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6 Attorneys for Defendants  
SAN JOAQUIN VALLEY COLLEGE,  
7 INC., a California Corporation, MELISSA  
GRIMSLEY, an individual, and KERRIE  
8 LILES, an individual

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10  
11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

13  
14 DANIEL SWAN,

15 Plaintiff,

16 vs.

17 SAN JOAQUIN VALLEY  
COLLEGE, INC., a California  
18 corporation, MELISSA GRIMSLEY,  
an individual, KERRIE LILES, an  
19 individual, and DOES 1 through 20,  
inclusive,

20 Defendants.  
21

Case No. 13-cv-01073 LJO (GSAx)

**STIPULATION FOR NON-TRIAL  
PROTECTIVE ORDER AND  
ORDER THEREON**

Complaint Filed: June 3, 2013

Trial Date: January 13, 2015

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23 Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Rule  
24 141.1, the parties to this action (Plaintiff, Daniel Swan; Defendant, San Joaquin  
25 Valley College, Inc.; Defendant, Melissa Grimsley; and Defendant, Kerrie Liles,  
26 together the "Parties" and individually the "Party) stipulate as follows:

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## STIPULATION

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2           1.       This protective order (“Order”) shall be applicable throughout the  
3 pendency of this action and after final resolution of this litigation. Certain of the  
4 Parties may claim that certain documents and/or other information or testimony  
5 constitute or contain confidential, proprietary or trade secret information, private  
6 third-Party/non-Party information, and/or private records or information relating to  
7 San Joaquin Valley College, Inc.’s (“SJVC”) current and/or former employees, and  
8 records relating to students or former students of Defendant, San Joaquin Valley  
9 College that may fall within the protections of the federal Family Education Rights  
10 and Privacy Act (“FERPA”). Such records are referred to herein collectively as  
11 “Confidential Information.” Documents containing or constituting such  
12 Confidential Information may be produced, disclosed, demanded, or otherwise  
13 provided, through discovery in this action. Pursuant to the terms of this Order,  
14 such documents may be designated “Confidential” or “Confidential – Attorneys’  
15 Eyes Only” subject to the provisions set forth herein.

16           2.       No documents, discovery, or deposition testimony specifically  
17 designated as “Confidential – Attorneys’ Eyes Only” shall be disclosed to or  
18 discussed with any person except: (a) counsel for each Party; (b) experts, agents or  
19 consultants of such Party who are not otherwise employees of the Party, but only to  
20 the extent disclosure is deemed reasonably necessary for the consultant’s, expert’s  
21 or agent’s work, and only for as long as is necessary for the performance of his/her  
22 expert or consulting services, and such expert or consultant may use such  
23 information only for the purpose of providing assistance to counsel on this  
24 litigation; (c) pursuant to legal process; (d) the Court, subject to the terms and  
25 provisions of this Agreement; (e) employees and former employees of the  
26 designating Party, if reasonably necessary for the purposes of the litigation, persons  
27 who have prepared or assisted in the preparation of such documents, or to whom  
28 the documents or copies thereof were addressed or delivered, but only to the extent

1 that such disclosure is reasonably necessary for the conduct of this litigation, and  
2 provided that such persons may not retain any “Confidential – Attorneys’ Eyes  
3 Only” documents and/or information obtained as a result of this litigation; (f) court  
4 reporters or other personnel employed to record deposition testimony; and (g) any  
5 witness testifying at a hearing or deposition in connection with this litigation. All  
6 persons, experts, consultants and any other person to whom such confidential  
7 information will be disclosed pursuant to this provision, shall agree to be bound by  
8 the terms of this Order, and shall execute the Acknowledgment and Agreement  
9 attached as Exhibit A, or, alternatively, shall state his or her agreement to be  
10 bound by the terms of the Acknowledgement and Agreement under oath, and such  
11 oath shall be transcribed by a certified court reporter.

12 3. When used in this Order, the word “document(s)” means all written,  
13 recorded, electronic or graphic matters created and whatever the medium on which  
14 it was produced or reproduced, including but not limited to, documents produced  
15 by agreement, and may also include deposition transcripts and exhibits and  
16 electronic data, files and records.

17 4. “Confidential” or “Confidential – Attorneys’ Eyes Only” documents  
18 shall be designated by marking each page of the document with the legend  
19 “Confidential” or “Confidential – Attorneys’ Eyes Only.” Documents produced by  
20 a non-designating Party, may be marked by another Party as “Confidential” or  
21 “Confidential-Attorneys’ Eyes Only” by providing written notice to all other  
22 counsel of record in this action specifically identifying by Bates Number, Bates  
23 Number ranges, or other similarly specific description of the documents being  
24 designated. Such designation shall be made within 30 days of receipt of the  
25 document(s).

26 5. It shall be the duty of the designating Party to inform all other Parties  
27 as to which materials that are not in documentary form are to be treated as  
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1 “Confidential” or as “Confidential – Attorneys’ Eyes Only” by designating the  
2 information with reasonable particularity.

3 6. Items or information produced or generated by a non-Party shall be  
4 treated as “Confidential” for a period of fifteen (15) days after their production or  
5 disclosure. If, at the conclusion of fifteen (15) days, no Party has designated the  
6 items or information as “Confidential” or “Confidential – Attorneys’ Eyes Only”  
7 the documents or information shall not be protected. Nothing in this provision shall  
8 waive the right to re-designate pursuant to Paragraph 13 below.

9 7. The Parties agree that no documents produced by a Party during the  
10 course of these proceedings designated as “Confidential” or “Confidential –  
11 Attorneys’ Eyes Only” shall be used by another Party or her, his or its counsel for  
12 any purpose other than the litigation of this action.

13 8. The Parties may, based upon separate written agreement of all counsel  
14 to this action, provide that certain confidential information be discussed with or  
15 shown to specified individuals other than the persons identified in The parties shall  
16 follow and abide by applicable law, including Local Rule 141.1(e), with respect to  
17 filing documents under seal. Documents that are the subject of a protective order  
18 may be filed under seal only if a sealing order is first obtained in compliance with  
19 L.R. 141.

20 9. A Party shall not be obligated to challenge the propriety of a  
21 designation under this Order at the time made, and a failure to do so shall not  
22 preclude a subsequent challenge thereto. As set forth fully in Paragraph 21, below,  
23 the Party to whom documents have been produced reserves the right to challenge  
24 the designation of any documents as “Confidential” or “Confidential – Attorneys’  
25 Eyes Only.” After receiving notice of such challenge and meeting and conferring  
26 as set forth more fully in Paragraph 21, below, if no informal resolution is obtained  
27 the Party designating such challenged documents as confidential may move for an  
28 order from the court that the confidentiality designation be retained. The

1 document(s) or testimony will remain confidential until the Court rules on the  
2 matter.

3 10. Information disclosed during depositions may be designated as  
4 “Confidential” or “Confidential – Attorneys’ Eyes Only” either on the record at  
5 deposition or within thirty (30) days of receipt of the transcript by any Party. Prior  
6 to the expiration of the 30-day period, all information disclosed during a deposition  
7 shall constitute “Confidential” information unless otherwise agreed by the Parties,  
8 ordered by the Court, or so designated at the deposition, except that within 15 days  
9 of the filing deadline for any Motion for Summary Judgment or Opposition papers  
10 thereto, the 30-day presumptive confidentiality period shall be reduced to 7 days.  
11 Any document attached to any deposition previously marked as “Confidential” or  
12 “Confidential – Attorneys’ Eyes Only” shall remain so designated whether or not  
13 so designated at deposition. Similarly all testimony related to a document so  
14 marked shall also be treated as “Confidential” or “Confidential – Attorneys’ Eyes  
15 Only” whether or not so designated at deposition.

16 11. If a non-designating Party wishes to file Confidential Documents, and  
17 such Party does not challenge the Confidential designation, then that Party shall  
18 follow and abide by applicable law, including Local Rule 141.1(e), with respect to  
19 filing documents under seal. Documents that are the subject of a protective order  
20 may be filed under seal only if a sealing order is first obtained in compliance with  
21 L.R. 141.

22 12. If, on the other hand, a non-designating Party wishes to file  
23 Confidential Documents with the Court, and that Party does challenge the  
24 Confidential designation, then that Party must first provide notice of such  
25 challenge, and allow the designating Party to file an appropriate motion to retain  
26 such Confidential designation, as set forth in Paragraphs 9 and 21. If the Court  
27 orders that such documents retain their Confidential designation, then the Party  
28 must proceed as set forth in Paragraph 11, above. If the Court denies such a

1 motion, and does not order that such Confidential designation be retained, then on  
2 or after the date of entry of such order, the non-designating Party may proceed to  
3 file such documents (without engaging in any of the foregoing “under seal”  
4 provisions).

5 13. Production of any document or information without a designation as  
6 provided herein will not be deemed to waive a later claim as to its confidential  
7 nature or stop the designating Party from re-designating a document or information  
8 as “Confidential” or “Confidential – Attorneys’ Eyes Only” at a later date. For the  
9 purposes of this Order, any document or information that is subsequently  
10 designated shall be “Re-designated Material.” Any Party may make this  
11 designation by sending written notice of the designation to counsel for the Party to  
12 whom or from whom such documents or testimony was produced. Any counsel  
13 receiving this notice shall treat all such documents or testimony in accordance with  
14 the notice by the designating Party. Disclosure of such a document or information  
15 by any Party prior to such later re-designation shall not be deemed a violation of the  
16 provisions of this Order; provided, however, that the Party that disclosed the Re-  
17 designated Material shall promptly endeavor to procure all copies of such  
18 previously disclosed Re-designated Material from any persons known to have  
19 possession of any such previously disclosed Re-designated Material who are not  
20 entitled to receipt under the new designation under Paragraph 2 above. Any  
21 reasonable expenses incurred by the non-designating Party shall be borne by the  
22 designating Party.

23 14. Nothing in this Order shall be construed as a waiver of any Party’s  
24 right to object on any grounds whatsoever to any requests for discovery or as an  
25 agreement by the Parties to produce any documents or to supply any information.  
26 Additionally, none of the provisions of this Order are intended to abrogate the right  
27 of either Party to file, or preclude the Court’s jurisdiction to rule upon, any Motions  
28 to Compel production of records, regardless of designation.

1           15. All Confidential Documents shall be returned or destroyed upon  
2 request to the respective producing Parties at the conclusion of the litigation,  
3 regardless of the outcome. Counsel is permitted to retain a copy of the records  
4 solely for their files.

5           16. The termination of this action shall not relieve any person to whom  
6 Confidential Information has been disclosed from the terms of this Order unless the  
7 Court orders otherwise.

8           17. All Parties, their counsel and other agents, and all those acting in  
9 concert with them, are enjoined from the use of said “Confidential” or  
10 “Confidential – Attorneys’ Eyes Only” information in any manner not expressly  
11 permitted by this Order, as otherwise agreed by the Parties in writing, or as ordered  
12 by the Court.

13           18. This Order is made for the express purpose of facilitating the litigation  
14 of this matter. Should the litigation conclude without resolving the case in full,  
15 nothing in this Order shall be deemed a waiver of the Parties’ right to contest the  
16 confidential status of the documents. Nothing in this Order shall be deemed to  
17 preclude the Parties from seeking and obtaining, on an appropriate showing,  
18 additional protection with respect to the confidentiality of documents, testimony,  
19 court papers or other matters.

20           19. By signing this Order, the Parties do not acknowledge the validity of  
21 either Party’s claims of protection from disclosure for the Confidential Documents  
22 and Confidential Information. The Parties reserve the right to challenge such  
23 claims. The Parties agree, however, to be bound by the terms of this Order unless  
24 and until one of the Parties seeks and obtains from the Court a modification of the  
25 terms of this Order as provided below.

26           20. Any disclosure of information designated “Confidential” or  
27 “Confidential – Attorneys’ Eyes Only” as defined herein, other than to the specific  
28 Parties, for the specific purposes and under the specific procedures described in this

1 Order shall be considered an “unauthorized disclosure” and shall be considered a  
2 breach of this Order entitling the aggrieved Party to all appropriate relief within the  
3 Court’s discretion. However, such unauthorized disclosure shall not constitute a  
4 waiver of the confidential nature of the information or document(s) in question.  
5 Treatment of this information or document(s) as “Confidential” or “Confidential –  
6 Attorneys’ Eyes Only” shall continue until further order of the Court as described in  
7 Paragraph 16.

8 21. Any Party may object to the designation of certain  
9 information/documents as Confidential Information or Confidential Documents by  
10 giving written notice to the Party making the designation and to all other Parties  
11 within thirty days of the production date. Such notice shall identify with reasonable  
12 specificity the Confidential Information or Confidential Documents to which the  
13 objection is directed and the basis for the objection. The Parties shall attempt to  
14 resolve any such dispute by meeting and conferring in good faith. In the event the  
15 dispute is not resolved within seven days from the date that the objecting Party first  
16 notifies the Party that made such designation, the designating Party may move the  
17 Court for an Order that the disputed, previously-designated Confidential  
18 Information or Confidential Documents shall remain designated as Confidential  
19 Information or Confidential Documents.

20 22. If either Party desires to modify the terms of this Order or otherwise  
21 has any dispute relating to the protections afforded under this Order, that Party shall  
22 proceed to meet and confer, and, if necessary, move the Court in accordance with  
23 the terms set forth in Paragraph 21, above.

24 23. The Parties intend for this Order to be binding and enforceable against  
25 them beginning at the time it is executed by their counsel even though it may not  
26 yet be ordered by the Court.

27 24. Pursuant to Local Rule 141.1(b)(1), this Order is a Non-Trial  
28 Protective Order, and is without prejudice to the ability of either party to seek a



1 Protective Order for Trial pursuant to Local Rule 141.1(b)(2).

2 25. The Court may modify the protective order in the interests of justice or  
3 for public policy reasons.

4 IT IS SO STIPULATED.

5 Dated: February 19, 2014

HIRSCHFELD KRAEMER LLP

7

8 By: \_\_\_\_\_

Gregory S. Glazer  
Monte K. Grix

9 Attorneys for Defendants, SAN JOAQUIN  
10 VALLEY COLLEGE, KERRIE LILES and  
11 MELISSA GRIMSLEY

12 Dated: February 19, 2014

BRYANT WHITTEN, LLP

13

14

15 By: \_\_\_\_\_

Amanda B. Whitten

16 Attorneys for Plaintiff, DANIEL SWAN

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**ORDER**

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19 The Court hereby adopts the parties' stipulated protective order set forth  
20 above and filed as Doc. 21 (signed copy).

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IT IS SO ORDERED.

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Dated: February 24, 2014

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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