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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION

12
13 **DANA SMITHEE, et al.,**

14 Plaintiffs,

15 v.

16 **CA CORRECTIONAL INSTITUTION,**
17 **et al.,**

18 Defendants.

Case No. 1:19-cv-00004-NONE-JLT

STIPULATED PROTECTIVE ORDER

(Doc. 105)

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21 To facilitate discovery in this matter, Plaintiffs Dana Smithee and E.M., a minor by and
22 through guardian ad litem Jennifer Montes, and Defendant K. Celosse, stipulate that all
23 information, testimony, documents, or things produced or given (by a party or by a non-party) as
24 part of discovery in this action shall be governed by this Stipulated Protective Order, which
25 designates certain material as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY.”
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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
10 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Eastern District Local Rule 141 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the court to
13 file material under seal.

14 2. DEFINITIONS

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

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
19 of Civil Procedure 26(c).

20 2.3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
21 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
22 Non-Party would create a substantial risk of serious harm that could not be avoided by less
23 restrictive means. The criteria for such designation shall be whether the Party has a good-faith
24 belief that the information is entitled to protection from disclosure to non-attorneys, because such
25 information threatens the safety of individuals or inmates, or threatens the safety and security of a
26 prison.

27 2.4 Counsel (without qualifier): Counsel of Record (as well as their support staff).

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1 2.5 Designating Party: a Party or Non-Party that designates information or items that
2 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner in which it is generated, stored, or maintained (including, among other things,
6 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
7 responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
9 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
10 consultant in this action.

11 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
12 entity not named as a Party to this action.

13 2.9 Counsel of Record: attorneys who are not employees of a party to this action but
14 are retained to represent or advise a party to this action and have appeared in this action on behalf
15 of that party or are affiliated with a law firm or government agency which has appeared on behalf
16 of that party.

17 2.10 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and Counsel of Record (and their support staffs).

19 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
20 Material in this action.

21 2.12 Professional Vendors: persons or entities that provide litigation support services
22 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
23 organizing, storing, or retrieving data in any form or medium) and their employees and
24 subcontractors.

25 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
26 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

27 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
28 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulated Protective Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
5 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
6 Material. However, the protections conferred by this Stipulated Protective Order do not cover the
7 following information: (a) any information that is in the public domain at the time of disclosure to
8 a 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 action,
20 including the time limits for filing any motions or applications for extension of time pursuant to
21 applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

7 If it comes to a Designating Party's attention that information or items that it designated
8 for protection do not qualify for protection at all or do not qualify for the level of protection
9 initially asserted, that Designating Party must promptly notify all other Parties that it is
10 withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations.

12 Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a)
13 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
14 protection under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
19 Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES
20 ONLY" to each page that contains protected material. If only a portion or portions of the material
21 on a page qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
23 portion, the level of protection being asserted.

24 A Party or Non-Party that makes original documents or materials available for inspection
25 need not designate them for protection until after the inspecting Party has indicated which
26 material it would like copied and produced. During the inspection and before the designation, all
27 of the material made available for inspection shall be deemed "CONFIDENTIAL –
28 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,
2 qualify for protection under this Order. Then, before producing the specified documents, the
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” to each page that contains Protected Material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
7 specify, for each portion, the level of protection being asserted.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
9 Designating Party identifies on the record, before the close of the deposition, hearing, or other
10 proceeding, all protected testimony. When it is impractical to identify separately each portion of
11 testimony that is entitled to protection and it appears that substantial portions of the testimony
12 may qualify for protection, the Designating Party may invoke on the record (before the
13 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the
14 specific portions of the testimony as to which protection is sought and to specify the level of
15 protection being asserted. Only those portions of the testimony that are appropriately designated
16 for protection within the 21 days shall be covered by the provisions of this Stipulated Protective
17 Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days
18 afterwards if that period is properly invoked, that the entire transcript shall be treated as
19 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
21 other proceeding to include Protected Material so that the other parties can ensure that only
22 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
24 shall not in any way affect its designation as “CONFIDENTIAL” or “CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page
27 that the transcript contains Protected Material, and the title page shall be followed by a list of all
28 pages (including line numbers as appropriate) that have been designated as Protected Material and

1 the level of protection being asserted by the Designating Party. The Designating Party shall
2 inform the court reporter of these requirements. Any transcript that is prepared before the
3 expiration of a 21-day period for designation shall be treated during that period as if it had been
4 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
5 agreed. After the expiration of that period, the transcript shall be treated only as actually
6 designated.

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

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

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

11 6.3 Judicial Intervention.

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

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

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.

