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8 **Attorneys for Defendants County of Kern,**
9 **Kern County Department of Human Services,**
10 **Kern County Sheriff's Office,**
11 **Stephany Rosenow and Ralph Lomas**

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 **VICTORIA GARCIA, an individual and) Case No.: 1:18-CV-00369 DAD JLT**
15 **N.R., a minor, by and through her)**
16 **Guardian,)**
17 **) STIPULATED PROTECTIVE ORDER**
18 **Plaintiffs,) FOR DISCOVERY MATTERS**
19 **) [PROPOSED] ORDER**
20 **v.)**
21 **) (Doc. 28)**
22 **COUNTY OF KERN; KERN COUNTY)**
23 **DEPARTMENT OF HUMAN)**
24 **SERVICES; KERN COUNTY)**
25 **SHERIFF'S OFFICE; STEPHANY)**
26 **ROSENOW, an individual; RALPH)**
27 **LOMAS, an individual; and DOES 1)**
28 **through 100.)**

29 **Defendants.**

30 COME NOW, all Plaintiffs and all Defendants (hereinafter the "Parties") to this matter,
31 and agree and stipulate to a Protective Order, as follows:

32 **PROTECTIVE ORDER**

33 **1. PURPOSES AND LIMITATIONS**

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

1 In accordance with Local Rule 141.1(c)(1), the parties offer the following description
2 of the types of information eligible for protection under this order, and in accordance with
3 Local Rule 141.1(c)2, the parties offer the following as a showing of the particularized need
4 for protection as to each category of information proposed to be covered by the order, and in
5 accordance with Local Rule 141.1(c)(3) the parties offer the following as a showing as to why
6 the need for protection should be addressed by a court order, as opposed to a private agreement
7 between or among the parties:

8 1. It is anticipated that Plaintiffs will request portions of the private personnel records
9 of law enforcement members of the Kern County Sheriff's Office ("KCSO"), which qualify as
10 peace officer records under California Penal Code §§ 832.7 and 832.8, and KCSO will be
11 requested to produce the records in discovery;

12 2. The parties agree that discovery of the private personnel records of law enforcement
13 members of the KCSO may be relevant to this action;

14 3. The Defendants are concerned that turning over the KCSO private personnel records
15 without a protective order could result in the violation of the privacy rights of KCSO Deputies
16 including but not limited to those who are parties to this litigation;

17 4. The parties agree that a Stipulated Protective Order is necessary to balance Plaintiffs'
18 need for relevant discovery, KCSO's duty as steward of the records, and the privacy rights of
19 the KCSO Deputies including but not limited to those who are parties to this litigation;

20 5. It is anticipated that Plaintiffs will request portions of the private personnel records
21 of employees of the Kern County Department of Human Services, and Kern DHS will be
22 requested to produce the records in discovery;

23 6. The parties agree that discovery of the private personnel records of employees of the
24 Kern County Department of Human Services may be relevant to this action;

25 7. The Defendants are concerned that turning over the Kern DHS private personnel
26 records without a protective order could result in the violation of the privacy rights of Kern
27 DHS employees including but not limited to those who are parties to this litigation;

28 8. The parties agree that a Stipulated Protective Order is necessary to balance
Plaintiffs' need for relevant discovery, Kern DHS's duty as steward of the records, and the

1 privacy rights of the Kern DHS employees including but not limited to those who are parties to
2 this litigation;

3 Accordingly, the Parties hereby petition the Court to enter the following Protective
4 Order. Good cause appearing, the Court ORDERS as follows:

5 This Order does not confer blanket protections on all disclosures or responses to
6 discovery and that the protection it affords from public disclosure and use extends only to the
7 limited information or items that are entitled to confidential treatment under the applicable
8 legal principles. As set forth in Section 12.3, below, this Protective Order does not entitle the
9 parties to file confidential information under seal.

10 **2. DEFINITIONS**

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
14 generated, stored or maintained) or tangible things that qualify for protection under Federal
15 Rule of Civil Procedure 26(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
17 well as their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or items that
19 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among other
22 things, testimony, transcripts, and tangible things), that are produced or generated in
23 disclosures or responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
25 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
26 a consultant in this action.

27 2.7 House Counsel: attorneys who are employees of a party to this action. House
28 Counsel does not include Outside Counsel of Record or any other outside counsel.

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

1 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
2 action but are retained to represent or advise a party to this action and have appeared in this
3 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
4 that party.

5 2.10 Party: any party to this action, including all of its officers, directors, employees,
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
8 Material in this action.

9 2.12 Professional Vendors: persons or entities that provide litigation support services
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
11 organizing, storing, or retrieving data in any form or medium) and their employees and
12 subcontractors.

13 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
14 “CONFIDENTIAL.”

15 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 **3. SCOPE**

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

4. DURATION

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

8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for Protection**

10 Each Party or Non-Party that designates information or items for protection under this
11 Order must take care to limit any such designation to specific material that qualifies under the
12 appropriate standards. The Designating Party must designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify – so that other
14 portions of the material, documents, items, or communications for which protection is not
warranted are not swept unjustifiably within the ambit of this Order.

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

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

22 **5.2 Manner and Timing of Designations**

23 Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a)
24 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
25 for protection under this Order must be clearly so designated before the material is disclosed
or produced. Designation in conformity with this Order requires:

- 26 (a) for information in documentary form (e.g., paper or electronic documents,
27 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
28 Producing Party affix the legend "CONFIDENTIAL" to each page that contains

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

12 If only a portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings
14 in the margins).

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

18 (c) for information produced in some form other than documentary and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior
20 of the container or containers in which the information or item is stored the legend
21 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
22 protection, the Producing Party, to the extent practicable, shall identify the protected
portion(s).

