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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF ANTONIO THOMAS,
TAIJAH THOMAS, TAIONNAA
THOMAS, ANITA THOMAS, and
ANTHONY WALLACE,

Plaintiffs,

v.

COUNTY OF SACRAMENTO,
SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT, SCOTT R. JONES, and
DOES 1-50,

Defendants.

No. 2:20-cv-00903-KJM-DB

**STIPULATED
PROTECTIVE ORDER
RE: MEDICAL RECORDS**

1 **A. PURPOSE AND LIMITATION**

2 Defendants believe that the disclosure and discovery activity concerning the materials described
3 in Section C is likely to involve production of confidential or private information for which protection
4 from public disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. This protective order does not confer blanket protections on all disclosures or discovery
6 activity; the protection it affords extends only to the limited information or items that are described in
7 Section C, if subject to protection under Fed. R. Civ. P. 26(c). This protective order does not entitle any
8 party to file information designated as protected or confidential under seal, where E.D. Cal. L.R. 141
9 sets forth the procedures that must be followed and reflects the standards that will be applied when a
10 party seeks permission from the Court to file material under seal.

11 **B. DEFINITIONS**

12 The following definitions shall apply to this Protective Order:

13 1. The “Action” shall mean and refer to the above-captioned matter and to all actions now
14 or later consolidated with the Action, and any appeal from the Action and from any other action
15 consolidated at any time under the above-captioned matter, through final judgment.

16 2. “Documents” or “Confidential Documents” shall mean the Documents that Defendants
17 designate as “Confidential” in the manner set forth in this Protective Order.

18 3. “Confidential” shall mean information designated “Confidential” pursuant to this
19 Protective Order. Information designated “Confidential” shall be information that is determined in good
20 faith by the attorneys representing the Designating Party to be subject to protection pursuant to Fed. R.
21 Civ. P. 26(c). Confidential Documents, material, and/or information shall be used solely for purposes of
22 litigation. Confidential Information shall not be used by the non-Designating Party for any business or
23 other purpose, unless agreed to in writing by all Parties to this action or as authorized by further order of
24 the Court.

25 4. “Defendants” shall mean COUNTY OF SACRAMENTO, SACRAMENTO COUNTY
26 SHERIFF’S DEPARTMENT, and SCOTT R. JONES.

27 5. “Plaintiffs” shall mean ESTATE OF ANTONIO THOMAS, TAIJAH THOMAS,
28 TAIONNAA THOMAS, ANITA THOMAS, and ANTHONY WALLACE

1 6. “Parties” shall mean Plaintiffs and Defendants, identified above.

2 **C. INFORMATION COVERED**

3 Covered Information:

4 Pursuant to E.D. Cal. L.R. 141.1(c)(1), a description of the information eligible for protection
5 under this Protective Order is limited to the following:

6 1. Antonio Thomas’ Correctional Health Services medical records for the incarceration
7 beginning December 6, 2019, Bates labeled DEFS00099-00102; and

8 2. Antonio Thomas’ Correctional Health Services medical records for all prior
9 incarcerations with the Sacramento County Sheriff’s Department, Bates labeled DEFS00298-01651.

10 Particularized Need for Protection:

11 Pursuant to E.D. Cal. L.R. 141.1(c)(2), Defendants maintain that a specific, particularized need
12 for protection as to the information covered by this Protective Order exists. Plaintiffs have not been
13 permitted access to these materials pre-production and, as a result, rely upon Defendants and their
14 counsels’ representations. Defendants represent to the Court that the materials designated to be covered
15 by this Protective Order are limited solely to those which would qualify for protection under Fed. R.
16 Civ. P. 26(c), and does not include information which has been subject to protection on a blanket or
17 indiscriminate basis. See, e.g., In Re Roman Catholic Archbishop of Portland, 661 F.3d 417, 424 (9th
18 Cir. 2011) (identifying a two-part test for obtaining a protective order under Fed. R. Civ. P. 26(c)).

19 Showing of Need for a Protective Order:

20 Pursuant to E.D. Cal. L.R. 141.1(c)(3), Defendants maintain the need for protection pursuant to
21 this Protective Order is for the convenience of the parties and the Court. The parties seek to avoid
22 litigation and expenditure of resources concerning a potential Fed. R. Civ. P. 26(c) motion for protective
23 order. The entry of this Protective Order prevents the parties and the Court from conducting the usual
24 document-by-document analysis necessary to obtain protection under Fed. R. Civ. P. 26(c), in favor of a
25 procedure whereby presumptive protection is afforded based on Defendants and their counsels’
26 representations. See, e.g., Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1122 (3d Cir. 1986) (“[T]he
27 burden of justifying the confidentiality of each and every document sought to be covered by a protective
28 order remains on the party seeking the protective order; any other conclusion would turn [Fed. R. Civ.

1 P.] 26(c) on its head.”). As a result, production may be made with this Protective Order in place and, if
2 necessary, will permit challenges to the documents covered by this Protective Order.

3 **D. TERMS OF THE PROTECTIVE ORDER**

4 Confidential Documents subject to protection may be designated as “Confidential” by the
5 Defendants and produced subject to the following Protective Order:

6 1. The Confidential Documents shall be used solely in connection with the above-captioned
7 civil case, and in the preparation and trial of the case. The Parties do not waive any objections to the
8 admissibility of the documents or portions thereof in future proceedings in this case, including trial.

9 2. Defendants will designate the Confidential Documents as confidential by affixing a mark
10 labelling them “Confidential.”

11 3. The Confidential Documents may only be disclosed to the following persons:

12 a. Mark E. Merin and Paul H. Masuhara of THE LAW OFFICE OF MARK E.
13 MERIN, partners and associate attorneys in that office, if any, as counsel for Plaintiffs in the case
14 enumerated above;

15 b. Carl L. Fessenden and Suli A. Mastorakos of PORTER SCOTT, partners and
16 associate attorneys in that office, as counsel for Defendants in the case enumerated above;

17 c. Paralegal, clerical, and secretarial personnel regularly employed by counsel
18 referred to in subparts (a) and (b) immediately above, including stenographic deposition reporters or
19 videographers retained in connection with this action;

20 d. The Parties to this action, including Plaintiffs and Defendants;

21 e. Court personnel, including stenographic reporters or videographers engaged in
22 proceedings as are necessarily incidental to the preparation for the trial in the civil action;

23 f. Any expert, consultant, or investigator retained in connection with this action;
24 however, such persons must be advised of and abide by this protective order;

25 g. The finder of facts at the time of trial, subject to the court’s rulings on in limine
26 motions and objections of counsel; and

27 h. Witnesses during their depositions in this action. If confidential documents are
28 used in the deposition, the documents must be identified as “Confidential” and the portion of the

1 deposition in which the documents are described should also be considered confidential.

2 4. Information covered by this Protective Order does not entitle the Parties to file such
3 information or documents with the Court under seal. Any request to seal documents is governed by E.D.
4 Cal. L.R. 141. If the Confidential Documents are filed with any motion or other pleading, if necessary, a
5 party may seek permission from the Court to file the Confidential Documents under seal according to
6 E.D. Cal. L.R. 141. If permission is granted, the Confidential Documents will be filed and served in
7 accordance with E.D. Cal. L.R. 141.

8 5. The designation of the Confidential Documents as “Confidential” and the subsequent
9 production thereof is without prejudice to the right of any party to oppose the admissibility of the
10 Confidential Documents or information contained therein.

11 6. Any party or non-party may challenge a designation of confidentiality at any time. A
12 party or non-party does not waive its right to challenge a confidentiality designation by electing not to
13 mount a challenge promptly after the original designation is disclosed. The Challenging Party shall
14 initiate the dispute resolution process by providing written notice of each designation it is challenging
15 and describing the basis for each challenge. The parties shall attempt to resolve each challenge in good
16 faith and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of
17 communication are not sufficient) within seven (7) days of the date of service of notice. In conferring,
18 the Challenging Party must explain the basis for its belief that the confidentiality designation was not
19 proper and must give the Designating Party an opportunity to review the designated material, to
20 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
21 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if
22 it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling
23 to participate in the meet and confer process in a timely manner. If the Parties cannot resolve a
24 challenge without Court intervention, the Designating Party shall file and serve a motion for protective
25 order pursuant to Fed. R. Civ. P. 26(c) and E.D. Cal. L.R. 251 within twenty-one (21) days of the initial
26 notice of challenge or within seven (7) days of the parties agreeing that the meet and confer process will
27 not resolve their dispute, whichever is earlier. Failure by the Designating Party to make such a motion
28 within twenty-one (21) days (or seven (7) days, if applicable) shall automatically waive the

1 “Confidential” designation for each challenged designation. In addition, the Challenging Party may file
2 a motion challenging a confidentiality designation at any time if there is good cause for doing so. The
3 burden of persuasion in any such challenge proceeding shall be on the Designating Party. Unless the
4 Designating Party has waived the confidentiality designation by failing to file a motion to retain
5 confidentiality as described above, all parties shall continue to afford the material in question the level
6 of protection to which it is entitled under the Designating Party’s designation until the Court rules on the
7 challenge.

8 7. Should the Confidential Documents or any information contained therein be disclosed,
9 through inadvertence or otherwise, to any person not authorized to receive it under this Protective Order,
10 the disclosing person(s) shall promptly (a) inform counsel for the Defendants of the recipient(s) and the
11 circumstances of the unauthorized disclosure to the relevant producing person(s) and (b) use best efforts
12 to bind the recipient(s) to the terms of this Protective Order.

13 8. The Confidential Documents shall not lose its confidential status because it was
14 inadvertently or unintentionally disclosed to a person not authorized to receive it under this Protective
15 Order.

16 9. The protections conferred by this Protective Order cover the information defined above,
17 as well as any information copied from the materials. However, the protections conferred by this
18 Protective Order do not cover:

- 19 a. any information that is in the public domain at the time of disclosure or which
20 subsequently becomes part of the public domain after its disclosure, including
21 becoming part of the public record through trial or otherwise; or
- 22 b. any information known prior to the disclosure or obtained after the disclosure
23 from a source who obtained the information lawfully and under no obligation of
24 confidentiality.

25 10. After the conclusion of this litigation, the Confidential Documents will remain
26 confidential. “Conclusion” of this litigation means a termination of the case following a trial,
27 settlement, or dismissal of the Action with prejudice for any other reason.

28 11. This Stipulated Protective Order shall remain in full force and effect and shall continue to

1 be binding on all parties and affected persons until this litigation terminates, subject to any subsequent
2 modifications of this Stipulated Protective Order for good cause shown by this Court or any Court
3 having jurisdiction over an appeal of this action. Upon termination of this litigation, the parties agree
4 the Stipulated Protective Order shall continue in force as a private agreement between the parties.

5 12. During the pendency of this action, the Court shall (a) make such amendments,
6 modifications and additions to this Protective Order as it may deem appropriate upon good cause shown;
7 and, (b) adjudicate any dispute arising under it. The Court shall retain jurisdiction over this Protective
8 Order after the termination of this action.

9
10 **IT IS SO STIPULATED.**

11 Dated:

Respectfully Submitted,

12 PORTER SCOTT
13 A PROFESSIONAL CORPORATION

14 */s/ Carl L. Fessenden*
15 (as authorized on November 17, 2020)

16 By: _____

17 Carl L. Fessenden
18 Suli A. Mastorakos
19 Attorneys for Defendants
20 COUNTY OF SACRAMENTO, SACRAMENTO
21 COUNTY SHERIFF'S DEPARTMENT, and
22 SCOTT R. JONES

23 Dated: November 17, 2020

Respectfully Submitted,

24 LAW OFFICE OF MARK E. MERIN

25 */s/ Mark E. Merin*
26 (as authorized on November 17, 2020)

27 By: _____

28 Mark E. Merin
Paul H. Masuhara
Attorney for Plaintiffs
ESTATE OF ANTONIO THOMAS,
TAIJAH THOMAS, TAIONNAA THOMAS,
ANITA THOMAS, and ANTHONY WALLACE

1 **ORDER**

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

3 IT IS FURTHER ORDERED THAT:

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

6 2. The designation of documents (including transcripts of testimony) as confidential pursuant to
7 this order does not automatically entitle the parties to file such a document with the court under seal.
8 Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In
9 brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a
10 specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough
11 under the local rules. In particular, Local Rule 141(b) requires that "[t]he 'Request to Seal Documents'
12 shall set forth the statutory or other authority for sealing, the requested duration, the identity, by name or
13 category, of persons to be permitted access to the document, and all relevant information." L.R. 141(b).

14 3. A request to seal material must normally meet the high threshold of showing that "compelling
15 reasons" support secrecy; however, where the material is, at most, "tangentially related" to the merits of
16 a case, the request to seal may be granted on a showing of "good cause." Ctr. for Auto Safety v.
17 Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana v. City and County of
18 Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

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

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

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

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

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

5 DATED: November 19, 2020

/s/ DEBORAH BARNES
 UNITED STATES MAGISTRATE JUDGE

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