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

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

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

16 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

25 (c) the court and its personnel;

26 (d) court reporters and their staff, professional jury or trial consultants, mock jurors,
27 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
28 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

7 (f) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information.

9 7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
10 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party,
11 Counsel for the Receiving Party may not disclose any information or item designated
12 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to Plaintiffs, members of Plaintiffs’ family,
13 friends or associates of Plaintiffs, or to any other inmate, parolee, or person previously in the
14 custody of CDCR or any of their relatives, friends, associates, or the public. Unless otherwise
15 ordered by the Court or permitted in writing by the Designating Party, only Counsel for the
16 Receiving Party may have access to and review any information or item designated
17 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Staff employed by Counsel and Expert(s)
18 retained by the Receiving Party will not disclose any item or information designated
19 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or make copies of any item or information
20 so designated, except as necessary for this litigation. Counsel may disclose any information or
21 item designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

26 (b) Expert witnesses of the Receiving Party (1) to whom disclosure is reasonably
27 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
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1 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
2 have been followed;

3 (c) the court and its personnel;

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

7 (e) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information.

9 7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

11 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
12 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
13 has been designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
14 7.3(c) first must make a written request to the Designating Party that (1) identifies the general
15 categories of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving
16 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the
17 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume,
18 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the
19 Expert has received compensation or funding for work in his or her areas of expertise or to whom
20 the expert has provided professional services, including in connection with a litigation, at any
21 time during the preceding five years, and (6) identifies (by name and number of the case, filing
22 date, and location of court) any litigation in connection with which the Expert has offered expert
23 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
24 preceding five years.

25 (b) A Party that makes a request and provides the information specified in the preceding
26 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
27 within 14 days of delivering the request, the Party receives a written objection from the
28 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

1 (c) A Party that receives a timely written objection must meet and confer with the
2 Designating Party (through direct voice-to-voice dialogue) to try to resolve the matter by
3 agreement within seven days of the written objection. If no agreement is reached, the Party
4 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
5 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court
6 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the
7 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
8 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
9 In addition, any such motion must be accompanied by a competent declaration describing the
10 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
11 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
12 to approve the disclosure.

13 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
14 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
15 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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

18 If a Party is served with a subpoena or a court order issued in other litigation that compels
19 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
20 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

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

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

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

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

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

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

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

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14
26 days of receiving the notice and accompanying information, the Receiving Party may produce the
27 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
28 seeks a protective order, the Receiving Party shall not produce any information in its possession

1 or control that is subject to the confidentiality agreement with the Non-Party before a
2 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
3 burden and expense of seeking protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
13 MATERIAL

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

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
25 seek its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated
27 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
28 producing any information or item on any ground not addressed in this Stipulated Protective

1 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
2 the material covered by this Stipulated Protective Order.

3 12.3 Filing Protected Material. Without written permission from the Designating Party
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in
5 the public record in this action any Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
8 issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request
9 establishing that the Protected Material at issue is entitled to protection under the law.

10 13. FINAL DISPOSITION

11 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
12 Receiving Party must return all Protected Material to the Producing Party or destroy such
13 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of the Protected
15 Material. Whether the Protected Material is returned or destroyed, upon request of the Producing
16 Party, the Receiving Party must submit a written certification to the Producing Party (and, if not
17 the same person or entity, to the Designating Party) within 60 days that (1) identifies (by
18 category, where appropriate) all the Protected Material that was returned or destroyed and (2)
19 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
20 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this
21 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
22 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
23 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
24 such materials contain Protected Material. In addition, Counsel of Record is not required to
25 destroy or return copies of Protected Material that may be stored on back-up storage media
26 created in the Counsel of Record’s normal course of business and retained for disaster-recovery
27 purposes, but Counsel of Record should make an attempt to destroy or return such copies as
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1 feasible. Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
4

5 Dated: June 25, 2021

Respectfully submitted,

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ROB BONTA
Acting Attorney General of California
7 JON S. ALLIN
Supervising Deputy Attorney General

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8

/s/ JEREMY DUGGAN

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JEREMY DUGGAN
Deputy Attorney General
Attorneys for Defendant
11 *K. Celosse*

11

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Dated: June 25, 2021

Respectfully submitted,

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/s/ Gregory J. Brod (as authorized
14 *6/25/2021)*

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GREGORY J. BROD
JEFFREY M. LIPMAN
Attorneys for Plaintiffs Dana Smithee and
16 *E.M., a minor by and through guardian ad*
17 *litem Jennifer Montes*

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IT IS SO ORDERED.

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Dated: June 25, 2021

/s/ Jennifer L. Thurston
21 CHIEF UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Smithee et al. v. California Correctional Institution, et al.*, Eastern District of California Case No. 2:19-cv-00004. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

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