23 **5.3 Inadvertent Failures to Designate**

24 If timely corrected, an inadvertent failure to designate qualified information or items
25 does not, standing alone, waive the Designating Party's right to secure protection under this
26 Order for such material. Upon timely correction of a designation, the Receiving Party must
27 make reasonable efforts to assure that the material is treated in accordance with the provisions
28 of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges**

3 Any Party may challenge a designation of confidentiality at any time. Unless a prompt
4 challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of
6 the litigation, the challenge must be brought within a reasonable time or it is waived.

7 **6.2 Meet and Confer**

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

22 **6.3 Judicial Intervention**

23 If the Parties cannot resolve a challenge after meeting and conferring, the Challenging
24 Party SHALL initiate an informal, telephonic conference with the assigned Magistrate Judge.
25 At that conference, the Court will attempt to resolve the matter without need for formal motion
26 practice. If, in the Court's view, the matter can only be resolved through formal motion
27 practice, the Court will authorize the Challenging Party to file a motion which SHALL comply
28 with Local Rule 251(c).

As with motions to compel, the Challenging Party SHALL bear the initial burden of
demonstrating that the Designating Party has improperly marked the material as confidential.

1 If this showing is made, the burden will shift and as with motions for protective orders under
2 Federal Rules of Civil Procedure 26(c), the burden of establishing the need for the
3 confidentiality—as with any evidentiary privilege—must be borne by the Designating Party
4 who is asserting it. Frivolous challenges, and those made for an improper purpose (e.g., to
5 harass or impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. All parties shall continue to afford the material in question the
7 level of protection to which it is entitled under the Producing Party’s designation until the court
8 rules on the challenge.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 **7.1 Basic Principles**

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

16 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
18 Order.

19 **7.2 Disclosure of “CONFIDENTIAL” Information or Items**

20 Unless otherwise ordered by the court or permitted in writing by the Designating Party,
21 a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only
22 to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to
25 disclose the information for this litigation and who have signed the “Acknowledgment
26 and Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

4 (d) the court and its personnel;

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

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

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

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
18 **OTHER LITIGATION**

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be pursued by
the Designating Party who’s Protected Material may be affected. If the Designating
Party timely seeks a protective order, the Party served with the subpoena or court order

1 shall not produce any information designated in this action as “CONFIDENTIAL”
2 before a determination by the court from which the subpoena or order issued, unless
3 the Party has obtained the Designating Party’s permission. The Designating Party shall
4 bear the burden and expense of seeking protection in that court of its confidential
5 material – and nothing in these provisions should be construed as authorizing or
6 encouraging a Receiving Party in this action to disobey a lawful directive from another
7 court.

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

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

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

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

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

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

27 (c) If the Non-Party fails to object or seek a protective order from this court
28 within 14 days of receiving the notice and accompanying information, the Receiving
Party may produce the Non-Party’s confidential information responsive to the
discovery request. If the Non-Party timely seeks a protective order, the Receiving Party

1 shall not produce any information in its possession or control that is subject to the
2 confidentiality agreement with the Non-Party before a determination by the court.
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
4 of seeking protection in this court of its Protected Material.

5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL**

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

24 **12. MISCELLANEOUS**

25 **12.1 Right to Further Relief**

26 Nothing in this Order abridges the right of any person to seek its modification by the
27 court in the future.

28 **12.2 Right to Assert Other Objections**

The entry of this Protective Order does not imply any Party’s waiver of any right it
otherwise would have to object to disclosing or producing any information or item on any

1 ground not addressed in this Protective Order. Similarly, no Party waives any right to object
2 on any ground to use in evidence of any of the material covered by this Protective Order.

3 **12.3 Filing Protected Material**

4 Without written permission from the Designating Party or a court order secured after
5 appropriate notice to all interested persons, a Party may not file in the public record in this
6 action any Protected Material. A Party that seeks to file under seal any Protected Material must
7 comply with the applicable local rules. Protected Material may only be filed under seal pursuant
8 to a court order authorizing the sealing of the specific Protected Material at issue. A sealing
9 order will issue only upon a request establishing that the Protected Material at issue is
10 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
11 Receiving Party's request to file Protected Material under seal is denied by the court, then the
12 Receiving Party may file the information in the public record unless otherwise instructed by
13 the court.

13 **13. FINAL DISPOSITION**

14 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
15 Receiving Party must return all Protected Material to the Producing Party or destroy such
16 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
19 submit a written certification to the Producing Party (and, if not the same person or entity, to
20 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
21 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
22 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
23 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
24 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
25 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
26 reports, attorney work product, and consultant and expert work product, even if such materials
27 contain Protected Material. Any such archival copies that contain or constitute Protected
28 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

1 Dated: August 24, 2018

LANZONE MORGAN, LLP

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By: /s/ Jomo K. Stewart, Esq.
Jomo K. Stewart, Esq.
Attorneys for Plaintiffs

5 Dated: August 24, 2018

MARK L. NATIONS, COUNTY COUNSEL

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By: /s/ Kathleen Rivera
Kathleen S. Rivera, Deputy
Attorney for Defendants

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11 IT IS SO ORDERED.

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Dated: August 27, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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