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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DEBBIE THEBEAU, an individual,

Plaintiff,

vs.

TEHACHAPI VALLEY HEALTHCARE
DISTRICT, a governmental entity, ALAN
BURGESS, an individual, and DOES 1
through 25, inclusive,

Defendants.

Case No. 1:13-cv-00730-LJO-JLT

**ORDER GRANTING STIPULATED
PROTECTIVE ORDER AS
MODIFIED BY THE COURT**

(Doc. 19)

PROTECTIVE ORDER

During the course of discovery, the defendants to this action may produce information, including documents and testimony containing information, which is private, the uncontrolled release of which would cause undue invasion of the producing party's privacy or third-parties' privacy. In order to facilitate this discovery while protecting the producing party's and third-parties' privacy interests, it is hereby **ORDERED:**

I.

A. Defendants may produce documentation responsive to requests for production propounded by plaintiff that contains private and/or personal information about a party or third-parties, and that the producing party has a protected privacy interest

1 in those materials, or otherwise has an interest in preventing the dissemination of
2 information about third-parties.

3 C. When used in this Protective Order, the word “CONFIDENTIAL” means
4 private and/or personal information about the producing party and/or private and/or
5 personal information about third-parties.

6 D. When used in this Protective Order, the term “CONFIDENTIAL
7 MATERIAL” means all designated written materials in any form, including electronic
8 media, or other written discovery referencing CONFIDNETIAL material, deposition
9 transcripts, and all other designated tangible items which disclose “CONFIDENTIAL”
10 information, whether produced in hard-copy, on CD-ROMs or DVDs, or any other
11 media.

12 F. In order to designate a portion of any document or other printed material as
13 “CONFIDENTIAL,” the producing defendant shall mark the designated pages of the
14 material with the word “CONFIDENTIAL” in a manner that does not obscure, or impair
15 the legibility of any information contained within the material, but makes it difficult to
16 remove the designation. In order to designate a computer database, disc, compact disc,
17 drive, or other electronically recorded material as “CONFIDENTIAL,” the producing
18 party shall mark the disc, case or envelope containing the material with the word
19 “CONFIDENTIAL.” Documents printed from such electronic media shall be marked the
20 same as documents originally produced on paper.

21 G. In the case of a deposition or oral examination, counsel for the producing
22 defendant may, during the deposition, designate on the record that testimony involving
23 “CONFIDENTIAL MATERIAL” be held as “CONFIDENTIAL,” and the entire
24 deposition transcript will be treated as “CONFIDENTIAL” until counsel for the
25 producing defendant receives a transcript of the deposition and designates specific page
26 and line portions of the testimony. In the event the producing defendant’s counsel during
27 the deposition does not designate on the record that testimony involving
28 “CONFIDENTIAL MATERIAL” be held as “CONFIDENTIAL,” the producing
defendant does not waive its right to designate the deposition testimony or any parts

1 thereof as "CONFIDENTIAL" upon receipt of the deposition transcript. After receipt of
2 the final deposition transcript, the producing defendant shall identify by page and line the
3 portion of the material that the producing defendant intends to designate as
4 "CONFIDENTIAL" in a written letter served to all counsel of record within 30 days after
5 the producing defendant's receipt of the written deposition transcript from the court
6 reporter. Only the portions of the deposition transcript designated by the producing
7 defendant during this time period shall remain "CONFIDENTIAL." Any party
8 challenging the "CONFIDENTIAL" designations of the deposition transcripts shall
9 inform the producing defendant of those specific challenges in writing within 20 day of
10 receiving the designations. The producing defendant shall have 20 days from receipt of
11 the written challenges to move for an appropriate order regarding the confidentiality of
12 all or portions of the transcript. The parties stipulate that the court reporter or
13 videographer for any such depositions, who will be given a copy of this Protective Order,
14 and will execute an acknowledgement thereof, shall not disclose to anyone (other than the
15 COVERED PERSONS as defined in Section I.H below) any deposition testimony or
16 exhibits in this lawsuit.

