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

20 JEREMY LAPACHET,)
21)
22 Plaintiff,)
23 vs.)
24 CALIFORNIA FORENSIC MEDICAL)
25 GROUP, INC., TAYLOR FITHIAN, M.D.,)
26 LANI ANTONIO, P.A., VERONICA)
27 BERGHORST, R.N., JESSAMAE)
28 TRINIDAD, R.N., GRASHIKA)
29 DEVENDRA, Psychiatric R.N., TABITHA)
30 KING, L.V.N., AMARDEEP TAWANA,)
31 L.V.N., JUDITH ALEJANDRE, L.V.N.)
32 COUNTY OF STANISLAUS, a municipal)
33 corporation, Stanislaus County Sheriff)
34 ADAM CHRISTIANSON, and DOES 1-50,)
35 Jointly and Severally,)
36 Defendants.)

No: 1:17-cv-01226-DAD-EPG

**STIPULATED PROTECTIVE ORDER
FOR CONFIDENTIAL DOCUMENTS
PURSUANT TO EASTERN DISTRICT
CIVIL LOCAL RULE 141.1**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use
4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
5 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
6 parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
7 to discovery and that the protection it affords from public disclosure and use extends only to the
8 limited information or items that are entitled to confidential treatment under the applicable legal
9 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
10 Protective Order does not entitle them to file confidential information under seal; Eastern District
11 Civil Local Rule 141.1 sets forth the procedures that must be followed and the standards that will be
12 applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
15 or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c), and for which public disclosure is likely to result in particularized harm and
19 violate privacy interests recognized by law. This information may include:

- 20 a. personnel file records of any peace officer;

21 For purposes of this stipulated protective order confidential personnel records of persons
22 employed by Stanislaus County Sheriff's Department, includes but is not limited to, documents
23 concerning, relating or referring to: background investigations, hiring, appointment, termination, job
24 performance and evaluations, awards, commendations, and recognition of all professional
25 accomplishments, training, internal affairs investigative files, citizen complaints, charges of
26 misconduct, admonitions or any findings resulting in discipline or retraining.

- 27 b. medical records;

28 c. social security numbers and similar sensitive identifying information (unless
 redacted by order or by agreement of all parties).

1 Except by stipulation or order based on good cause, this information may not include
2 records and information of foundational facts and investigation of the subject incident(s),
3 specifically, the incident(s) involving Plaintiff Jeremy Lapachet on or about October 25, 2015 to
4 October 26, 2015.

5 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
6 as their support staff including any retained private investigators).

7 2.4 Designating Party: a Party or Non-Party that designates information or items that it
8 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

9 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
10 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
11 transcripts, and tangible things), that are produced or generated in disclosures or responses to
12 discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
15 consultant in this action.

16 2.7 House Counsel: attorneys who are employees of a party to this action. House
17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
19 entity not named as a Party to this action.

20 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
21 action but are retained to represent or advise a party to this action and have appeared in this action
22 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

23 2.10 Party: any party to this action, including all of its officers, directors, employees,
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
26 Material in this action.

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

4 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL.”

6 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
7 Producing Party.

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only Protected Material (as
10 defined above), but also (1) any information copied from Protected Material; (2) all copies, excerpts,
11 summaries, or compilations of Protected Material that reveal the source of the Protected Material or
12 that reveal specific information entitled to confidentiality as a matter of law; and (3) any testimony,
13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

14 However, the protections conferred by this Stipulation and Order do not cover the following
15 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
16 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
17 publication not involving a violation of this Order, including becoming part of the public record
18 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
19 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
20 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
21 Protected Material at trial shall be governed by a separate agreement or order.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
26 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
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1 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
2 limits for filing any motions or applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
5 Non-Party that designates information or items for protection under this Order must take care to limit
6 any such designation to specific material that qualifies under the appropriate standards. The
7 Designating Party must designate for protection only those parts of material, documents, items, or oral
8 or written communications that qualify – so that other portions of the material, documents, items, or
9 communications for which protection is not warranted are not swept unjustifiably within the ambit of
10 this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
12 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber
13 or retard the case development process or to impose unnecessary expenses and burdens on other
14 parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party’s attention that information or items that it designated for
16 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
17 that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
19 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
20 Discovery Material that qualifies for protection under this Order must be clearly so designated before
21 the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
24 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
25 legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions
26 of the material on a page qualifies for protection, the Producing Party also must clearly identify the
27 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party that
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1 makes original documents or materials available for inspection need not designate them for protection
2 until after the inspecting Party has indicated which material it would like copied and produced. During
3 the inspection and before the designation, all of the material made available for inspection shall be
4 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied
5 and produced, the Producing Party must determine which documents, or portions thereof, qualify for
6 protection under this Order. Then, before producing the specified documents, the Producing Party
7 must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing Party also must
9 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
11 Designating Party identify on the record, before the close of the deposition, hearing, or other
12 proceeding, all protected testimony.

13 (c) for information produced in some form other than documentary and for any other tangible
14 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
15 in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or
16 portions of the information or item warrant protection, the Producing Party, to the extent practicable,
17 shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the Designating Party’s right
20 to secure protection under this Order for such material. Upon timely correction of a designation, the
21 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
22 the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
25 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
27 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
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1 confidentiality designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
4 by providing written notice of each designation it is challenging and describing the basis for each
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
6 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
7 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
8 process by conferring directly (in voice to voice dialogue; other forms of communication are not
9 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
10 explain the basis for its belief that the confidentiality designation was not proper and must give the
11 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
12 and, if no change in designation is offered, to explain the basis for the chosen designation. A
13 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
14 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
15 meet and confer process in a timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the parties shall request an informal discovery dispute conference pursuant to the
18 undersigned Magistrate Judge’s case management procedures. Designating Party shall file and serve a
19 motion to retain confidentiality under Eastern District Civil Local Rule 251 (and in compliance with
20 Civil Local Rule 141.1, if applicable) within 21 days of the parties agreeing that the meet and confer
21 process will not resolve their dispute. Each such motion must be accompanied by a competent
22 declaration affirming that the movant has complied with the meet and confer requirements imposed in
23 the preceding paragraph. Failure by the Designating Party to make such a motion including the
24 required declaration within 21 days shall automatically waive the confidentiality designation for each
25 challenged designation. In addition, the Challenging Party may file a motion challenging a
26 confidentiality designation at any time if there is good cause for doing so, including a challenge to the
27 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this
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1 ~~provision must be accompanied by a competent declaration affirming that the movant has complied~~
2 ~~with the meet and confer requirements imposed by the preceding paragraph.~~

3 ~~The burden of persuasion in any such challenge proceeding shall be on the Designating Party.~~
4 ~~Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary~~
5 ~~expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the~~
6 ~~Designating Party has waived the confidentiality designation by failing to file a motion to retain~~
7 ~~confidentiality as described above, all parties shall continue to afford the material in question the level~~
8 ~~of protection to which it is entitled under the Producing Party's designation until the court rules on the~~
9 ~~challenge.~~

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
14 categories of persons and under the conditions described in this Order. When the litigation has been
15 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location
17 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
19 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
22 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
23 litigation (counsel and law firms appearing in this action are deemed to have agreed to be bound by
24 this Protective Order);

25 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
26 whom disclosure is reasonably necessary for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
10 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
12 bound by the court reporter and may not be disclosed to anyone except as permitted under this
13 Stipulated Protective Order or as agreed by the Designating Party.

14 (g) the author or recipient of a document containing the information or a custodian or other
15 person who otherwise possessed or knew the information.

16 7.3 Confidential information produced pursuant to this Protective Order may not be
17 delivered, exhibited, emailed, texted or otherwise disclosed to any reporter, writer or employee of any
18 trade publication, newspaper, magazine or other media organization, including but not limited to
19 radio, television, social and electronic media sites, including but limited too, twitter, instagram,
20 facebook and linkedin.

21 7.4. No information shall lose its confidential status because it was inadvertently or
22 unintentionally disclosed to a person not authorized to receive it under this Protective Order. In
23 addition, any information that is designated confidential and produced by the Defendants does not lose
24 its confidential status due to any inadvertent or unintentional disclosure.

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26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
27 LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation that compels

1 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
2 must:

3 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
4 the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
6 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
7 Order. Such notification shall include a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
9 Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
11 court order shall not produce any information designated in this action as “CONFIDENTIAL” before
12 a determination by the court from which the subpoena or order issued, unless the Party has obtained
13 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
14 seeking protection in that court of its confidential material – and nothing in these provisions should be
15 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
16 from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
18 LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-Party in this
20 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
21 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing
22 in these provisions should be construed as prohibiting a Non-Party from seeking additional
23 protections.

24 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
25 confidential information in its possession, and the Party is subject to an agreement with the Non-Party
26 not to produce the Non-Party’s confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all
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1 of the information requested is subject to a confidentiality agreement with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
3 this litigation, the relevant discovery request(s), and a reasonably specific description of the
4 information requested; and

5 (3) make the information requested available for inspection by the Non-Party.

6 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
7 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
8 confidential information responsive to the discovery request. However, nothing in this section shall
9 require a Party to violate the terms of a Protective Order issued in another action that protects the
10 Non-Party's Information from disclosure. If the Non-Party timely seeks a protective order, the
11 Receiving Party shall not produce any information in its possession or control that is subject to the
12 confidentiality agreement with the Non-Party before a determination by the court. Absent a court
13 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
14 court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
17 any person or in any circumstance not authorized under this Stipulated Protective Order, the
18 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
20 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
21 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
22 Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

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

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
8 its modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
10 Party waives any right it otherwise would have to object to disclosing or producing any information or
11 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
12 right to object on any ground to use in evidence of any of the material covered by this Protective
13 Order.

14 12.3 Filing Protected Material. Without written permission from the Designating Party or a
15 court order secured after appropriate notice to all interested persons, a Party may not file in the public
16 record in this action any Protected Material. A Party that seeks to file under seal any Protected
17 Material must comply with Eastern District Civil Local Rule 141. Protected Material may only be
18 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
19 issue. Pursuant to Eastern District Civil Local Rule 141, a sealing order will issue only upon a request
20 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
21 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material
22 under seal pursuant to Eastern District Civil Local Rule 141(b) is denied by the court, then the
23 Receiving Party may file the information in the public record pursuant to Eastern District Civil Local
24 Rule 141(e)(1) unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
27 Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision,
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1 “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format
2 reproducing or capturing any of the Protected Material. When the Protected Material is returned, the
3 Receiving Party must submit a written certification to the Producing Party (and, if not the same person
4 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where
5 appropriate) all the Protected Material that was returned and (2) affirms that the Receiving Party has
6 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
7 capturing any of the Protected Material.

8

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: December 14, 2017

HADDAD & SHERWIN LLP
LAW OFFICE OF SANJAY S. SCHMIDT

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/s/ Maya Sorensen

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MAYA SORENSEN
Attorneys for Plaintiff
JEREMY LAPACHET

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16 Dated: December 14, 2017

Bertling and Clausen, LLP

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/s/ Jemma Parker Saunders

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Berghorst, Trinidad, Devendra, King, Tawana, Alejandro

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22 Dated: December 14, 2017

RIVERA AND ASSOCIATES

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/s/ Jesse Manuel Rivera

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JESSE MANUEL RIVERA
JILL B. NATHAN
Attorneys for Defendants County of Stanislaus, Sheriff
Adam Christianson

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ORDER

Pursuant to the parties' stipulation and the Court's modification to Paragraph 6.3 above, the stipulated protective order is hereby adopted.

IT IS SO ORDERED.

Dated: December 26, 2017

/s/ Eric P. Gorsj
UNITED STATES MAGISTRATE JUDGE

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