENTIAL” stamp on such page(s) shall not obstruct the
10 substance of the page’s (or pages’) text or content.

11 A Party or non-party that makes original documents or materials available for
12 inspection need not designate them for protection until after the Receiving Party has
13 indicated which material it would like copied and produced. During the inspection
14 and before the designation, all of the material made available for inspection shall be
15 deemed “CONFIDENTIAL.” After the Receiving Party has identified the documents
16 it wants copied and produced, the Producing Party must determine which documents,
17 or portions thereof, qualify for protection under this Order. Then, before producing
18 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
19 legend to each page that contains Protected Material. If only a portion or portions of
20 the material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins).

23 (b) for testimony given in deposition or in other pretrial or trial proceedings,
24 that the Party or non-party offering or sponsoring the testimony identify on the record,
25 before the close of the deposition, hearing, or other proceeding, all protected
26 testimony, and further specify any portions of the testimony that qualify as
27 “CONFIDENTIAL.” When it is impractical to identify separately each portion of
28 testimony that is entitled to protection, and when it appears that substantial portions

1 of the testimony may qualify for protection, the Producing Party may invoke on the
2 record (before the deposition or proceeding is concluded) a right to have up to twenty
3 (20) days to identify the specific portions of the testimony as “CONFIDENTIAL.”

4 Only those portions of the testimony that are appropriately designated as
5 “CONFIDENTIAL” for protection within the 20 days shall be covered by the
6 provisions of this Protective Order.

7 The court reporter must affix to each such page the legend “CONFIDENTIAL,”
8 as instructed by the Producing Party.

9 (c) for information produced in some form other than documentary, and for
10 any other tangible items (including but not limited to information produced on disc or
11 electronic data storage device), that the Producing Party affix in a prominent place on
12 the exterior of the container or containers in which the information or item is stored
13 the legend “CONFIDENTIAL.” If only portions of the information or item warrant
14 protection, the Producing Party, to the extent practicable, shall identify the protected
15 portions, specifying the material as “CONFIDENTIAL.”

16 5.3. Inadvertent Failures to Designate. If timely corrected (within 30 days of
17 production or disclosure of such material, or within 30 days of the would-be
18 Designating Party’s discovery of its failure to to designate), an inadvertent failure to
19 designate qualified information or items as “CONFIDENTIAL” does not, standing
20 alone, waive the Designating Party’s right to secure protection under this Order for
21 such material. If material is appropriately designated as “CONFIDENTIAL” *after*
22 the material was initially produced, the Receiving Party, on timely notification of the
23 designation, must make reasonable efforts to assure that the material is treated in
24 accordance with this Order.

25 5.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall
26 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove
27 a “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any
28 other action so as to make it appear that Protected Material is not subject to the terms

1 and provisions of this Order. However, nothing in this section shall be construed so
2 as to prevent a Receiving Party from challenging a confidentiality designation subject
3 to the provisions of this Order.

4
5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

6 6.1. Timing of Challenges. Any Party or non-party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
10 economic burdens, or a later significant disruption or delay of the litigation, a Party
11 does not waive its right to challenge a confidentiality designation by electing not to
12 mount a challenge promptly after the original designation is disclosed.

13 6.2. Meet and Confer. Prior to challenging a confidentiality designation, a
14 Party shall initiate a dispute resolution process by providing written notice of each
15 specific designation it is challenging, and describing the basis (and supporting
16 authority or argument) for each challenge. To avoid ambiguity as to whether a
17 challenge has been made, the written notice must recite that the challenge to
18 confidentiality is being made in accordance with this Protective Order. The parties
19 shall attempt to resolve each challenge in good faith and must begin the process by
20 conferring directly (in voice to voice dialogue, either in person, telephonically, or by
21 other comparable means, but *not* by correspondence) within 14 days of the date of
22 service of notice.

23 In conferring, the Party challenging the designation must explain the specific
24 basis for its belief that the confidentiality designation was not proper and must give
25 the Designating Party an opportunity to review the designated material, to reconsider
26 the circumstances, and, if no change in designation is offered, to explain the basis for
27 the chosen designation. A Party may proceed to the next stage of the challenge process
28 only if it has engaged in this meet and confer process first or establishes that the

1 Designating Party is unwilling to participate in the meet and confer process in a timely
2 manner.

3 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,
4 to harass or impose unnecessary expenses and burdens on other parties), may expose
5 the Party making to challenge to sanctions.

6 6.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
7 challenge without court intervention, the Party challenging the designation shall file
8 and serve a motion to remove confidentiality (under the applicable rules for filing and
9 service of discovery motions).

10 The parties must comply with Central District Local Rules 37-1 and 37-2
11 (including the joint stipulation re discovery dispute requirement) in any motion
12 associated with this Protective Order.

13 The Party wishing to challenge a designation may file a motion challenging a
14 confidentiality designation at any time if there is good cause for doing so, including a
15 challenge to the designation of a deposition transcript or any portions thereof. Any
16 motion brought pursuant to this provision must be accompanied by a competent
17 declaration affirming that the movant has complied with the meet and confer
18 requirements imposed by the preceding paragraph.

19 6.4 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party, regardless of whether the Designating Party is the moving party
21 or whether such Party sought or opposes judicial intervention. Frivolous challenges,
22 and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
23 expenses and burdens on other parties) may expose the Challenging Party to
24 sanctions. Unless the Designating Party has waived the confidentiality designation by
25 failing to oppose a motion to remove confidentiality as described above, all parties
26 shall continue to afford the material in question the level of protection to which it is
27 entitled under the Producing Party's designation until the court rules on the challenge.

28 6.5. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a

1 Designating Party may remove Protected Material/Confidential Documents from
2 some or all of the protections and provisions of this Order at any time by any of the
3 following methods:

4 (a) Express Written Withdrawal. A Designating Party may withdraw a
5 “CONFIDENTIAL” designation made to any specified Protected
6 Material/Confidential Documents from some or all of the protections of this Order by
7 an express withdrawal in a writing signed by such Party (or such Party’s Counsel, but
8 not including staff of such Counsel) that specifies and itemizes the Disclosure or
9 Discovery Material previously designated as Protected Material/Confidential
10 Documents that shall no longer be subject to all or some of the provisions of the this
11 Order. Such express withdrawal shall be effective when transmitted or served upon
12 the Receiving Party. If a Designating Party is withdrawing Protected Material from
13 only some of the provisions/protections of this Order, such Party must state which
14 specific provisions are no longer to be enforced as to the specified material for which
15 confidentiality protection hereunder is withdrawn. Otherwise, such withdrawal shall
16 be construed as a withdrawal of such material from all of the protections/provisions
17 of this Order;

18 (b) Express Withdrawal on the Record. A Designating Party may withdraw
19 a “CONFIDENTIAL” designation made to any specified Protected Material/
20 Confidential Documents from all of the provisions/protections of this Order by
21 verbally consenting in court proceedings on the record to such withdrawal – provided
22 that such withdrawal specifies the Disclosure or Discovery Material previously
23 designated as Protected Material/Confidential Documents that shall no longer be
24 subject to any of the provisions of this Order. A Designating Party is not permitted
25 to withdraw Protected Material from only some of the protections/ provisions of this
26 Order by this method;

27 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
28 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”

1 designation made to any specified Protected Material/Confidential Documents from
2 all of the provisions/protections of this Order by either (1) making such Protected
3 Material/Confidential Records part of the public record – including but not limited to
4 attaching such as exhibits to any filing with the Court without moving, prior to such
5 filing, for the Court to seal such records; or (2) failing to timely oppose a Challenging
6 Party’s motion to remove a “CONFIDENTIAL” designation to specified Protected
7 Material/Confidential Documents.

8
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 case
12 only for preparing, prosecuting, defending, or attempting to settle this litigation – up
13 to and including final disposition of the above-entitled action – and not for any other
14 purpose, including any other litigation or dispute outside the scope of this action.
15 Such Protected Material may be disclosed only to the categories of persons and under
16 the conditions described in this Order. When the above entitled litigation has been
17 terminated, a Receiving Party must comply with the provisions of section 11, below
18 (FINAL DISPOSITION).

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

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

26 (a) the Receiving Party’s Outside Counsel of record in this action, as well
27 as employees of such Counsel to whom it is reasonably necessary to disclose the
28 information for this litigation;

1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
3 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
4 by this Order;

5 (c) Experts of the Receiving Party to whom disclosure is reasonably
6 necessary for this litigation – each of whom, by accepting receipt of such Protected
7 Material, thereby agree to be bound by this Order;

8 (d) certified court reporters (not employed by the court in this matter), their
9 staffs, and other Professional Vendors to whom disclosure is reasonably necessary for
10 this litigation – each of whom, by accepting receipt of such Protected Material,
11 thereby agree to be bound this Order [nothing in this Order shall be construed so as
12 to bind the honorable Court or any of the Court’s clerks, assistants, reporters, or other
13 chambers staff];

14 (e) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary – each of whom, by accepting receipt of such Protected
16 Material, thereby agree to be bound by this Order. Pages of transcribed deposition
17 testimony or exhibits to depositions that reveal Protected Material may not be
18 disclosed to anyone except as permitted under this Protective Order;

19 (f) the author or custodian of a document containing the information that
20 constitutes Protected Material, or other person who otherwise possessed or knew the
21 information.

22 7.3. Notice of Confidentiality. Prior to producing or disclosing Protected
23 Material/Confidential Documents to persons to whom this Order permits disclosure
24 or production; a Receiving Party shall provide a copy of this Order to such persons
25 so as to put such persons on notice as to the restrictions imposed upon them herein:
26 except that, for court reporters, Professional Vendors, and for witnesses being
27 provided with Protected Material during a deposition, it shall be sufficient notice for
28 Counsel to give the witness a verbal admonition (on the record, for witnesses)

1 regarding the provisions of this Order and such provisions' applicability to specified
2 Protected Material at issue.

3 7.4. Reservation of Rights. Nothing in this Order shall be construed so as to
4 require any Producing Party to designate or produce any records or materials as
5 "CONFIDENTIAL." Nothing in this Order shall be construed so as to prevent the
6 admission of Protected Material into evidence at the trial of this action, or in any
7 appellate proceedings for this action, solely on the basis that such Disclosure or
8 Discovery Material has been designated as Protected Material/Confidential
9 Documents. Notwithstanding the foregoing, nothing in this Order shall be construed
10 as a waiver of any privileges or of any rights to object to the use or admission into
11 evidence of any Protected Material in any proceeding; nor shall anything herein be
12 construed as a concession that any privileges asserted or objections made are valid or
13 applicable.

14 Nothing in this Order shall be construed so as to prevent the Designating Party
15 (or its Counsel or custodian of records) from having access to and using Protected
16 Material designated by that Party in the manner in which such persons or entities
17 would typically use such materials in the normal course of their duties or profession
18 – except that the waiver of confidentiality provisions shall apply.

19 7.5. Filing Confidential Documents Under Seal. A party that seeks to file
20 Confidential Documents in any law and motion proceeding before the Court must
21 apply to file the Confidential Documents under seal in compliance with United States
22 District Court, Central District of California Local Rules 79-5.1 and 79-5.2 (as
23 applicable) and pursuant to the provisions of this Order. Confidential Documents may
24 only be filed under seal pursuant to a court order authorizing the sealing of the specific
25 Protected Material/Confidential Documents at issue. If a party's request to file
26 Confidential Documents under seal is denied by the Court, then the party may file the
27 information in the public record unless otherwise instructed by the Court.

28 However, this paragraph (§ 7.5) shall not be construed so as to prevent a

1 Designating Party or counsel from submitting, filing, lodging, or publishing any
2 document it has previously designated as a Confidential Document without
3 compliance with this paragraph's requirement to apply to do so under seal (i.e., a
4 producing-disclosing party or counsel may submit or publish its own Confidential
5 Documents without being in violation of the terms of this Protective Order).

6 Furthermore, a Receiving Party shall be exempted from the requirements of
7 this paragraph as to any specifically identified Confidential Document(s) where –
8 prior to the submission or publication of the Confidential Document(s) at issue – the
9 Designating Party of such specifically identified Confidential Document(s) has
10 waived/withdrawn the protections of this Order.

11 [*Exemption From Sealing.*] A Receiving Party shall also be exempt from the
12 sealing requirements of this paragraph (§ 7.5) where the Confidential
13 Documents/Protected Material at issue is/are **not** documents, records, or information
14 regarding:

15 (1) private, personal information contained in peace officer personnel files
16 (such as social security numbers, driver's license numbers or comparable personal
17 government identification numbers, residential addresses, compensation or pension
18 or personal property information, credit card numbers or credit information, dates of
19 birth, tax records and information, information related to the identity of an officer's
20 family members or co-residents, and comparable personal information about the
21 officer or his family);

22 (2) any internal affairs or comparable investigation by any law enforcement
23 agency into alleged officer misconduct; and/or

24 (3) the medical records or records of psychiatric or psychological treatment
25 of any peace officer or party to this action.

26
27
28

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

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items in the Party's possession or
5 control which had been designated in this action as "CONFIDENTIAL," that Party
6 must:

7 (a) promptly notify in writing the Designating Party, preferably (though not
8 necessarily) by facsimile or electronic mail. Such notification shall include a copy of
9 the subpoena or court order at issue, if possible;

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

14 (c) cooperate with respect to all reasonable procedures sought to be pursued
15 by all sides in any such situation, while adhering to the terms of this Order.

16 If the Designating Party timely seeks a protective order, the Party served with
17 the subpoena or court order shall not produce any information designated in this action
18 as "CONFIDENTIAL" before a determination by the court from which the subpoena
19 or 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
23 directive from another court.

24 The purpose of this section is to ensure that the affected Party has a meaningful
25 opportunity to preserve its confidentiality interests in the court from which the
26 subpoena or court order issued.

27
28

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

2 9.1. Unauthorized Disclosure of Protected Material.

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this
5 Order, the Receiving Party must:

6 (a) notify in writing the Designating Party of the unauthorized disclosures;

7 (b) use its best efforts to retrieve all copies of the Protected Material;

8 (c) inform the person or persons to whom unauthorized disclosures were made
9 of all the terms of this Order; and

10 (d) request that such person or persons consent to be bound by this Order.

11 9.2. Inadvertent Production of Privileged or Otherwise Protected Material.

12 When a Producing Party or Designating Party gives notice to Receiving Parties
13 that certain inadvertently produced material is subject to a claim of privilege or other
14 protection, the obligations of the Receiving Parties are those set forth in Federal Rule
15 of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever
16 procedure may be established in an e-discovery order that provides for production
17 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e)
18 and/or Federal Rule of Civil Procedure 29, insofar as the parties reach an agreement
19 on the effect of disclosure of a communication or information covered by the attorney-
20 client privilege or work product protection, the parties may incorporate their
21 agreement in the stipulated protective order submitted to the Court.

22
23 **10. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

24 10.1. Filing of Protected Material Only Under Seal.

25 Without advance written permission from the Designating Party, or a court
26 order secured after appropriate notice to all interested persons, a Receiving Party may
27 not file in the public record in this action any Protected Material. A Party that seeks
28 to file under seal any Protected Material must comply with the applicable Federal and

1 Local Rules.

2 10.2. Public Dissemination of Protected Material Prohibited.

3 A Receiving Party shall not publish, release, post, or disseminate Protected
4 Material to any persons except those specifically delineated and authorized by this
5 Order; nor shall a Receiving Party publish, release, leak, post, or disseminate
6 Protected Material/Confidential Documents to any news media, member of the press,
7 website, or public forum (except as permitted under this Order regarding filings with
8 the Court in this action and under seal).

9 **11. FINAL DISPOSITION.**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within
11 thirty (30) days after the final termination of this action (defined as the dismissal or
12 entry of judgment by the above named Court, or if an appeal is filed, the disposition
13 of the appeal), upon written request by the Producing Party, each Receiving Party
14 must return all Protected Material to the Producing Party – whether retained by the
15 Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-
16 party to whom the Receiving Party produced or shared such records or information.

17 As used in this subdivision, “all Protected Material” includes all copies,
18 abstracts, compilations, summaries or any other form of reproducing or capturing any
19 of the Protected Material, regardless of the medium (hardcopy, electronic, or
20 otherwise) in which such Protected Material is stored or retained.

21 In the alternative, at the discretion of the Receiving Party, the Receiving Party
22 may destroy the Protected Material instead of returning it – unless such Protected
23 Material is an original, in which case, the Receiving Party must obtain the Producing
24 Party’s written consent before destroying such original Protected Material.

25 Whether the Protected Material is returned or destroyed, the Receiving Party
26 must submit a written certification to the Producing Party (and, if not the same person
27 or entity, to the Designating Party) within thirty (30) days of the aforementioned
28 written request by the Designating Party that specifically identifies (by category,

1 where appropriate) all the Protected Material that was returned or destroyed and that
2 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
3 summaries or other forms of reproducing or capturing any of the Protected material
4 (in any medium, including but not limited to any hardcopy, electronic or digital copy,
5 or otherwise).

6 Notwithstanding this provision, Counsel are entitled to retain an archival copy
7 of all pleadings, motion papers, transcripts, legal memoranda or other documents filed
8 with the Court in this action, as well as any correspondence or attorney work product
9 prepared by Counsel for the Receiving Party, even if such materials contain Protected
10 Material; however, any such archival copies that contain or constitute Protected
11 Material remain subject to this Protective Order as set forth in the applicable section(s)
12 above. This Court shall retain jurisdiction in the event that a Designating Party elects
13 to seek enforcement of this Order by any and all appropriate measures including,
14 without limitation, contempt proceedings and/or monetary sanctions.

15
16 **12. MISCELLANEOUS.**

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

19 12.2. Right to Assert Other Objections. Nothing in this Order shall be
20 construed as a Party's waiver any right it otherwise would have to object to disclosing
21 or producing any information or item on any ground not addressed in this Order.
22 Similarly, no Party waives any right to object on any ground to use in evidence any
23 of the material covered by this Protective Order.

24 ///

25 ///

26 ///

27

28


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

The provisions of this Protective Order shall be in effect until further Order of the Court.

IT IS SO ORDERED.

DATED: December 27, 2018

UNITED STATES DISTRICT COURT

By: 

Hon. Sheri Pym
U.S. MAGISTRATE JUDGE