17 H. When used in this Protective Order, the term "COVERED PERSONS"
18 includes only the following: (1) the Court and all Court personnel; (2) the named parties
19 in this litigation; (3) retained counsel for all parties in this litigation, including members
20 of counsel's legal or support staff (e.g., in-house investigators, secretaries, legal
21 assistants, paralegals and law clerks), to the extent reasonably necessary for such persons
22 to render assistance in this litigation; (4) non-attorney experts retained or consulted by
23 counsel for any party to assist in the preparation, prosecution, or evaluation of this
24 litigation, provided that no disclosure shall be made to any expert or consultant who is
25 employed by a competitor of a party; and (5) witnesses and the jury in this case.

26 II.

27 This Protective Order is to facilitate the exchange of records and information in
28 discovery. It governs disclosures to third persons or disclosure of records for discovery
motions and discovery proceedings. Nothing in this Protective Order shall be deemed to

1 preclude any parties' right to oppose discovery on grounds not addressed under the terms
2 of this Protective Order, or to object on any ground to the admission of any
3 CONFIDENTIAL MATERIAL into evidence at trial.

4 **III.**

5 Absent a further order of the Court, those documents marked as
6 "CONFIDENTIAL" or "CONFIDENTIAL MATERIAL," as described in Sections I.F
7 and I.G, shall not be used for any purpose other than the prosecution or defense of this
8 captioned action, and shall not be shown, disseminated or disclosed in any manner to
9 anyone other than COVERED PERSONS as defined in Section I.H without the prior
10 written agreement of the producing defendant or by order of the Court after due notice to
11 the producing defendant.

12
13 **IV.**

14 Before showing or divulging any "CONFIDENTIAL MATERIAL" or
15 "CONFIDENTIAL" information to any COVERED PERSON other than the Court and
16 Court personnel, counsel shall first obtain from each such person a signed "WRITTEN
17 ASSURANCE" in the form attached hereto as Exhibit "A." Counsel shall maintain a list
18 of all such recipients of "CONFIDENTIAL MATERIAL" to whom this paragraph
19 applies and the original of every "WRITTEN ASSURANCE" required pursuant to this
20 paragraph. At the conclusion of the litigation, the parties shall forward to counsel for the
21 producing party each and every signed "WRITTEN ASSURANCE" and a list of all
22 recipients of "CONFIDENTIAL MATERIALS"; however, with regard to consultant(s)
23 not identified as expert(s) in this matter, counsel need only provide a copy of the
24 "WRITTEN ASSURANCE" redacted to remove any reference to the identity of the
25 consultant(s).

26 **V.**

27 A. **If Before** any "CONFIDENTIAL MATERIAL" is filed with this Court,
28 including any pleading incorporating "CONFIDENTIAL MATERIAL," **the moving**

1 party shall seek an order of the Court, pursuant to Local Rule 141, allowing the portion of
2 such filing containing “CONFIDENTIAL MATERIAL” to shall be filed under seal.

3 B. “CONFIDENTIAL MATERIAL” may be introduced into evidence, if
4 otherwise admissible, provided that it may only be done so during a hearing or trial when
5 counsel for the producing defendant is present, and subject to the producing defendant’s
6 right to seek in-camera treatment of such documents. Further, the Court may take such
7 steps as it deems reasonably necessary to preserve the confidentiality of the documents or
8 information.

9 C. All writings submitted to or filed with the Court in connection with any
10 pre-trial proceeding that contain, set forth, summarize or otherwise disclose
11 “CONFIDENTIAL MATERIAL” shall be under seal in accordance with Section V.A if
12 prior authorization is provided by the Court according to Local Rule 141, and such
13 documents shall not be publicly available, except by further order of this Court.

14 D. If any party or person who has obtained “CONFIDENTIAL MATERIAL”
15 under the terms of this Protective Order receives a Subpoena or other legal process
16 commanding the production of any such “CONFIDENTIAL MATERIAL” (the
17 “Subpoena”), such party or person shall promptly notify counsel for the producing party
18 of the service of the Subpoena. The party or person receiving the Subpoena shall not
19 produce any “CONFIDENTIAL MATERIAL” in response to the Subpoena without
20 either the prior written consent of counsel for the producing party, or an order of a court
21 of competent jurisdiction.

22 VII.

23 A. Within 90 days after the final disposition of this lawsuit, by settlement, trial
24 or appeal, counsel for the parties shall deliver to counsel for the producing party all
25 CONFIDENTIAL MATERIAL including any copies (except those determined by the
26 Court or agreed by the parties not to be CONFIDENTIAL) which have been
27 disseminated to any COVERED PERSONS. Deposition transcripts need not be returned
28 if all CONFIDENTIAL portions have been destroyed or obliterated.

1 B. It is the responsibility of any party receiving “CONFIDENTIAL
2 MATERIAL” to obtain all copies of that material provided by that party to “Covered
3 Persons,” as defined in Paragraph I.H above, and to return that “CONFIDENTIAL
4 MATERIAL” to the producing party.

5 VIII.

6 A. In the event counsel for any party, in good faith, disputes the designation of
7 any document as “CONFIDENTIAL,” he or she shall notify counsel for the producing
8 party in writing. The producing party shall seasonably apply to the Court for a
9 determination that the document is or is not protected pursuant to this Protective Order.
10 Until a final determination by the Court, any disputed document will be treated as
11 CONFIDENTIAL MATERIAL pursuant to this Protective Order. Nothing in this
12 Protective Order shall be construed to alter or shift the burdens of production and
13 persuasion (“the burden of proof”) as they apply to the assertion of privileges or
14 exemptions from public disclosure or any claim or affirmative defense in this matter.

15 B. Counsel for the parties agree that any material produced from the personnel
16 file of any individual defendant is “CONFIDENTIAL” and shall not challenge such
17 designation.

18 IX.

19 A. This Protective Order shall not preclude the parties from exercising any
20 rights or raising any objections otherwise available to them under the rules of discovery
21 and evidence. Nothing contained in this Protective Order shall in any manner change,
22 alter or modify any of the rights of the producing party or any other party under any other
23 orders issued by any other courts concerning the protection of CONFIDENTIAL
24 MATERIALS and CONFIDENTIAL information. Nothing in this Protective Order shall
25 limit the rights of parties to apply for further protective orders or for modification of the
26 terms of this Protective Order.

27 B. This Protective Order may not be waived, modified, abandoned or
28 terminated, in whole or in part, except by an instrument in writing signed by the parties,

1 or by Order of the issuing Court. If any provision of this Protective Order shall be held
2 invalid for any reason whatsoever, the remaining provisions shall not be affected thereby.

3 C. This Protective Order shall be binding upon the parties hereto, their
4 attorneys, and upon the parties' and their attorneys' successors, executors, personal
5 representatives, administrators, heirs, legal representatives, assigns, subsidiaries,
6 divisions, employees, agents, independent contractors, or other persons or organizations
7 over which they have control.

8 **X.**

9 At the conclusion of this lawsuit, the Court shall retain jurisdiction of this lawsuit
10 for the enforcement of this Protective Order.

11 **ORDER**

12 The stipulation of the parties for this stipulation (Doc. 19) —as modified by the
13 Court in paragraphs V.A. and V.C.— is **GRANTED**.

14
15 IT IS SO ORDERED.

16 Dated: June 2, 2014

/s/ Jennifer L. Thurston
17 UNITED STATES MAGISTRATE JUDGE
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1 EXHIBIT "A"

2 LIMITED SPECIAL APPEARANCE AND AGREEMENT FOR
3 ACCESS TO CONFIDENTIAL MATERIAL

4 I hereby acknowledge and affirm that I have read the terms and conditions of the
5 Protective Order dated _____ and agreed to by the parties ("Protective Order") in the
6 action titled THEBEAU v. TEHACHAPI VALLEY HEALTHCARE DISTRICT, ET AL.;
7 United States District Court, Eastern District of California, No. 1:13-CV-00730-LJO-JLT. I
8 understand the terms of the Protective Order and under oath consent to be bound by such terms
9 as a condition to being provided access to the CONFIDENTIAL MATERIALS furnished by the
10 parties in this action. Further, by executing this Agreement, I hereby consent to the jurisdiction
11 of the above-captioned Court or any Court of competent jurisdiction for the special and limited
12 purpose of enforcing the terms of the Protective Order.

13 I recognize that all civil remedies for breach of this Agreement are specifically reserved
14 by the producing parties in this action and are not waived by the disclosure provided for herein.
15 Further, in the event of the breach of this Agreement, I recognize that the producing parties may
16 pursue all civil remedies available to them as third-party beneficiaries of this Agreement.

17 DATED: _____

18 _____
19 Name

20 _____
21 Firm

22 _____
23 Address

24 _____
25 Telephone Number