

1 James J. McGarry, Esq. - SBN 92856  
2 jamesjmcgarry@mcgarrylaufenberg.com

3 **McGARRY & LAUFENBERG**

4 615 Nash Street, Suite 305  
5 El Segundo, California 90245

6 (310) 606-8675

7 Attorneys for Defendants, Officer Matt  
8 Dubendorf, Officer Billy J. Saukkola, Officer  
9 Stephen Newman and Officer Kevin White

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
12 **SACRAMENTO DIVISION**

13 **JEFFREY A. JURGENS, JR.,**

2:14-cv-02780 KJM DB

14 Plaintiff,

15 v.

**STIPULATION AND  
PROTECTIVE ORDER**

16 **California Highway Patrol**  
17 **Officer M. DUBENDORF**  
18 **(Badge #18286), in his**  
19 **individual capacity;**  
20 **California Highway Patrol**  
21 **Officer S. NEWMAN (Badge**  
22 **#18425); California Highway**  
23 **Patrol Officer BILLY J.**  
24 **SAUKKOLA (Badge #18291);**  
25 **California Highway Patrol**  
26 **Officer K. WHITE (Badge**  
27 **#18424); California Highway**  
28 **Patrol Sergeant S.A.**  
**DURYEE (Badge #15584);**  
**and Does 1-10,**

Defendants.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF  
RECORD:

**1 - STIPULATION FOR AND PROTECTIVE ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, that the Court may enter the following protective order:

1. Application. The terms of this order apply to: (1) investigative reports, photographs video and audio tapes or other materials produced during discovery which contain official, private, confidential or personal information that cannot be readily redacted, (2) plaintiff’s medical records and; (3) any other materials that the parties agree may be covered by this order. This material will be collectively referred to as “confidential material” throughout the remainder of this document. It is the obligation of the party producing confidential material to identify such materials at the time of production. “Designating party” is defined as a party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential.”

2. Permissible use of confidential material. Counsel for the parties may not use confidential material, or any document derived from or based on such material, such as an

1 expert report (hereinafter “derivative material”), for any  
2 purpose other than the conduct of this litigation.

3  
4 3. Duplication of confidential material. Counsel for  
5 the parties may make only one copy of any confidential or  
6 derivative material.

7  
8 4. Disclosure of confidential material to plaintiffs.  
9 Counsel for the plaintiffs may disclose confidential or  
10 derivative material to the plaintiff’s Guardian Ad Litem  
11 Joanna Jurgens.

12  
13 5. Permissive disclosure of confidential material to  
14 specific individuals and entities. Counsel for the parties may  
15 disclose confidential or derivative material only to (a) the  
16 Court, including any courtroom personnel; (b) the paralegal  
17 and clerical staff employed by counsel for the plaintiffs, if  
18 such disclosure is necessary to the conduct of the litigation;  
19 (c) any experts or consultants (together with their clerical  
20 staff) that counsel for the parties retain to assist in the  
21 prosecution of this action; (d) any court reporter responsible  
22 for recording or transcribing any proceeding in this action;  
23 (e) any witness at any deposition or other reported proceeding  
24 in this action; (f) mediators or arbitrators and their staff; and

1 (g) any other person to whom the designating party agrees in  
2 writing it may be disclosed. Counsel for the parties shall not  
3 disclose confidential or derivative material to any of the  
4 above individuals (excluding the Court and courtroom  
5 personnel) until counsel for the parties has explained to that  
6 person the obligations created by this protective order and  
7 obtained that person's agreement to abide by the contents of  
8 this protective order. Nothing in this paragraph imposes any  
9 restrictions on the use or disclosure by counsel for the parties  
10 of any material obtained independent of discovery in this  
11 action, whether or not such material is also obtained through  
12 discovery in this action.

17 6. Use of confidential material at depositions.  
18 Counsel for the parties may present confidential information  
19 to witnesses at depositions, and examine them concerning that  
20 confidential information, only after explaining to the witness  
21 on the record that the information is confidential and subject  
22 to this protective order, and only after the witness agrees to  
23 abide by the terms of this protective order and maintain the  
24 confidentiality of the information per the terms of the order.  
25 No witness may leave any deposition with any confidential or

1 derivative material that was disclosed to that witness during  
2 that deposition. If a witness testifies concerning confidential  
3 information at a deposition, that testimony will be treated as  
4 confidential information. Counsel for the designating party  
5 shall make arrangements with the court reporter transcribing  
6 the deposition to separately bind any portions of the  
7 transcript containing information designated as confidential,  
8 and to label those portions appropriately.

11  
12 7. Use of confidential material in open court. Counsel  
13 for either party may not use any confidential or derivative  
14 material in open court for any purpose without first having  
15 provided reasonable notice of such intent to opposing counsel  
16 so that opposing counsel may object or move in limine to  
17 exclude such evidence, if appropriate, prior to it being used  
18 in open court.

21 8. Filing of confidential material. Counsel for either  
22 party may not file any confidential or derivative material  
23 without first having provided notice of such intent to  
24 opposing counsel so that opposing counsel may seek the  
25 court's permission for the material to be filed under seal,  
26 pursuant to Civil Local Rule 141. If either party's request to  
27

1 file confidential material under seal pursuant to Civil Local  
2 Rule 141 is denied by the court, then the information may be  
3 filed in the public record unless otherwise instructed by the  
4 court.  
5

6 9. Destruction of confidential material. At the  
7 conclusion of this litigation, counsel for the parties shall  
8 return all confidential and derivative materials to the  
9 designating party, or shall certify to the designating party  
10 that all such materials have been destroyed.  
11  
12

13 10. Further orders. The foregoing is without prejudice  
14 to the right of any party: (a) to apply to the Court for a  
15 further or different protective order covering any material to  
16 be produced in this litigation; (b) to apply to the Court for  
17 an order removing the confidential designation from any  
18 material; (c) to apply to the Court for an order compelling  
19 production of documents or modification of this order or for  
20 any order permitting disclosure of confidential material  
21 beyond the terms of this order; and (d) to object to the  
22 production of privileged or private information.  
23  
24  
25

26 11. Term. This order shall remain in effect after the  
27 termination of this litigation and the Court shall retain  
28

1 jurisdiction to resolve any dispute arising out of this order.

2 SO STIPULATED:

3  
4 DATED: September 19, 2016 **McGARRY & LAUFENBERG**

5 /s/ James J. McGarry  
6 JAMES J. McGARRY  
7 Attorneys for Defendants,  
8 Officer Matt Dubendorf, Officer  
9 Billy J. Saukkola, Officer  
10 Stephen Newman and Officer  
11 Kevin White

12 DATED: September 16, 2016 **WEINER MARTINEZ, LLP**

13 /s/Beau Daniel Weiner  
14 BEAU D. WEINER  
15 Attorneys for Plaintiff,  
16 Jeffrey A. Jurgens, Jr.

17 DATED: September 19, 2016

18 /s/ Kevin W. Reager  
19 KEVIN W. REAGER  
20 Attorneys for Defendant,  
21 CALIFORNIA HIGHWAY  
22 PATROL Capt. S. DURYEE

23 **ORDER**

24 Pursuant to the parties' stipulation, IT IS SO ORDERED.

25 IT IS FURTHER ORDERED THAT:

26 1. Requests to seal documents shall be made by motion before the same judge who will  
27 decide the matter related to that request to seal.

28 2. The designation of documents (including transcripts of testimony) as confidential  
pursuant to this order does not automatically entitle the parties to file such a document with the

**7 - STIPULATION FOR AND PROTECTIVE ORDER**

1 court under seal. Parties are advised that any request to seal documents in this district is governed  
2 by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a  
3 written order of the court after a specific request to seal has been made. L.R. 141(a). However, a  
4 mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires  
5 that “[t]he ‘Request to Seal Documents’ shall set forth *the statutory or other authority for sealing,*  
6 *the requested duration, the identity, by name or category, of persons to be permitted access to the*  
7 *document, and all relevant information.*” L.R. 141(b) (emphasis added).

8 3. A request to seal material must normally meet the high threshold of showing that  
9 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially  
10 related” to the merits of a case, the request to seal may be granted on a showing of “good cause.”  
11 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016), petition  
12 for cert. filed, \_\_\_ U.S.L.W. \_\_\_ (U.S. March 24, 2016) (No. 15-1211); Kamakana v. City and  
13 County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

14 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of  
15 certain documents, at any court hearing or trial – such determinations will only be made by the  
16 court at the hearing or trial, or upon an appropriate motion.

17 5. With respect to motions regarding any disputes concerning this protective order which  
18 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local  
19 Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an *ex*  
20 *parte* basis or on shortened time.

21 6. The parties may not modify the terms of this Protective Order without the court’s  
22 approval. If the parties agree to a potential modification, they shall submit a stipulation and  
23 proposed order for the court’s consideration.

24 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement  
25 of the terms of this Protective Order after the action is terminated.

26 ////

27 ////

28 ////

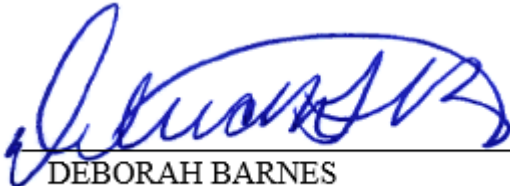
**8 - STIPULATION FOR AND PROTECTIVE ORDER**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. Any provision in the parties' stipulation that is in conflict with anything in this order is hereby DISAPPROVED.

Dated: September 26, 2016



---

DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:6  
DLB1\orders.civil\jurgens2780.stip.prot.ord