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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13

14
15 KELSEY HENLE,) Case No. 2:22-cv-00596-KJM-JDP
16)
Plaintiff,) **STIPULATED PROTECTIVE ORDER**
17)
vs.)
18)
COUNTY OF EL DORADO, EVAN)
19 VAUGHAN, MICHAEL JONES, AUSTIN)
20 RAMSEY. DOES 1-5,)
21)
Defendants.)

22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve production of
24 confidential, proprietary, or private information for which special protection from public
25 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
26 This is likely to include medical records, sensitive information contained within personnel files,
27 and third party sensitive information such as citizen complaints.
28

1 Accordingly, the parties hereby stipulate to the following Protective Order. The parties
2 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
3 discovery, and that the protection it affords from public disclosure and use extends only to the
4 limited information or items that are entitled to confidential treatment under the applicable legal
5 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order
6 does not entitle them to file confidential information under seal; Local Rule 141 sets forth the
7 procedures that must be followed and the standards that will be applied when a party seeks
8 permission from the court to file material under seal.

9 2. DEFINITIONS

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
13 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule
14 of Civil Procedure 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
16 well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

19 2.5 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among other things,
21 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
22 responses to discovery in this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
24 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
25 consultant in this action.

26 2.7 House Counsel: attorneys who are employees of a party to this action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
4 action but are retained to represent or advise a party to this action and have appeared in this action
5 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

6 2.10 Party: any party to this action, including all of its officers, directors, employees,
7 consultants, retained experts, and Outside Counsel of Record (and their support staff).

8 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
9 Material in this action.

10 2.12 Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
12 organizing, storing, or retrieving data in any form or medium) and their employees and
13 subcontractors.

14 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
15 "CONFIDENTIAL."

16 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 3. SCOPE

19 The protections conferred by this Order cover not only Protected Material (as defined
20 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
21 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
22 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
23 protections conferred by this Order do not cover the following information: (a) any information
24 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
25 public domain after its disclosure to a Receiving Party as a result of publication not involving a
26 violation of this Order, including becoming part of the public record through trial or otherwise;
27 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
28 Receiving Party after the disclosure from a source who obtained the information lawfully and

1 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
2 trial shall be governed by a separate agreement or order.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations imposed by this
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
6 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
7 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
8 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
9 including the time limits for filing any motions or applications for extension of time pursuant to
10 applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
13 or Non-Party that designates information or items for protection under this Order must take care
14 to limit any such designation to specific material that qualifies under the appropriate standards.
15 The Designating Party must designate for protection only those parts of material, documents,
16 items, or oral or written communications that qualify, so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this Order.

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

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

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
28 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so

1 designated before the material is disclosed or produced. Designation in conformity with this Order
2 requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
5 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only
6 a portion or portions of the material on a page qualifies for protection, the Producing Party also
7 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
8 margins).

9 A Party or Non-Party that makes original documents or materials available for inspection
10 need not designate them for protection until after the inspecting Party has indicated which material
11 it would like copied and produced. During the inspection and before the designation, all of the
12 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
13 Party has identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this Order.

15 Then, before producing the specified documents, the Producing Party must affix the
16 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or
17 portions of the material on a page qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

22 (c) for information produced in some form other than documentary and for any
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
24 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
25 If only a portion or portions of the information or item warrant protection, the Producing Party, to
26 the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
28 designate qualified information or items does not, standing alone, waive the Designating Party's

1 right to secure protection under this Order for such material. Upon timely correction of a
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
3 in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process by providing written notice of each designation it is challenging and describing the basis
13 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
14 notice must recite that the challenge to confidentiality is being made in accordance with this
15 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
16 good faith and must begin the process by conferring within 14 calendar days of the date of service
17 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
18 confidentiality designation was improper and must give the Designating Party an opportunity to
19 review the designated material, to reconsider the circumstances, and, if no change in designation
20 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
21 the next stage of the challenge process only if it has engaged in this meet and confer process first
22 or establishes that the Designating Party is unwilling to participate in the meet and confer process
23 in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the parties shall follow the procedures set forth in Local Rule 251 to resolve the
26 challenge. 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. Until the court rules on the challenge, the Parties shall continue to afford the material
2 in question the level of protection to which it is entitled under the Producing Party's designation.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
5 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
7 to the categories of persons and under the conditions described in this Order. When the litigation
8 has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

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

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
12 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
13 information or item designated "CONFIDENTIAL" only to:

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

18 (b) the officers, directors, and employees (including House Counsel) of the
19 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
20 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

24 (d) the court and its personnel;

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

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

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

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
11 LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
14 must:

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with the subpoena
24 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
25 before a determination by the court from which the subpoena or order issued, unless the Party has
26 obtained the Designating Party's permission. The Designating Party shall bear the burden and
27 expense of seeking protection in that court of its confidential material, and nothing in these
28 provisions should be construed as authorizing or encouraging a Receiving Party in this action to

1 disobey a lawful directive from another court.

