

1 James D. Weakley, Esq. Bar No. 082853
Ashley N. Torres, Esq. Bar No. 312120

2 Weakley & Arendt,
3 A Professional Corporation
1630 East Shaw Ave., Suite 176
4 Fresno, California 93710
Telephone: (559) 221-5256
5 Facsimile: (559) 221-5262
jim@walaw-fresno.com
6 ashley@walaw-fresno.com

7 Attorneys for Defendants, COUNTY OF FRESNO, ROY VINTON, KEFER McCOY, ARAM
8 YOUSIF, RUBEN CANEL, RAYMUNDO RAMOS

9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12
13 WILMA DELONEY, individually and as) CASE NO. 1:17-CV-1336-LJO-EPG
successor-in-interest to Decedent JOHN)
14 MAYBERRY,) STIPULATED PROTECTIVE ORDER
15)
Plaintiff,)
16)
vs.)
17)
COUNTY OF FRESNO,et al.,)
18)
19 Defendants.)
20)

21 **STIPULATED PROTECTIVE ORDER**

22 1. **PURPOSES AND LIMITATIONS**

23 Disclosure and discovery activity in this action are likely to involve production of
24 confidential or private information for which special protection from public disclosure and from
25 use for any purpose other than prosecuting this litigation may be warranted.

26 Pursuant to Eastern District Local Rule 141.1 (c), the parties hereby stipulate to and
27 petition the court to enter the following Stipulated Protective Order. The information for which
28 protection is sought includes: a) the Fresno County Sheriff’s Office’s investigation of the inmate

1 suicide from which this lawsuit arises, which includes photographs of the decedent while on life
2 support at the hospital; autopsy photographs of the decedent; photographs that contain images of
3 other inmates detained at Fresno County Jail; audio interviews of inmates, decedent's mother;
4 and health care professionals who provided medical treatment to decedent; criminal history of
5 the decedent including juvenile criminal history; b) Fresno County Jail records including security
6 video from inside the jail housing area; information pertaining to other inmates; classification
7 records, which contain confidential inmate information not for public disclosure; visitor logs;
8 personnel files of Fresno County Sheriff's Office employees; c) HIPAA protected medical and
9 mental health records relating to the decedent's treatment while at the Fresno County Jail.

10 A Protective Order is sought so the documents and information can be used by the parties
11 in preparation for trial and shared with witnesses and expert witnesses, who would not be subject
12 to a private agreement between the parties.

13 The parties acknowledge that this Order does not confer blanket protections on all
14 disclosures or responses to discovery and that the protection it affords from public disclosure and
15 use extends only to the limited information or items that are entitled to confidential treatment
16 under the applicable legal principles. The parties further acknowledge, as set forth in Section
17 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
18 information under seal. Local Rule 141 sets forth the procedures that must be followed and the
19 standards that will be applied when a party seeks permission from the court to file material under
20 seal.

21 **2. DEFINITIONS**

22 2.1 Challenging Party: A Party or Non-Party that challenges the designation of
23 information or items under this Order.

24 2.2 Confidential Information or Items: Information (regardless of how it is generated,
25 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
26 Procedure 26(c).

27 2.3 Counsel: Attorneys (and their support staff) who are retained to represent or advise a
28

1 party to this action and have appeared in this action on behalf of that party or are affiliated with a
2 law firm which has appeared on behalf of that party.

3 2.4 Designating Party: A Party or Non-Party that designates information or items that it
4 produces in disclosures or in responses to discovery. The information or items shall be identified
5 as follows: CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER, Deloney v.
6 County of Fresno USDC Case No. 1:17-cv-1336-LJO-EPG.

7 2.5 Disclosure or Discovery Material: All items or information, regardless of the medium
8 or manner in which it is generated, stored, or maintained (including, among other things,
9 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
10 responses to discovery in this matter.

11 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to
12 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
13 consultant in this action.

14 2.7 Non-Party: Any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.8 Party: Any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.9 Producing Party: A Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.10 Professional Vendors: Persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
22 organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors.

24 2.11 Protected Material: Any Disclosure or Discovery Material that is designated as
25 “Confidential Material.”

26 2.12 Receiving Party: A Party that receives Disclosure or Discovery Material from a
27 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material
3 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
4 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
6 However, the protections conferred by this Stipulation and Order do not cover the following
7 information: (a) any information that is in the public domain at the time of disclosure to a
8 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
9 a result of publication not involving a violation of this Order, including becoming part of the
10 public record through trial or otherwise; and (b) any information known to the Receiving Party
11 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
12 obtained the information lawfully and under no obligation of confidentiality to the Designating
13 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

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

22 5. PROTECTED MATERIAL

23 5.1 Protected Materials

24 Defendants shall produce the confidential material, subject to this Protective Order on the
25 following conditions:

26 (a) Documents Subject to Disclosure Limited to This Action. The documents
27 requested by Plaintiff through discovery come from Fresno County Sheriff's Office's
28

1 investigation of an inmate suicide from which this lawsuit arises. Plaintiff also seeks records
2 relating to mental health treatment received by the decedent while in the Fresno County Jail. The
3 Fresno Sheriff's Office investigation includes photographs of the decedent while on life support
4 at the hospital; subsequent autopsy photographs; photographs which contain images of other
5 inmates; audio interviews of inmates housed together with the decedent; audio interview of the
6 decedent's mother (the plaintiff) being informed of the incident by investigating detectives;
7 security video from inside the jail housing pod; personnel files of defendants and non-defendant
8 Fresno County Sheriff's Office employees, which are protected by the California Peace Officers
9 Bill of Rights, the federal common law qualified privilege known as the Official Information
10 Privilege, California Evidence Code §1040, et seq., California Penal Code §§832.7 and 832.8,
11 the Right to Privacy of the defendant officers and third-party non-defendant Fresno County
12 Sheriff's Office employees, victims, minors as guaranteed by the United States Constitution and
13 the California Constitution (Cal. Const., Art. 1, §1). The confidential documents and the
14 information contained therein shall be used solely in connection with this litigation, including
15 appeals, and not for any other purpose, including other litigation:

16 (b) Redaction of Confidential Information. Considering the privacy concerns
17 contained in the personnel and Internal Investigation Records, Defendants shall redact the
18 identities and personal identifying information (social security numbers, month and day of birth,
19 driver's license number, home addresses, and telephone numbers).

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or
21 as otherwise stipulated or ordered, disclosure or discovery of material that qualifies for
22 protection under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents, but
26 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
27 Party affix the designation "CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE
28

1 ORDER, Deloney v. County of Fresno, et al., USDC Case No. 1:17-cv-1336-LJO-EPG”
2 pursuant to section 2.4 above, to each page that contains protected material.

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

6 (c) for information produced in some form other than documentary and for any
7 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
8 container or containers in which the information or item is stored the CONFIDENTIAL
9 designation. If only a portion or portions of the information or item warrant protection, the
10 Producing Party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the Designating Party’s
13 right to secure protection under this Order for such material. Upon timely correction of a
14 designation, the Receiving Party must make reasonable efforts to assure that the material is
15 treated in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the
22 original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
24 by providing written notice of each designation it is challenging and describing the basis for each
25 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
26 recite that the challenge to confidentiality is being made in accordance with this specific
27 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
28

1 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms
2 of communication are not sufficient) within 14 days of the date of service of notice. In
3 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
4 designation was not proper and must give the Designating Party an opportunity to review the
5 designated material, to reconsider the circumstances, and, if no change in designation is offered,
6 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
7 stage of the challenge process only if it has engaged in this meet and confer process first or
8 establishes that the Designating Party is unwilling to participate in the meet and confer process in
9 a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
11 intervention, the parties shall request an informal discovery dispute conference pursuant to the
12 undersigned Magistrate Judge's case management procedures. ~~Designating Party shall file and~~
13 ~~serve a motion to retain confidentiality within 21 days of the initial notice of challenge or within~~
14 ~~14 days of the parties agreeing that the meet and confer process will not resolve their dispute,~~
15 ~~whichever is earlier. Each such motion must be accompanied by a competent declaration~~
16 ~~affirming that the movant has complied with the meet and confer requirements imposed in the~~
17 ~~preceding paragraph. Failure by the Designating Party to make such a motion including the~~
18 ~~required declaration within 21 days (or 14 days, if applicable) shall automatically waive the~~
19 ~~confidentiality designation for each challenged designation. In addition, the Challenging Party~~
20 ~~may file a motion challenging a confidentiality designation at any time if there is good cause for~~
21 ~~doing so, including a challenge to the designation of a deposition transcript or any portions~~
22 ~~thereof. Any motion brought pursuant to this provision must be accompanied by a competent~~
23 ~~declaration affirming that the movant has complied with the meet and confer requirements~~
24 ~~imposed by the preceding paragraph.~~

25 ~~_____The burden of persuasion in any such challenge proceeding shall be on the Designating~~
26 ~~Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose~~
27 ~~unnecessary expenses and burdens on other parties) may expose the Challenging Party to~~
28

1 ~~sanctions. Unless the Designating Party has waived the confidentiality designation by failing to~~
2 ~~file a motion to retain confidentiality as described above, all parties shall continue to afford the~~
3 ~~material in question the level of protection to which it is entitled under the Producing Party's~~
4 ~~designation until the court rules on the challenge.~~

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
9 to the categories of persons and under the conditions described in this Order. When the litigation
10 has been terminated, a Receiving Party must comply with the provisions of section 13 below
11 (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and
13 in a secure manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
15 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated "CONFIDENTIAL" only to:

17 (a) The Receiving Party's Counsel of Record in this action, as well as employees of said
18 Counsel of Record to whom it is reasonably necessary to disclose the information for this
19 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
20 attached hereto as Exhibit A;

21 (b) The officers, directors, and employees of the Receiving Party to whom disclosure is
22 reasonably necessary for this litigation and who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
25 reasonably necessary for this litigation and who have signed the "Acknowledgment and
26 Agreement to Be Bound" (Exhibit A);

27 (d) The court and its personnel;
28

1 (e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (f) During their depositions, witnesses in the action to whom disclosure is reasonably
5 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
6 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
8 separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this Stipulated Protective Order. Witnesses shall not leave the deposition with a copy of
10 Confidential documents unless expressly agreed to on the record by the Designating Party.

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

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
14 OTHER LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that compels
16 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
17 Party must:

18 (a) Promptly notify in writing the Designating Party. Such notification shall include a
19 copy of the subpoena or court order;

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

23 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the
24 Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the
26 subpoena or court order shall not produce any information designated in this action as
27 CONFIDENTIAL before a determination by the court from which the subpoena or order issued,
28

1 unless the Party has obtained the Designating Party's written permission. The Designating Party
2 shall bear the burden and expense of seeking protection in that court of its confidential material.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
4 IN THIS LITIGATION

5 (a) The terms of this Order are also applicable to information produced by a Non-Party in
6 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
7 connection with this litigation is protected by the remedies and relief provided by this Order.
8 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
9 additional protections.

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

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

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

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

19 (c) If the Non-Party fails to object or seek a protective order from this court within 14
20 days of receiving the notice and accompanying information, the Receiving Party may produce
21 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
22 timely seeks a protective order, the Receiving Party shall not produce any information in its
23 possession or control that is subject to the confidentiality agreement with the Non-Party before a
24 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
25 burden and expense of seeking protection in this court of its Protected Material.

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
27
28

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
2 Material to any person or in any circumstance not authorized under this Stipulated Protective
3 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
4 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
5 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
6 made of all the terms of this Order, (d) request such person or persons to execute the
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A and (e)
8 state in writing all efforts the Receiving Party made to retrieve the unauthorized copies.

9 **11. INADVERTENT PRODUCTION OF PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently
11 produced material is subject to a claim of privilege or other protection, the obligations of the
12 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
17 no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
19 no Party waives any right to object on any ground to use in evidence of any of the material
20 covered by this Protective Order.

21 12.3 Filing Protected Material. Without written permission from the Designating Party or
22 a court order secured after appropriate notice to all interested persons, a Party may not file in the
23 public record in this action any Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Local Rule 141.1. Protected Material may only be filed
25 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
26 issue. A sealing order will issue only upon a request establishing that the Protected Material at
27 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.
28

1 If a Receiving Party's request to file Protected Material under seal is denied by the court, then the
2 Receiving Party may file the information in the public record unless otherwise instructed by the
3 court.

4 13. FINAL DISPOSITION

5 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
6 Receiving Party must return all Protected Material to the Producing Party or destroy such
7 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
8 compilations, summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
10 submit a written certification to the Producing Party (and, if not the same person or entity, to the
11 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
12 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
13 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
14 capturing any of the Protected Material.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 DATED: April 18, 2018

LAW OFFICES OF JOHN L. BURRIS

17
18 By: /s/ James Cook (As authorized on 4/18/18) _____
19 JAMES COOK
20 JOHN L. BURRIS
21 BENJAMIN NISENBAUM
22 Attorneys for WILMA DELONEY,
23 Individually and as successor-in-interest
24 to Decedent JOHN MAYBERRY

25 DATED: April 18, 2018

LAW OFFICES OF MATTHEW M. GRIGG

26
27 By: /s/ Matthew M. Grigg (As authorized on 4/16/18)
28 MATTHEW M. GRIGG
PAMELA CHUNG
Attorneys for Corizon Health, Inc.

DATED: April 18, 2018

WEAKLEY & ARENDT

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

A Professional Corporation

By: /s/ James D. Weakley
JAMES D. WEAKLEY
ASHLEY N. TORRES
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

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

IT IS SO ORDERED.

Dated: April 23, 2018

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE