

1 CHAIN | COHN | STILES
 2 David K. Cohn (SBN 68768)
 3 Email: dcohn@chainlaw.com
 4 Neil K. Gehlawat (SBN 289388)
 5 Email: ngehlawat@chainlaw.com
 6 1731 Chester Avenue
 7 Bakersfield, CA 93301
 8 Telephone: (661) 323-4000
 9 Facsimile: (661) 324-1352

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT
 12 EASTERN DISTRICT OF CALIFORNIA

13 ROBERT PALMER,
 14 Plaintiff,

CASE NO. 1:16-CV-00787-SKO

STIPULATED PROTECTIVE ORDER

15 v.

16 CALIFORNIA HIGHWAY PATROL
 17 OFFICER IOSEFA; CALIFORNIA
 18 HIGHWAY PATROL OFFICER
 19 CRELOSE; CALIFORNIA HIGHWAY
 20 PATROL OFFICER MCCONNELL; and
 21 Does 1 to 10, inclusive,
 22 Defendants.

23 IT IS HEREBY STIPULATED by all parties to this action by and through their attorneys of
 24 record, that the documents described herein shall be designated as “Confidential” and if produced
 25 subject to the following Protective Order:

26 1. Categories of documents described as follows:

27 (a) Personnel records produced by the Department of Insurance (or any other law
 28 enforcement agency in which Plaintiff Robert Palmer may have worked) in response to
 Defendants’ subpoena for records related to Plaintiff Robert Palmer; and

1 (b) Any and all portions of personnel records of California Highway Patrol Officer
2 Peniamina Iosefa that may be produced in this action per court order or otherwise.

3 2. The categories of documents designated as “Confidential” contain information that is
4 not available to the public, statutorily protected under state law and information in which the
5 parties, and potentially other individuals, have a privacy interest in.

6 3. A Court-approved protective order is appropriate pursuant to Local Rule 141.1
7 because Defendants’ employing agency, a third party, does not believe it can lawfully waive its
8 perceived statutory duties to protect the confidentiality of the materials subject to this order
9 without the imprimatur of the Court.

10 4. The disclosed documents shall be used solely in connection with the civil action of
11 Robert Palmer v. California Highway Patrol Officer Iosefa, et al., E.D. Cal. Case No. 1:16-CV-
12 00787-SKO. The parties do not waive any objections to the admissibility of the documents or
13 portions thereof in future proceedings in this action, including trial.

14 5. A party may designate any further documents as “Confidential” which it has
15 determined in good faith to be: (a) confidential or potentially invasive of an individual’s privacy
16 interests; (b) not generally known; and (c) not normally revealed to the public or third parties or, if
17 disclosed to third parties, such that third parties would be required to maintain the information in
18 confidence. By designating a document or portion thereof as “Confidential,” the party making the
19 designation avers that it can and would make a showing to the Court sufficient to justify entry of a
20 protective order covering that document or portion thereof under Federal Rule of Civil Procedure
21 26 and Eastern District of California Local Rule 141.1.

22 6. A party producing the documents described herein may designate those documents as
23 confidential by affixing a mark labeling them “Confidential,” provided that such marking does not
24 obscure or obliterate the content of any record. If any confidential documents cannot be labeled
25 with this marking, those documents shall be placed in a sealed envelope or other container that is
26 in turn marked “Confidential” in a manner agreed upon by the disclosing and requesting parties.

27

28

1 7. A party may apply to the Court for an order that information or materials labeled
2 “Confidential” are not, in fact, confidential. Prior to applying to the Court for such an order, the
3 party seeking to reclassify Confidential information shall meet and confer with the producing
4 party. Until the matter is resolved by the parties or the Court, the document in question shall
5 continue to be treated according to its designation under the terms of this Protective Order. The
6 producing party shall have the burden of establishing the propriety of the “Confidential”
7 designation. A party shall not be obligated to challenge the propriety of a confidentiality
8 designation at the time made, and a failure to do so shall not preclude a subsequent challenge
9 thereto.

10 8. Documents designated under this Protective Order as “Confidential” may be disclosed
11 only to the following persons:

- 12 (a) All counsel of record and attorneys in the offices of said counsel;
- 13 (b) Paralegal, clerical, and secretarial personnel regularly employed by counsel
14 referred to in subpart (a) immediately above, including stenographic deposition reporters or
15 videographers retained in connection with this action;
- 16 (c) Court personnel, including stenographic reporters or videographers engaged in
17 proceedings as are necessarily incidental to the preparation for the trial of this action;
- 18 (d) Any expert, consultant, or investigator retained in connection with this action;
- 19 (e) Any “in-house” expert designated by Defendant to testify at trial in this matter;
- 20 (f) The parties to this action who have affirmatively agreed in writing to be bound by
21 this Protective Order;
- 22 (g) Witnesses who may have the documents disclosed to them during deposition
23 proceedings; the witnesses may not leave the depositions with copies of the documents.
- 24 (h) Any neutral evaluator or other designated ADR provider; and
- 25 (i) The finder of fact at the time of trial, subject to the Court’s ruling on in limine
26 motions and objections of counsel.