2 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
3 LITIGATION

4 (a) The terms of this Order are applicable to information produced by a Non-Party in
5 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
6 connection with this litigation is protected by the remedies and relief provided by this Order.
7 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
8 additional protections.

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

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

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

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

18 (c) If the Non-Party fails to object or seek a protective order from this court within 14
19 days of receiving the notice and accompanying information, the Receiving Party may produce the
20 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
21 seeks a protective order, the Receiving Party shall not produce any information in its possession
22 or control that is subject to the confidentiality agreement with the Non-Party before a
23 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
24 burden and expense of seeking protection in this court of its Protected Material.

25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
27 Material to any person or in any circumstance not authorized under this Stipulated Protective
28 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
2 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
3 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
4 Agreement to Be Bound" that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
6 MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
10 is not intended to modify whatever procedure may be established in an e-discovery order that
11 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
12 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
13 communication or information covered by the attorney-client privilege or work product protection,
14 the parties may incorporate their agreement in the stipulated protective order submitted to the
15 court.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
18 seek its modification by the court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
20 Order no Party waives any right it otherwise would have to object to disclosing or producing any
21 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
22 no Party waives any right to object on any ground to use in evidence of any of the material covered
23 by this Protective Order.

24 12.3 Filing Protected Material. Without written permission from the Designating Party
25 or a court order secured after appropriate notice to all interested persons, a Party may not file in
26 the public record in this action any Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
28 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If

1 a Receiving Party's request to file Protected Material under seal pursuant to Local Rule 141 is
2 denied by the court, then the Receiving Party may file the information in the public record unless
3 otherwise instructed by the court.

4 13. FINAL DISPOSITION

5 Within 60 calendar days after the final disposition of this action, as defined in Section 4,
6 upon written notification served by the Producing or Designating Party, each Receiving Party must
7 return all Protected Material to the Producing Party or destroy such material. As used in this
8 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and
9 any other format reproducing or capturing any of the Protected Material. Whether the Protected
10 Material is returned or destroyed, the Receiving Party must submit a written certification to the
11 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
12 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
13 returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries, or any other format reproducing or capturing any of the
15 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
16 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
18 and expert work product, even if such materials contain Protected Material. Any such archival
19 copies that contain or constitute Protected Material remain subject to this Protective Order as set
20 forth in Section 4.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22
23 Dated: July 28, 2022

ANGELO, KILDAY & KILDUFF, LLP

24 /s/ Melissa T. Currier

25 By: _____
26 DERICK E. KONZ
27 MELISSA T. CURRIER
28 Attorneys for Defendants COUNTY OF
EL DORADO and DEPUTY MICHAEL
JONES

1 Dated: July 28, 2022

PORTER SCOTT

2 /s/ Suli A. Mastorakos

3 By: _____

CARL FESSENDEN

4 SULI MASTORAKOS

Attorneys for Defendant EVAN

5 VAUGHAN

6
7 Dated: July 29, 2021

LAW OFFICE OF ROBERT CHALFANT

8 /s/ Robert Chalfant

9 By: _____

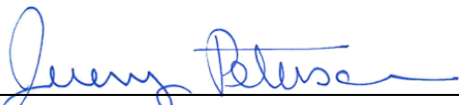
10 ROBERT CHALFANT

Attorneys for Plaintiff KELSEY HENLE

11
12
13
14 **ORDER**

15
16 IT IS SO ORDERED.

17
18 Dated: July 28, 2022

19 
JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Eastern District of California on
7 _____ [date] in the case of *Henle v. County of El Dorado, et al.*, No. 2:22-cv-
8 00596-KJM-JDP. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
11 any manner any information or item that is subject to this Stipulated Protective Order to any person
12 or entity except in strict compliance with the provisions of this Order.

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

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

20
21 Date: _____

22 City and State where
23 sworn and signed: _____

24
25 Printed Name: _____

26
27 Signature: _____