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 LANDERMAN, DOUG WALTZ,
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 JAMES MARTIN

15 UNITED STATES DISTRICT COURT
 16 EASTERN DISTRICT OF CALIFORNIA
 17 SACRAMENTO DIVISION

18 DERRIL HEDRICK, DALE ROBINSON,
 KATHY LINDSEY, MARTIN C. CANADA,
 19 DARRY TYRONE PARKER, individually and
 on behalf of all others similarly situated,

20 Plaintiffs,

21 v.

22 JAMES GRANT, as Sheriff of Yuba County;
 23 Lieutenant FRED J. ASBY, as Yuba County
 Jailer; JAMES PHARRIS, ROY
 24 LANDERMAN, DOUG WALTZ, HAROLD J.
 “SAM” SPERBEK, JAMES MARTIN, as
 25 members of the YUBA COUNTY BOARD OF
 SUPERVISORS,

26 Defendants.

Case No. 2:76-CV-00162-GEB-EFB

**STIPULATED [PROPOSED]
 PROTECTIVE ORDER**

Judge: Edmund F. Brennan

Trial Date: None Set

1 WHEREAS, in or about May 2, 1979 the Court issued its Order approving a
2 Consent Decree in the above-captioned case, *Hedrick, et al. v. Grant, et al.*, No. 76-00162
3 (E.D. Cal. filed Mar. 24, 1976) (the “**ACTION**”):

4 WHEREAS by Order dated June 20, 2013, Senior United States District Court
5 Judge Garland Burrell, Jr. issued an order appointing Carter Capps White counsel for the
6 class, and on September 12, 2014 the law firm of Rosen, Bien, Galvan and Grunfeld
7 associated in as counsel for the Plaintiff class;

8 WHEREAS on October 25, 2016 counsel from the law firm of Porter Scott
9 appeared in the ACTION on behalf of all defendants;

10 WHEREAS the Consent Decree states that “records and documents which relate to
11 compliance with [the] Consent Decree or are otherwise required by law to be kept shall be
12 available immediately upon request by plaintiffs’ attorneys.”;

13 WHEREAS Plaintiffs DERRIL HEDRICK, DALE ROBINSON, KATHY
14 LINDSEY, MARTIN C. CANADA, DARRY TYRONE PARKER, on behalf of
15 themselves and all others similarly situated (“**PLAINTIFFS**”), and Defendants JAMES
16 GRANT, as Sheriff of Yuba County, Lieutenant FRED J. ASBY, as Yuba County Jailer,
17 JAMES PHARRIS, ROY LANDERMAN, DOUG WALTZ, HAROLD J. “SAM”
18 SPERBEK, JAMES MARTIN, as members of the YUBA COUNTY BOARD OF
19 SUPERVISORS (“**DEFENDANTS**”) (collectively, the “**PARTIES**”), agree that certain
20 documents to be produced pursuant to the Consent Decree or otherwise in this **ACTION**
21 are likely to involve production of private, confidential, or security-sensitive information
22 for which protection from public disclosure and from use for any purpose other than this
23 litigation may be warranted; and

24 WHEREAS, the **PARTIES** seek to facilitate the exchange of information and
25 documents which may be subject to confidentiality limitations on disclosure due to federal
26 laws, state laws, and constitutional privacy rights;

27 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
28 between the **PARTIES**, by and through their respective counsel of record, that they jointly

1 request, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, that the Court
2 enter this Stipulated [Proposed] Protective Order (hereinafter “**ORDER**”) as an Order of
3 the Court, as set forth below.

4 This stipulation and **ORDER** shall govern all “**CONFIDENTIAL**” information (as
5 defined hereafter) and all information derived therefrom, including, but not limited to, all
6 copies, excerpts or summaries thereof.

7 **Definition of Confidential Information**

8 1. For purposes of the Order, the term “**CONFIDENTIAL**” means any
9 information, document, tangible thing, electronically stored information or transcript of
10 oral testimony, whether or not made under oath, or any portion of such document, thing,
11 information, or transcript, designated by any party as **CONFIDENTIAL** because it
12 contains: (a) security-sensitive information (information that if released to the public or
13 inmate population may compromise the safety and security of a correctional facility), (b)
14 private and/or confidential personal information, such that the party making the
15 designation avers that it can and would make a showing to the Court sufficient to justify
16 the filing of the document or information under seal in accordance with Federal Rule of
17 Civil Procedure 26(c), Local Rules 140, 141, and/or 141.1, and controlling federal case
18 law, or (c) information reasonably believed to be protected from disclosure pursuant to
19 state or federal law.

20 2. Prior to the execution of this Stipulation, the **PARTIES** exchanged
21 documents and information, some of which could be considered **CONFIDENTIAL**
22 pursuant to this Stipulation. The **PARTIES** agree that any such **CONFIDENTIAL**
23 documents or information exchanged prior to the Stipulation may be designated as
24 **CONFIDENTIAL** and subject to all the terms and conditions of the Stipulation and any
25 related Order. As to any such documents or information, the **PARTIES** shall have 14 days
26 from the date the Order is entered to designate such documents and information
27 **CONFIDENTIAL**.

28

1 **Who May Have Access to Confidential Information**

2 3. **CONFIDENTIAL** information may be disclosed only to the following
3 persons:

4 (a) Counsel for **PLAINTIFFS** and **DEFENDANTS** (defined herein to
5 include: attorneys in this **ACTION** and their support staff, including paralegals, legal
6 interns, certified law students, and legal assistants);

7 (b) The **PARTIES** to this **ACTION**;

8 (c) The Court, its officers, court personnel, stenographic reporters, and
9 videographers engaged in proceedings in this matter;

10 (d) Any expert or consultant retained by any party or the Court for
11 purposes of this litigation; and

12 (e) Witnesses to whom **CONFIDENTIAL** information is necessarily
13 required be disclosed during testimony given in this matter or otherwise during the legal
14 proceedings, provided that the witness shall be informed of and shall agree to be bound by
15 the terms of this **ORDER**.

16 Any attorney, the attorney's support staff, or expert to whom disclosure is made
17 will be furnished with a copy of the **ORDER** and will be subject to this **ORDER**.

18 Nothing in this **ORDER** will preclude **PLAINTIFFS'** counsel from reviewing with
19 a **PLAINTIFF** his or her Jail medical and/or custody records.

20 **Use of Confidential Information**

21 4. In their capacity as class counsel, Plaintiffs' counsel may receive private and
22 confidential information and documents about class members, including medical records.
23 The **PARTIES** acknowledge that disclosure of such documents and information is made
24 only as is necessary and appropriate for Plaintiffs' counsel to represent the interests of
25 class members in this matter. Plaintiffs' counsel acknowledge their obligation to strictly
26 maintain the confidentiality of any documents provided by Defendant and designated
27 **CONFIDENTIAL** under the terms of this Stipulation and Order, and further agree to be
28 bound by all privacy laws that may apply to the documents and information received,

1 including, but not limited to, the Health Insurance Portability and Accountability Act, if
2 applicable.

3 5. By designating a document or portion thereof as **CONFIDENTIAL**, the
4 party making the designation avers that it can and would make a showing to the Court
5 sufficient to justify the filing of the document or portion thereof under seal in accordance
6 with Federal Rule of Civil Procedure 26(c), Local Rules 140, 141, and/or 141.1, and
7 controlling federal case law.

8 6. The designation of information as **CONFIDENTIAL** shall be made
9 whenever possible prior to production, by placing or affixing on each page of such
10 material in a manner that will not interfere with its legibility the words
11 “**CONFIDENTIAL**,” or by the designation of categories of documents as
12 “**CONFIDENTIAL**.” If such designation is not possible prior to production, the
13 designation must be made by the producing party within seven (7) days after disclosure.
14 The information shall be treated as **CONFIDENTIAL** until the seven (7) days has
15 elapsed. Within such seven (7)-day period, the disclosing party must notify all **PARTIES**
16 in writing of the precise information sought to be designated as **CONFIDENTIAL**. In the
17 event of a mistake or inadvertent disclosure is discovered post-production, such documents
18 shall be treated as **CONFIDENTIAL** as of the date the documents were originally
19 produced. If any such documents were provided to a person other than identified in
20 section 3(a) – (e), those document shall be returned to counsel within 10 days of notice of
21 the inadvertent disclosure.

22 7. Counsel for any party retains the right to challenge the designation of a
23 particular document or portion thereof as **CONFIDENTIAL**. The burden of proof with
24 respect to the propriety or correctness of the designation of any document or portion
25 thereof as **CONFIDENTIAL** will rest on the designating party. If any party believes any
26 designation of a document or portion thereof as **CONFIDENTIAL** is inappropriate, the
27 **PARTIES** will meet and confer and attempt to resolve the issue on an expedited basis. If
28 the **PARTIES** are unable to mutually agree on a resolution, the **PARTIES** will seek

1 appropriate Court intervention, including a request for a discovery conference or call with
2 the Magistrate Judge, and where appropriate, submit the documents to the Magistrate
3 Judge under seal to determine whether and to what extent such documents or portions
4 thereof should be deemed **CONFIDENTIAL** information in accordance with Paragraph 2
5 of this **ORDER**. Specifically, the Magistrate Judge shall determine whether the party
6 seeking to designate information as **CONFIDENTIAL** has satisfied the requirements for
7 filing the document or portion thereof sought to be designated under seal in accordance
8 with Federal Rule of Civil Procedure 26(c), Local Rules 140, 141, and/or 141.1, and
9 controlling federal case law. Where requested or permitted by the Court, the **PARTIES**
10 may provide the Court with separate statements containing the challenges by the party
11 opposing the **CONFIDENTIAL** information designation and the justifications by the
12 party designating the documents or portions thereof as **CONFIDENTIAL**.

13 8. Should testimony of a witness involve the disclosure of a party's
14 **CONFIDENTIAL** information, the following procedure will apply:

15 (a) The court reporter will be directed to bind those portions of the
16 transcript containing **CONFIDENTIAL** information separately. This request will be
17 made on the record whenever possible.

18 (b) The cover of any portion of a deposition or court proceeding transcript
19 that contains testimony or documentary evidence that has been designated
20 **CONFIDENTIAL** will be prominently marked:

21 **CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.**

22 (c) All portions of transcripts designated as **CONFIDENTIAL** will be
23 sealed and will not be disseminated except to the persons identified in Paragraph 3.

24 9. Any party may designate a transcript or portion thereof as
25 **CONFIDENTIAL** and subject to the Protective Order at the time of the testimony or
26 within seven days after the time the testimony is given. If a party intends to designate
27 portions of a transcript as "**CONFIDENTIAL**," that party shall have the right to limit
28 attendance during the relevant portion of the testimony to the persons set forth in

1 Paragraph 3 of this **ORDER**.

2 10. For all pleadings that contain **CONFIDENTIAL** information, the filing
3 party shall seek leave of court to file under seal consistent with the Local Rules for the
4 Eastern District of California. With leave of court, an unredacted version will be filed
5 under seal with the clerk of the court, and pleadings containing **CONFIDENTIAL**
6 information will be filed in a sealed envelope prominently marked with the caption of this
7 case, the identity of the party filing the envelope, and the notation:

8 **CONFIDENTIAL INFORMATION**
9 **SUBJECT TO PROTECTIVE ORDER**
10 **THIS ENVELOPE IS NOT TO BE OPENED NOR THE**
11 **CONTENTS DISPLAYED, COPIED, OR REVEALED,**
12 **EXCEPT BY COURT ORDER**

11 11. Upon a failure of the filing party to file personal, security, or
12 private/confidential information under seal, any party may request that the Court place the
13 document under seal. The procedures of Local Rules 140, 141, and/or 141.1 shall be
14 followed.

15 12. Either party may challenge the designation of a transcript, or a portion
16 thereof as **CONFIDENTIAL** under the procedure set forth in Paragraph 6, above.

17 13. The **PARTIES** agree that **CONFIDENTIAL** information subject to this
18 **ORDER** is strictly limited to use in this litigation and shall not be used by them, or anyone
19 else, for any other purpose. If records are unsealed by the Court or filed in the public
20 record in this **ACTION** this paragraph shall not apply.

21 14. Disclosure of **CONFIDENTIAL** information shall not constitute a waiver of
22 the attorney-client privilege, work-product doctrine, or any other applicable rights or
23 privilege. In addition, no document shall lose its **CONFIDENTIAL** status because it was
24 inadvertently or unintentionally disclosed to a person not authorized to receive it under this
25 **ORDER**.

26 15. Within thirty (30) days of the conclusion of the litigation of this **ACTION**,
27 all material marked as **CONFIDENTIAL** under this **ORDER** and not received in
28 evidence shall be returned to the producing party or third party, unless the **PARTIES**

1 agree that the material may be destroyed instead of being returned, in which instance
2 counsel shall certify that the documents have been destroyed. This **ORDER** shall survive
3 the discontinuance or other resolution of the **ACTION**.

4 16. To the extent that any provisions of this **ORDER** restrict the communication
5 and use of the **CONFIDENTIAL** information produced hereunder, such **ORDER** shall
6 continue to be binding after the conclusion of this litigation, except that there shall be no
7 restriction on documents that are used as exhibits in Court unless such exhibits were or
8 should have been filed under seal.

9 17. Nothing contained in this **ORDER** shall be deemed to preclude any party at
10 any time from:

11 (a) seeking and obtaining from the opposing party or the Court, on
12 appropriate showing, a further protective order relating to **CONFIDENTIAL** information
13 or relating to any information or documents sought in this case;

14 (b) applying to the Court for an order requiring the removal of the
15 **CONFIDENTIAL** designation from any document pursuant to Paragraph 6 above; or

16 (c) applying to the Court for any relief from a provision of this **ORDER**,
17 upon good cause shown.

18 Nothing in this **ORDER** shall be construed as preventing any party from making
19 application to the Court for revision of the terms of this **ORDER**.

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1 18. Each person designated in Paragraph 3, by receiving and reading a copy of
2 the **ORDER** entered by the Court as part of this Stipulation and Protective Order, agrees to
3 abide by its provisions and to see that its provisions are known and adhered to by those
4 under his or her supervision or control, and to submit to the jurisdiction of the Court in the
5 event the **ORDER** is breached.

6 IT IS SO STIPULATED.

7 DATED: February 2, 2017 U.C. DAVIS CIVIL RIGHTS CLINIC
8 By: /s/ Carter C. White
9 Carter C. White
10 Attorney for Plaintiffs

11 DATED: February 2, 2017 ROSEN BIEN GALVAN & GRUNFELD LLP
12 By: /s/ Gay Crosthwait Grunfeld
13 Gay Crosthwait Grunfeld
14 Attorney for Plaintiffs


15 DATED: February 3, 2017 PORTER SCOTT
16 A PROFESSIONAL CORPORATION
17 By: /s/ Carl L. Fessenden
18 Carl L. Fessenden
19 Attorney for Defendants

20 **ORDER**

21 The Court, having reviewed the above stipulation of the parties, and good cause
22 appearing, hereby enters the Stipulated Protective Order.

23 IT IS SO ORDERED.

24 DATED: February 7, 2017.

25 
26 Edmund F. Brennan
27 United States Magistrate Judge
28