1 9. Prior to the disclosure of any “Confidential” documents to any person identified in
2 Paragraph 8(d)-(g), each such recipient of “Confidential” documents shall be provided with a copy
3 of this Protective Order, which he or she shall read. Upon reading this Protective Order, such
4 person shall acknowledge in writing as follows:

5 I have read the Protective Order that applies in Robert Palmer v. California
6 Highway Patrol Officer Iosefa, et al., E.D. Cal. Case No. 1:16-CV-00787-SKO
7 and shall abide by its terms. I consent to be subject to the jurisdiction of the
8 United States District Court for the Eastern District of California, including
9 without limitation in any proceeding for contempt.

10 10. The following procedures shall be utilized by the parties making copies of documents
11 designated as “Confidential”:

12 (a) The producing party shall provide one copy of the “Confidential” documents to
13 the receiving party.

14 (b) The receiving party shall not furnish, disclose, or otherwise divulge any the
15 “Confidential” documents to any source, except those persons identified in Paragraph 8 herein,
16 without further order of the Court or authorization from counsel for the producing party.

17 (c) If any document designated as “Confidential” pursuant to this Protective Order is
18 used or disclosed during the course of a deposition, that portion of the deposition record reflecting
19 such material shall be stamped with the appropriate designation and access shall be limited
20 pursuant to the terms of this Protective Order. The court reporter will be directed to bind those
21 portions of the transcript that contain discussion of the contents of the “Confidential” documents
22 separately. The cover of any portion of a deposition transcript that contains testimony or
23 documentary evidence that has been designated “Confidential,” including exhibits designated as
24 “Confidential,” will be marked: CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.

25 11. Should any documents designated “Confidential” be disclosed, through inadvertence
26 or otherwise, to any person not authorized to receive the documents under this Protective Order,
27 the disclosing person(s) shall promptly: (a) inform the producing party of the recipient(s) and the
28

1 circumstances of the unauthorized disclosure, and (b) use best efforts to bind the recipient(s) to the
2 terms of this Protective Order. No document shall lose its “Confidential” status because it was
3 inadvertently or unintentionally disclosed to a person not authorized to receive it under this
4 Protective Order.

5 12. The “Confidential” documents produced pursuant to this Order will be redacted with
6 respect to any purely confidential identifying personal and family information.

7 13. If a party would like to use “Confidential” documents in Court filings, at least seven
8 (7) days notice shall be given to all parties. The parties shall comply with the requirements of
9 Eastern District Local Rule 141, in the event that a party would like “Confidential” document to
10 be sealed. The Parties agree a request to seal or remove the designation of “Confidential” may be
11 heard on shortened time and/or by telephone conference with a showing of good cause.

12 14. Nothing in this Order shall in any way limit or prevent “Confidential” documents from
13 being used in any deposition or other proceeding in this action. In the event that any
14 “Confidential” document is used in any deposition or other proceeding in this action, it shall not
15 lose its confidential status through such use. If any “Confidential” document is used in a
16 deposition, then arrangements shall be made with the court reporter to separately bind such
17 portions of the transcript containing information designated as “CONFIDENTIAL” and to label
18 such portions appropriately.

19 15. This Protective Order is entered for the purpose of facilitating the exchange or
20 documents between the parties to this action without involving the Court unnecessarily in the
21 process. Nothing in this Protective Order, or the production of any document under the terms of
22 this Protective Order, shall be deemed to have the effect of an admission or waiver by either party
23 or of altering the confidentiality or non-confidentiality of any such document.

24 16. Nothing in this Protective Order shall in and of itself require disclosure of information
25 that is protected by the attorney-client privilege, work-product doctrine, or any other privilege,
26 doctrine, or immunity, nor does anything in this Order, result in any party giving up its right to
27
28

1 argue that otherwise privileged documents must be produced due to waiver or for any other
2 reason.

3 17. If “Confidential” documents produced in accordance with this Order are disclosed to
4 any person other than in the manner authorized by this Order, the party responsible for the
5 disclosure shall immediately bring all pertinent facts relating to such disclosure to the attention of
6 all counsel of record and without prejudice to their rights and remedies available to the producing
7 party, make every effort to obtain the return of the disclosed “Confidential” documents and
8 prevent further disclosure by the person who was the recipient of such information.

9 18. After the conclusion of this litigation, all “Confidential” documents, in whatever form
10 stored or reproduced, will remain “Confidential.” All documents produced pursuant to this
11 Protective Order shall be destroyed or returned to counsel for the producing party in a manner in
12 which counsel will be able to reasonably verify that all documents were returned. All parties
13 agree to ensure that “Confidential” documents disclosed to other persons shall be destroyed or
14 returned to counsel for the producing party. “Conclusion” of this litigation means a termination of
15 the action following a trial (and any subsequent appeal) or settlement, and entry of an order,
16 judgment, or decree terminating this action.

17 19. The terms of this Protective Order shall survive and remain in full force and effect
18 during discovery and after the termination of this lawsuit.

19
20 DATED: July 5, 2017

CHAIN | COHN | STILES

21 By: /s/ Neil K. Gehlawat
22 Neil K. Gehlawat
23 Attorneys for Plaintiff

24 DATED: July 5, 2017

OFFICE OF THE ATTORNEY GENERAL
OF CALIFORNIA

25
26 By: /s/ Neli N. Palma
27 Peter A. Meshot
28 Neli N. Palma
Attorneys for Defendants

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

ORDER

IT IS SO ORDERED.

Dated: July 5, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE