

1 **1. PURPOSE AND LIMITATIONS**

2 Defendants have requested that Plaintiffs MARTIN JOHN and WILLIAM MYERS
3 (collectively “Plaintiffs”) sign authorizations permitting the release of their psychiatric records to
4 defense counsel. Those records contain confidential and private information for which special
5 protection from public disclosure and from use for any purpose other than prosecuting this
6 litigation may be warranted.

7 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
8 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
9 protections on all disclosures or responses to discovery and that the protection it affords from
10 public disclosure and use extends only to the limited information or items that are entitled to
11 confidential treatment under Fed. R. Civ. P. 26(c).

12 Specifically, the parties in this action, in good faith, believe that Plaintiffs’ psychiatric
13 records contain information that is (a) confidential, sensitive, or potentially invasive of their
14 privacy interests; (b) not generally known; and (c) not normally revealed to the public or third
15 parties or, if disclosed to third parties, would require such third parties to maintain the information
16 in confidence.

17 In light of the sensitive nature of the documents potentially to be disclosed and the strong
18 presumption against disclosure of such information pursuant to the applicable federal and state
19 privacy laws, the parties hereby request that any such disclosure be governed by a court-ordered
20 protective order. The parties believe a court order, not a private agreement, properly facilitates the
21 limited disclosure of such documents while protecting them from general disclosure.

22 The parties further acknowledge that this Stipulated Protective Order does not entitle them
23 to file confidential information under seal; E.D. Cal. L.R. 141 sets forth the procedures that must
24 be followed and the standards that will be applied when a party seeks permission from the Court to
25 file material under seal.

26 **2. DEFINITIONS**

27 2.1 Challenging Party: a Party to this litigation that challenges the designation of
28 information or items under this Order.

1 2.2 “CONFIDENTIAL” Information or “CONFIDENTIAL” Item: Plaintiff’s
2 psychiatric records which qualify for protection under Fed. R. Civ. P. 26(c).

3 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
4 well as their support staff).

5 2.4 Designating Party: a Party to this litigation that designates information or items that
6 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

7 2.5 Disclosure Material or Discovery Material: any item or information that is
8 produced or generated in disclosures or responses to discovery in this matter.

9 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
10 the litigation who has been retained by a Party to this litigation or its Counsel to serve as an expert
11 witness or as a consultant in this action.

12 2.7 House Counsel: attorneys who are employees of a party to this action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

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

19 2.10 Party: any Party to this litigation, including its officers, directors, employees,
20 consultants, retained experts, and Counsel of Record (and their support staff).

21 2.11 Producing Party: a Party to this litigation that produces Disclosure Material or
22 Discovery Material in this action.

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

27 2.13 Protected Material: any Disclosure Material or Discovery Material that is
28 designated as “CONFIDENTIAL” by a Producing Party.

1 2.14 Receiving Party: a Party to this litigation that receives Disclosure Material or
2 Discovery Material.

3 **3. SCOPE**

4 The protections conferred by this Stipulated Protective Order cover not only Plaintiffs'
5 psychiatric records, but also (1) any information copied or extracted from those materials; (2)
6 copies, excerpts, summaries, or compilations of those materials; and (3) any testimony,
7 conversations, or presentations by a Party or their Counsel that might reveal protected information
8 regarding those materials.

9 The protections conferred by this Stipulated Protective Order do not cover the following
10 information: (a) any information that is in the public domain at the time of disclosure to a
11 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
12 result of publication not involving a violation of this Order, including becoming part of the public
13 record through trial or otherwise; or (b) any information known to the Receiving Party prior to the
14 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
15 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
16 of Protected Material at trial shall be governed by a separate agreement or order.

17 **4. DURATION**

18 The confidentiality obligations imposed by this Stipulated Protective Order shall remain in
19 effect until a Designating Party agrees otherwise in writing or a Court order otherwise directs.
20 Final disposition shall be deemed to be the later of (a) dismissal of all claims and defenses in this
21 action, with or without prejudice; or (2) final judgment herein after the completion and exhaustion
22 of all appeals, re-hearings, remands, trials, or reviews of this action, including the time limits for
23 filing any motions or applications for extension of time pursuant to applicable law.

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each Party
26 that designates information or items for protection under this Stipulated Protective Order must
27 take care to limit any such designation to specific material that qualify under Fed. R. Civ. P. 26(c).
28 The Designating Party must designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify so that other portions of the material,
2 documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Stipulated Protective Order.

4 A party may only designate as “CONFIDENTIAL” Information or Items which it has
5 determined in good faith to be sufficient to justify the Court’s entry of a protective order pursuant
6 to Fed. R. Civ. P. 26(c) and E.D. Cal. L.R. 141.1.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
8 shown to be without substantial justification or that have been made for an improper purpose (e.g.,
9 to impose unnecessary expenses and burdens on other parties) shall subject the Designating Party
10 to sanctions.

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

14 5.2 Manner and Timing of Designations: Except as otherwise provided in this
15 Stipulated Protective Order, or as otherwise stipulated or ordered, Disclosure Material or
16 Discovery Material that qualifies for protection under this Stipulated Protective Order must be
17 clearly designated before the material is disclosed or produced. In the absence of substantial
18 unfairness, economic burden, or a significant disruption or delay of the litigation, a Party does not
19 waive its right to designate material as “CONFIDENTIAL” by not doing so before disclosure or
20 production upon a showing of reasonable cause.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
23 excluding transcripts of depositions or other pre-trial or trial proceedings), that the Producing
24 Party affix the legend “CONFIDENTIAL” to each page that contains Protected Material. If only a
25 portion or portions of the material on a page qualifies for protection, the Producing Party also must
26 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). A
27 Party that makes original documents or materials available for inspection need not designate them
28 for protection until after the inspecting Party has indicated which material it would like copied and

1 produced. During the inspection and before the designation, all of the material made available for
2 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
3 documents it wants copied and produced, the Producing Party must determine which documents,
4 or portions thereof, qualify for protection under this Stipulated Protective Order. Then, before
5 producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”
6 legend to each page that contains Protected Material. If only a portion or portions of the material
7 on a page qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins).

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

12 (c) for information produced in some form other than documentary and for any other
13 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
14 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
15 portion or portions of the information or item warrant protection, the Producing Party shall
16 identify the protected portion(s).

17 5.3 Non-Designation: A Party’s non-designation of any information or item implies
18 that it is not Protected Material.

19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

26 6.2 Timing of Motion for Protective Order: Within seven calendar days of a
27 Challenging Party’s challenge to the Producing Party’s designation, the Producing Party must
28 move for a protective order pursuant to E.D. Cal. L.R. 251, if it seeks to maintain the Protected

1 Material’s designation as “CONFIDENTIAL” and subject to this Stipulated Protective Order. If
2 the Producing Party fails to move for a protective order within the specific seven calendar days,
3 the Producing Party automatically waives each challenged Protected Material’s designation as
4 “CONFIDENTIAL” and subject to this Stipulated Protective Order.

5 6.3 Judicial Intervention: If the Parties cannot resolve a challenge without Court
6 intervention, the Producing Party’s motion for protective order must be accompanied by a
7 competent declaration affirming that the movant has complied with this Stipulated Protective
8 Order. Nothing in Stipulated Protective Order precludes a Challenging Party from filing a separate
9 or parallel motion challenging a confidentiality designation at any time, if there is good cause for
10 doing so.

11 Nothing in this Stipulated Protective Order changes or modifies the Designating Party’s
12 burden of persuasion or substantive or procedural obligation in any such confidentiality challenge
13 proceeding, pursuant to Fed. R. Civ. P. 26(c) and E.D. Cal. L.R. 141.1. Unless the Designating
14 Party has waived the confidentiality designation by failing to file a motion for protective order, as
15 described above, all parties shall continue to afford the material in question the level of protection
16 to which it is entitled under the Producing Party’s designation until the Court rules on the
17 challenge.

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

19 7.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed or
20 produced in connection with this case only for prosecuting, defending, or attempting to settle this
21 litigation. Such material may be disclosed only to the categories of persons and under the
22 conditions described in this Stipulated Protective Order. Such material must be stored and
23 maintained by a Receiving Party at a location and in a secure manner that ensures that access is
24 limited to the persons authorized under this Stipulated Protective Order.

25 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless otherwise ordered
26 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
27 information or item designated “CONFIDENTIAL” only to:

- 28 (a) the Receiving Party’s Counsel of Record in this action;

- 1 (b) the officers, directors, and employees/staff of the Receiving Party;
- 2 (c) Experts of the Receiving Party;
- 3 (d) the Court and its personnel;
- 4 (e) Court reporters and their employees/staff, professional jury or trial consultants,
- 5 mock jurors, and Professional Vendors;
- 6 (f) witnesses in the action, during their deposition, unless otherwise agreed by the
- 7 Designating Party or ordered by the Court; and
- 8 (g) the author or recipient of a document containing the information or a custodian or
- 9 other person who otherwise possessed or knew the information.

10 **IT IS SO STIPULATED:**

11 Dated: July 20, 2017

PORTER SCOTT
A PROFESSIONAL CORPORATION

12
13 By: _____
14 Carl L. Fessenden
15 Derek J. Haynes
16 Drew M. Tate
17 Attorneys for Defendants,
18 COUNTY OF SUTTER, SUSAN REDFORD,
19 and TONY HOBSON

20 Dated: July 20, 2017 GALANTE LAW INC.


21 By: _____
22 Ben J. Galante
23 Attorney for Plaintiff

24 Dated: July 20, 2017 SETHI LAW FIRM

25 By: _____
26 Rahul Sethi
27 Attorney for Plaintiff

28 **IT IS SO ORDERED.**

Dated: July 20, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE