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by and through her guardians ad litem,
6 KRISTINA B. and MICHAEL B., and
7 KRISTINA B. and MICHAEL B., Individually

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

11 S.B., a minor, by and through her guardians ad
litem, KRISTINA B. and MICHAEL B., and
12 KRISTINA B. and MICHAEL B.,
Individually,

13 Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF
16 EDUCATION, THE STATE OF
17 CALIFORNIA, GOVERNOR EDMUND
GERALD BROWN, JR., in his official
18 capacity, and THOMAS TORLAKSON, in his
official capacity,

19 Defendants.

Case No.: 1:17-CV-01507-LJO-BAM

STIPULATED PROTECTIVE ORDER

Complaint Filed: November 9, 2017
Trial Date: July 28, 2020

20
21 **GOOD CAUSE STATEMENT**

22 Due to the nature of the litigation, while the Parties reserve the right to object to and/or
23 challenge whether certain information is confidential, proprietary, personal and/or private, the
24 Parties believe that they, as well as Non-Parties, may be required to produce or disclose
25 information that is confidential, proprietary, personal and/or private, particularly as it relates to
26 Student S.B. The Parties believe that if such information is disclosed in this action without
27 restriction on its use or further disclosure, it may cause disadvantage, harm, or invade the privacy
28 rights and any other applicable rights of the disclosing Party or Non-Parties.

1 Therefore, believing good cause exists, the Parties hereby stipulate and agree that, subject
2 to the Court’s approval, the following procedures shall be followed in this action to facilitate the
3 exchange of information and documents during the course of discovery, which may be subject to
4 confidentiality and extremely sensitive and private limitations due to federal laws, state laws, and
5 privacy rights. The Parties are hereby ordered to comply with the terms of the following Protective
6 Order:

7 1. In this Protective Order, the words set forth below shall have the following meanings:

- 8 a. “Proceeding” means the above-entitled proceeding (CASE NO. 1:17-CV-01507-LJO-
9 BAM).
- 10 b. “Court” means the Hon. Lawrence J. O’Neill, or any other judge to which this Proceeding
11 may be assigned, including Court staff participating in such proceedings.
- 12 c. “Confidential” means any information which is in the possession of a Designating Party
13 who believes in good faith that such information is entitled to confidential treatment
14 under applicable law.
- 15 d. “Confidential Materials” means any Documents, Testimony or Information as defined
16 below designated as “Confidential” pursuant to the provisions of this Stipulation and
17 Protective Order.
- 18 e. “Designating Party” means the Party that designates Materials as “Confidential.”
- 19 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give, or make
20 available Materials, or any part thereof, or any information contained therein.
- 21 g. “Documents” means (i) any “Writing,” “Original,” and “Duplicate,” which have been
22 produced in discovery in this Proceeding by any person, and (ii) any copies,
23 reproductions, or summaries of all or any part of the foregoing.
- 24 h. “Information” means the content of Documents or Testimony.
- 25 i. “Testimony” means all depositions, declarations or other testimony taken or used in this
26 Proceeding.

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1 2. The Designating Party shall have the right to designate as “Confidential” any Documents,
2 Testimony or Information that the Designating Party in good faith believes to contain non-public
3 information that is entitled to confidential treatment under applicable law.

4 3. The entry of Protective Order does not alter, waive, modify, or abridge any right, privilege
5 or protection otherwise available to any Party with respect to the discovery of matters, including
6 but not limited to any Party’s right to assert the attorney-client privilege, the attorney work-product
7 doctrine, or other privileges, or any Party’s right to contest any such assertion.

8 4. Any Documents, Testimony or Information to be designated as “Confidential” must be
9 clearly so designated before the Document, Testimony or Information is Disclosed or produced.
10 The parties may agree that the case name and number are to be part of the “Confidential”
11 designation. The “Confidential” designation should not obscure or interfere with the legibility of
12 the designated Information.

13 a. For Documents (apart from transcripts of depositions or other pretrial or trial
14 proceedings), the Designating Party must affix the legend “Confidential” on each page
15 of any Document containing such designated Confidential Material. If only portions of
16 the Information or item warrant protection, the Designating Party, to the extent
17 practicable, shall identify the “Confidential” portions.

18 b. For Testimony given in depositions the Designating Party may either:

19 i. identify on the record, before the close of the deposition, all “Confidential”
20 Testimony, by specifying all portions of the Testimony that qualify as
21 “Confidential;” or

22 ii. designate the entirety of the Testimony at the deposition as “Confidential” (before
23 the deposition is concluded) with the right to identify more specific portions of the
24 Testimony as to which protection is sought within 30 days following receipt of the
25 deposition transcript. In circumstances where portions of the deposition Testimony
26 are designated for protection, the transcript pages containing “Confidential”
27 Information may be separately bound by the court reporter, who must affix to the
28 top of each page the legend “Confidential,” as instructed by the Designating Party.

1 c. For Information produced in some form other than Documents, and for any other
2 tangible items, including, without limitation, compact discs or DVDs, the Designating
3 Party must affix in a prominent place on the exterior of the container or containers in
4 which the Information or item is stored the legend “Confidential.” If only portions of
5 the Information or item warrant protection, the Designating Party, to the extent
6 practicable, shall identify the “Confidential” portions.

7 5. The inadvertent production by any of the undersigned Parties or non-Parties to the
8 Proceedings of any Document, Testimony or Information during discovery in this Proceeding
9 without a “Confidential” designation, shall be without prejudice to any claim that such item is
10 “Confidential” and such Party shall not be held to have waived any rights by such inadvertent
11 production. In the event that any Document, Testimony or Information that is subject to a
12 “Confidential” designation is inadvertently produced without such designation, the Party that
13 inadvertently produced the document shall give written notice of such inadvertent production
14 within twenty (20) days of discovery of the inadvertent production, together with a further copy of
15 the subject Document, Testimony or Information designated as “Confidential” (the “Inadvertent
16 Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party that received
17 the inadvertently produced Document, Testimony or Information shall promptly destroy the
18 inadvertently produced Document, Testimony or Information and all copies thereof, or, at the
19 expense of the producing Party, return such together with all copies of such Document, Testimony
20 or Information to counsel for the producing Party and shall retain only the “Confidential”
21 designated Materials. Should the receiving Party choose to destroy such inadvertently produced
22 Document, Testimony or Information, the receiving Party shall notify the producing Party in
23 writing of such destruction within ten (10) days of receipt of written notice of the inadvertent
24 production. This provision is not intended to apply to any inadvertent production of any
25 Information protected by attorney-client or work product privileges. In the event that this provision
26 conflicts with any applicable law regarding waiver of confidentiality through the inadvertent
27 production of Documents, Testimony or Information, such law shall govern.

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1 6. In the event that counsel for a Party receiving Documents, Testimony or Information in
2 discovery designated as “Confidential” objects to such designation with respect to any or all of
3 such items, said counsel shall advise counsel for the Designating Party, in writing, of such
4 objections, the specific Documents, Testimony or Information to which each objection pertains,
5 and the specific reasons and support for such objections (the “Designation Objections”). Counsel
6 for the Designating Party shall have thirty (30) days from receipt of the written Designation
7 Objections to either (a) agree in writing to de-designate Documents, Testimony or Information
8 pursuant to any or all of the Designation Objections and/or (b) file a motion with the Court seeking
9 to uphold any or all designations on Documents, Testimony or Information addressed by the
10 Designation Objections (the “Designation Motion”). Pending a resolution of the Designation
11 Motion by the Court, any and all existing designations on the Documents, Testimony or
12 Information at issue in such Motion shall remain in place. The Designating Party shall have the
13 burden on any Designation Motion of establishing the applicability of its “Confidential”
14 designation. In the event that the Designation Objections are neither timely agreed to nor timely
15 addressed in the Designation Motion, then such Documents, Testimony or Information shall be de-
16 designated in accordance with the Designation Objection applicable to such material.

17 7. Access to and/or Disclosure of Confidential Materials designated as “Confidential” shall be
18 permitted only to the Court, counsel for a party (including the paralegal, clerical, and secretarial
19 staff employed by such counsel), and to the “qualified persons” designated below:

- 20 a. The named parties and their employees, representatives and agents who are deemed
21 necessary to the prosecution or defense of that party’s position in this litigation;
- 22 b. those officers, directors, partners, members, employees and agents of all non-designating
23 Parties that counsel for such Parties deems necessary to aid counsel in the prosecution
24 and defense of this Proceeding;
- 25 c. court reporters in this Proceeding (whether at depositions, hearings, or any other
26 proceeding);
- 27 d. any potential or confirmed deposition, trial or hearing witness in the Proceeding who
28 previously has had access to the Confidential Materials, or who is currently or was

1 previously an officer, director, partner, member, employee or agent of an entity that has
2 had access to the Confidential Materials;

3 e. any potential or confirmed deposition, trial or hearing witness in the Proceeding who
4 previously did not have access to the Confidential Materials;

5 f. outside experts or expert consultants consulted by the undersigned Parties or their counsel
6 in connection with the Proceeding, whether or not retained to testify at any oral hearing.

7 It shall be the obligation of counsel, upon learning of any breach or threatened breach of
8 this Stipulation and Protective Order by any such expert or expert consultant, to promptly
9 notify counsel for the Designating Party of such breach or threatened breach; and

10 g. any other person that the Designating Party agrees to in writing.

11 Prior to receiving any Confidential Materials, each “qualified person,” as defined herein
12 shall be provided with a copy of this Order and shall execute a nondisclosure agreement in the
13 form of Attachment A, a copy of which shall be provided forthwith to counsel for each other party
14 and for the parties.

15 8. Confidential Materials shall be used by the persons receiving them only for the purposes of
16 preparing for, conducting, participating in the conduct of, and/or prosecuting and/or defending the
17 Proceeding, and not for any business or other purpose whatsoever.

18 9. Any Party to the Proceeding (or other person subject to the terms of this Protective Order)
19 may ask the Court, after appropriate notice to the other Parties to the Proceeding, to modify or
20 grant relief from any provision of this Protective Order.

21 10. Entering into, agreeing to, and/or complying with the terms of this Protective Order shall not:

22 a. operate as an admission by any person that any particular Document, Testimony or
23 Information marked “Confidential” contains or reflects trade secrets, proprietary,
24 confidential or competitively sensitive business, commercial, financial or personal
25 information; or

26 b. prejudice in any way the right of any Party (or any other person subject to the terms of
27 this Protective Order):

28 i. to seek a determination by the Court of whether any particular Confidential Material

1 should be subject to protection as “Confidential” under the terms of this Stipulation
2 and Protective Order; or

- 3 ii. to seek relief from the Court on appropriate notice to all other Parties to the
4 Proceeding from any provision(s) of this Protective Order, either generally or as to
5 any particular Document, Material or Information.

6 11. Nothing in this Protective Order shall be construed to preclude either Party from asserting
7 in good faith that certain Confidential Materials require additional protection. The Parties shall
8 meet and confer to agree upon the terms of such additional protection.

9 12. If, after execution of this Protective Order, any Confidential Materials submitted by a
10 Designating Party under the terms of this Protective Order is Disclosed by a non-Designating Party
11 to any person other than in the manner authorized by this Protective Order, the non-Designating
12 Party responsible for the Disclosure shall bring all pertinent facts relating to the Disclosure of such
13 Confidential Materials to the immediate attention of the Designating Party.

14 13. This Protective Order is entered into without prejudice to the right of any Party to
15 knowingly waive the applicability of this Stipulation and Protective Order to any Confidential
16 Materials designated by that Party. If the Designating Party uses Confidential Materials in a non-
17 Confidential manner, then the Designating Party shall advise that the designation no longer applies.

18 14. Where any Confidential Materials, or Information derived from Confidential Materials, is
19 included in any motion or other proceeding, the same shall be submitted to the Court with a
20 Request to Seal Documents in compliance with Federal Rule of Civil Procedure 5.2 and Eastern
21 District Local Rule 141.

22 15. The Parties shall meet and confer regarding the procedures for use of Confidential
23 Materials at trial and shall move the Court for entry of an appropriate order.

24 16. Nothing in this Protective Order shall affect the admissibility into evidence of Confidential
25 Materials, or abridge the rights of any person to seek judicial review or to pursue other appropriate
26 judicial action with respect to any ruling made by the Court concerning the issue of the status of
27 Protected Material.

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1 17. This Protective Order shall continue to be binding after the conclusion of this Proceeding
2 and all subsequent proceedings arising from this Proceeding, except that a Party may seek the
3 written permission of the Designating Party or may move the Court for relief from the provisions
4 of this Protective Order. To the extent permitted by law, the Court shall retain jurisdiction to
5 enforce, modify, or reconsider this Stipulation and Protective Order, even after the Proceeding is
6 terminated.

7 18. Upon written request made within thirty (30) days after the settlement or other termination
8 of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a) promptly return
9 to counsel for each Designating Party all Confidential Materials and all copies thereof (except that
10 counsel for each Party may maintain in its files, in continuing compliance with the terms of this
11 Protective Order, all work product, and one copy of each pleading filed with the Court, (b) agree
12 with counsel for the Designating Party upon appropriate methods and certification of destruction or
13 other disposition of such Confidential Materials, or (c) as to any Documents, Testimony or other
14 Information not addressed by sub-paragraphs (a) and (b), file a motion seeking a Court order
15 regarding proper preservation of such Materials. To the extent permitted by law the Court shall
16 retain continuing jurisdiction to review and rule upon the motion referred to in sub-paragraph (c)
17 herein.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 Respectfully submitted,

20 DATED: October 26, 2018

/s/ Kate Starn Legrand
KATE STARN LEGRAND
Attorney for California Department of Education and State
Superintendent of Public Instruction Tom Torlakson

23 DATED: October 26, 2018

/s/ Colleen A. Snyder
COLLEEN A. SNYDER
Attorney for Plaintiff S.B., a minor, by and through her guardians
ad litem, KRISTINA B. and MICHAEL B., and KRISTINA B.
and MICHAEL B.

26 Attestation: The filer of this document attests that the concurrence of the other signatory has
27 been obtained.
28

Attachment A
NONDISCLOSURE AGREEMENT

I, _____, do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered into in S.B., a minor, by and through her guardians ad litem, KRISTINA B. and MICHAEL B., and KRISTINA B. and MICHAEL B., Individually, United States District Court for the Eastern District of California, Civil Action No.1:17-cv-01507-LJO-BAM, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: _____

By: _____

1 ORDER

2 The Court adopts the stipulated protective order submitted by the parties. However, in
3 addition to the above stipulation, the parties are advised that pursuant to the Local Rules of the
4 United States District Court, Eastern District of California, any documents designated Confidential
5 to be filed under seal must be accompanied by a written request which complies with Local Rule
6 141 prior to sealing. The party making a request to file documents under seal shall be required to
7 show good cause for documents attached to a nondispositive motion or compelling reasons for
8 documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-
9 78 (9th Cir. 2009). Within five (5) days of any approved document filed under seal, the party shall
10 file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect
11 only the information that is confidential or was deemed confidential

12
13 IT IS SO ORDERED.

14 Dated: November 13, 2018

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE