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13 Attorneys for Plaintiffs John Scalia, individually and as successor-in-interest of
14 Decedent Kimberly Morrissey-Scalia

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 JOHN SCALIA, individually and as
18 successor-in-interest of Decedent KIMBERLY
19 MORRISSEY-SCALIA,

20 Plaintiff,

21 vs.

22 COUNTY OF KERN, a municipal
23 corporation, KERN COUNTY HOSPITAL
24 AUTHORITY, a public entity and/or agent of
25 the COUNTY OF KERN, KERN COUNTY
26 SHERIFF DONNY YOUNGBLOOD, KERN
27 COUNTY SHERIFF'S SERGEANT JOE
28 SWANSON, KERN COUNTY SHERIFF'S
DETENTION DEPUTIES RANDI ALLEN
AND MISTY MILLER, KERN COUNTY
HOSPITAL AUTHORITY STAFF NURSE
ROWENA P. BLAKELY, R.N. and DOES 1-
100, Jointly and Severally,

Defendants.

CASE NO. 1:17-CV-01097-LJO-SKO

Judge: Hon. Lawrence J. O'Neill
Court Room: 4 (7th Floor)

Action Filed: August 14, 2017
Trial Date: December 3, 2019

**STIPULATION RE: "FIRST LOOK"
AGREEMENT RE: DEFENDANTS'
FEDERAL RULE OF CIVIL
PROCEDURE 45 SUBPOENAS SEEKING
PLAINTIFF'S AND DECEDENT'S
CONSUMER RECORDS AND**

[PROPOSED] ORDER

(Doc. 51)

29 The parties, by and through their respective attorneys of record, hereby stipulate to the
30 following order being issued in this matter:

- 31 1. In January 2019 and February 2019, Plaintiff's counsel received Federal Rule of Civil
32 Procedure 45 subpoenas for the Production of Documents, which counsel for

1 Defendants served through Ronsin Litigation Support Services on the following
2 entities:

3 A. Custodian of Record for Kleinfelder: The records requested are regardless of date
4 for the following types of records: Any and all employment records, wage
5 records, personnel records, attendance records, employment applications, W-2's,
6 W-4's, contracts, 1099's, resumes, payroll records, vacation schedule, sick leave,
7 insurance records, benefits, evaluations and any other records, including but not
8 limited to any records/documents that may be stored digitally and/or electronically
9 pertaining to the employment of John Patrick Scalia, DOB#.

10 B. Custodian of Record for Blackburn Consulting: The records requested are
11 regardless of date for the following types of records: Any and all employment
12 records, wage records, personnel records, attendance records, employment
13 applications, W-2's, W-4's, contracts, 1099's, resumes, payroll records, vacation
14 schedule, sick leave, insurance records, benefits, evaluations and any other
15 records, including but not limited to any records/documents that may be stored
16 digitally and/or electronically pertaining to the employment of John Patrick Scalia,
17 DOB#.

18 C. Custodian of Record for Krazan & Associates: The records requested are
19 regardless of date for the following types of records: Any and all employment
20 records, wage records, personnel records, attendance records, employment
21 applications, W-2's, W-4's, contracts, 1099's, resumes, payroll records, vacation
22 schedule, sick leave, insurance records, benefits, evaluations and any other
23 records, including but not limited to any records/documents that may be stored
24 digitally and/or electronically pertaining to the employment of John Patrick Scalia,
25 DOB#.

26 D. Custodian of Record for Kaiser Foundation Hospital/SCPMG ROI Unit: The
27 records requested are regardless of date for the following type of records: Any
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1 and all medical records, documents, medical reports, including doctors' entries,
2 nurses' charts, progress reports, physical therapy records, pathology reports, x-ray
3 reports, lab reports, case history, emergency room records, admitting sheets,
4 special tests, inpatient and outpatient records, and any sign-in sheets, any and all
5 pharmacy/prescription records, activity Rx notes, including prescriptions filled and
6 refilled including but not limited to any records/documents that may be stored
7 digitally and/or electronically pertaining to the care and treatment, diagnosis,
8 prognosis, condition, discharge, affecting or relating to Kimberly Morrissey-
9 Scalia, DOB#, including ambulance records and all psychiatric, alcohol treatment
10 and mental health records.

11 E. Custodian of Record for Southern California Permanente Medical Group – Billing:

12 The records requested are regardless of date for the following types of records:
13 Any and all billings, statement of charges, statements of accounts, writings, and
14 documents reflecting the following: Any and all payments made or received in
15 reference to Kimberly Morrissey-Scalia, DOB#. Any and all credits, adjustments,
16 write-offs, reconciliations, contract price payments or reduction, payments by any
17 health insurance entity, personal payments by or to said patient from any source,
18 HMO, PPO, Medi-Cal, Medicare or contract payments by an entity concerning
19 said patient, billing ledgers, reports and/or statements of charges rendered and any
20 insurance records, including but not limited to any records/documents that may be
21 stored digitally and/or electronically this request for records includes any and all
22 evidence of any payments from any source regarding the account of this patient to
23 or from any person and/or entity.

24 F. Custodian of Record for Kern Radiology Medical Group: The records requested
25 are regardless of date for the following types of records: Any and all films,
26 original x-ray films, CT scans and MRI films, including any films/images that may
27 be stored digitally/electronically, relating to Kimberly Morrissey-Scalia, DOB#,
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1 including records from Kaiser Permanente Medical Center and Kaiser Foundation
2 Hospital locations in Bakersfield.

3 G. Custodian of Record for Kaiser Foundation Health Plan, Inc.: The records
4 requested are regardless of date for the following types of records: Any and all
5 insurance records, documents, reports, claims, legal records, applications,
6 enrollment records, policies, medical records, benefits, explanation of benefits,
7 billings, denials and any other records, including but not limited to any
8 records/documents that may be stored digitally and/or electronically relating to
9 Kimberly Morrissey-Scalia, DOB#.

10 H. Custodian of Record for Tony Carey, Inc.: The records requested are regardless of
11 date for the following types of records: Any and all medical records, documents,
12 medical reports, including doctor's entries, nurses' charts, notes, progress reports,
13 physical therapy records, pathology reports, all films, original x-rays films, MRI's,
14 CT scans, including any films/images that may be stored digitally/electronically,
15 x-ray reports, lab reports, case history, emergency room records, admitting sheets,
16 special tests, inpatient and outpatient records, any sign-in sheets, all prescriptions
17 and activity RX, notes pertaining to the care and treatment, diagnosis, prognosis,
18 condition discharge, insurance records, all billings, statement of charges,
19 statements of accounts, writing, and documents reflecting the following: All
20 payments made or received in reference said patient, any and all credits,
21 adjustments, write-offs, reconciliations, contract price payments or reduction,
22 payments by any health insurance entity, personal payments by or to said patient
23 from any source, HMO, PPO Medi-Cal, Medicare or contract payments by any
24 entity concerning said patient, billing ledgers, reports and/or statement of charges
25 rendered and any insurance records. This request for records including any and all
26 evidence of any payment from any source regarding the account of this patient to
27 or from any reason and/or entity, all records pertaining to psychiatric
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1 treatment/rehabilitation, psychological treatment/ rehabilitation, treatment for
2 alcoholism, drug addiction, depression, mental instability, mental disease or
3 emotional instability, including but not limited to any records/documents that may
4 be stored digitally and/or electronically including all patient orders and patient
5 results and specifically for any discharge orders, all detailed screen shots within
6 any computer system relating to Kimberly Morrissey-Scalia, DOB#, including all
7 records from Dr. Tony Carey and legal records.

8 I. Custodian of Record for Mary K. Shell Mental Health Center: The records
9 requested are regardless of date for the following types of records: Any and all
10 medical records, documents, medical reports, including doctor's entries, nurses'
11 charts, progress reports, physical therapy records, pathology reports, x-ray reports,
12 lab reports, case history, emergency room records, admitting sheets, special tests,
13 inpatient and outpatient records, any sign-in sheets, any and all
14 pharmacy/prescription records, activity RX notes, including prescriptions filled
15 and refilled, pertaining to the care and treatment, diagnosis, prognosis, condition
16 discharge, all billings, statement of accounts, writing, and documents reflecting the
17 following: Any and all payments made or received, any and all credits or
18 adjustments, write-offs, reconciliations, contract price payments or reduction,
19 payments by any health insurance entity, personal payments by or to said patient
20 from any source, HMO, PPO Medi-Cal, Medicare or contract payments by any
21 entity concerning said patient, billing ledgers, reports and/or statement of charges
22 rendered and any insurance records. This request for records includes any and all
23 evidence of any payments from any source regarding the account of this patient to
24 or from any person and/or entity, including but not limited to any
25 records/documents that may be stored digitally and/or electronically including all
26 patient orders and patient results and specifically for any discharge orders, all
27 detailed screen shots within any computer system, including but not limited to
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1 those pertaining to psychiatric treatment, psychiatric rehabilitation, psychological
2 treatment, psychological rehabilitation, treatment for alcoholism, drug addiction,
3 depression, mental instability, mental disease or emotional instability in referenced
4 to Kimberly Morrissey-Scalia, DOB#, including legal records.

5 J. Custodian of Record for Hall Ambulance: The records requested are regardless
6 of date for the following types of records: All dispatch and response logs,
7 treatment, medical and billing records, insurance and legal records, and any other
8 records or logs, including but not limited to records/documents that may be stored
9 digitally and/or electronically relating to Kimberly Morrissey-Scalia, DOB#.

10 K. Custodian of Record for Stewart Title of California: any and all employment
11 records, wage records, personnel records, attendance records, employment
12 applications, W-2's, W-4's, contracts, 1099's, resumes, payroll records, vacation
13 schedule, sick leave, insurance records, benefits, evaluations and any other
14 records, including but not limited to any records/documents that may be stored
15 digitally and/or electronically pertaining to the employment of Kimberly
16 Morrissey-Scalia, dob #; ss#, to include any and all records relating to
17 recommendations for rehabilitation for alcohol or mental health treatment.

18 L. Custodian of Record for Tony Carey, Inc – Billing: The records requested are
19 regardless of date for the following types of records: Any and all billings,
20 statement of charges, statements of accounts, writings, and documents reflecting
21 the following: Any and all payments made or received in reference to Kimberly
22 Morrissey-Scalia, DOB#. Any and all credits, adjustments, write-offs,
23 reconciliations, contract price payments or reduction, payments by any health
24 insurance entity, personal payments by or to said patient from any source, HMO,
25 PPO, Medi-Cal, Medicare or contract payments by an entity concerning said
26 patient, billing ledgers, reports and/or statements of charges rendered and any
27 insurance records, including but not limited to any records/documents that may be
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1 stored digitally and/or electronically this request for records includes any and all
2 evidence of any payments from any source regarding the account of this patient to
3 or from any person and/or entity.

- 4 2. The subpoenas had production dates of January 28, 2019 and February 27, 2019.
- 5 3. Plaintiffs' counsel contend that the subpoenaed documents likely contain privileged
6 information to which Defendants are not entitled (such as medical histories of
7 unrelated conditions and/or injuries), and that the subpoenas as drafted are overbroad
8 insofar as they seek discovery of information protected by Plaintiff's or Decedent's
9 physician-patient privilege and privacy rights, and which is neither proportional to the
10 needs of this case nor relevant to the claims and defenses in this matter. Counsel for
11 defendants disputes plaintiff's contentions set forth in this paragraph, and by entering
12 into this stipulation, does not waive any rights, contentions or defenses.
- 13 4. Plaintiff's counsel and Defendants' counsel met and conferred by phone on January
14 21, 2019 and during the drafting of this Stipulation. The parties agree to the following
15 "First-Look" Procedure:
- 16 a. Counsel for Defendants shall instruct Ronsin Litigation Support Services to obtain
17 the subpoenaed documents; however, instead of producing the documents to
18 counsel for Defendants, Ronsin Litigation Support Service shall instead produce
19 the documents directly to Plaintiff's counsel business address no later than March
20 11, 2019:

21
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23 Law Office of Sanjay S. Schmidt
24 1388 Sutter Street, Suite 810
25 San Francisco, CA 94109
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28 Jeff Dominic Price
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- 1 b. Upon receipt of the subpoenaed documents from Ronsin Litigation Support
2 Services, Plaintiff's counsel will then have ten (10) business days to review the
3 documents to see if they contain any privileged information. If the documents do
4 contain such information, Plaintiff's counsel shall redact the pages containing that
5 information and Plaintiff's counsel shall create a privilege log complying with
6 Federal Rules of Civil Procedure 45(e)(2)(A)(i)-(ii) and 26(b)(5)(A)(i)-(ii).
- 7 c. On or before the tenth (10th) day after receiving the records from Ronsin Litigation
8 Support Services, Plaintiff's counsel shall serve the subpoenaed documents by
9 Federal Express Priority Overnight on Defendants' counsel; if Plaintiff's counsel
10 has redacted any information, they shall also concurrently serve the privilege log
11 described in ¶3(b) above. As an alternative to serving the subpoenaed documents
12 by Federal Express Priority Overnight on Defendants' counsel, Plaintiff's counsel
13 can serve the subpoenaed documents electronically, in PDF format, via email or
14 via a file sharing service. If the tenth day for production by plaintiff's counsel
15 falls on a date between March 16-25, 2019, the deadline for production shall be
16 extended to March 29, 2019.

- 17 5. All parties shall share in the cost (equal one-thirds share) for Ronsin Litigation
18 Support Services to obtain the documents and produce them to Plaintiff's counsel.
19 Plaintiff's counsel shall pay to send them by Federal Express Priority Overnight to
20 Counsel for Defendants.
- 21 6. Counsel for Defendants reserve the rights to seek production of any documents that
22 are withheld and/or redacted by Plaintiff's counsel pursuant to the terms of this
23 agreement within ten (10) business days after receipt of the records from Plaintiff's
24 counsel, if defendants dispute the redactions made by plaintiff's counsel or the
25 privilege log that was or should have been provided. Defendants' counsel shall meet
26 and confer with Plaintiff's counsel to resolve the dispute. If the parties do not reach
27 an agreement within five (5) business days thereafter, Defendants may file an ex
28 parte application to request the Court to review *in camera* the redacted and unredacted

1 records in dispute, to determine if the withheld or redacted records are discoverable
2 by, and should be produced without redaction to, Defendants.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

4 Dated: March 6, 2019

LAW OFFICE OF SANJAY S. SCHMIDT

5 By: */s/ Sanjay S. Schmidt*
6 Sanjay S. Schmidt,
7 Attorneys for Plaintiff JOHN SCALIA, individually and as
8 successor-in-interest of Decedent KIMBERLY
9 MORRISSEY-SCALIA

10 Dated: March 6, 2019

CLINKENBEARD, RAMSEY, SPACKMAN
& CLARK, LLP

11 By: */s/ Maureen Clark*
12 Hugh S. Spackman,
13 Maureen Clark,
14 Attorneys for Defendants KERN COUNTY HOSPITAL
15 AUTHORITY and ROWENA P. BLAKELY, R.N.

16 Dated: March 6, 2019

MARGO A. RAISON, COUNTY COUNSEL

17 By: */s/ Marshall Scott Fontes*
18 Marshall Scott Fontes,
19 Deputy County Counsel
20 Attorneys for Defendants COUNTY OF KERN, KERN
21 COUNTY SHERIFF DONNY YOUNGBLOOD, KERN
22 COUNTY SHERIFF'S SERGEANT JOE SWANSON,
23 KERN COUNTY SHERIFF'S DETENTION DEPUTIES
24 RANDI ALLEN AND MISTY MILLER

25 **ORDER**

26 The Court **GRANTS** the stipulation of the Parties (Doc. 51) as set forth above.

27 IT IS SO ORDERED.

28 Dated: March 6, 2019

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE