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15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 G.F., by and through her guardian ad litem,
 18 Gail F.; W.B., by and through his guardian ad
 19 litem, CiCi C.; Q.G., by and through his
 20 guardian ad litem, Barbara C.; and on behalf of
 themselves and a class of those similarly
 situated,

21 Plaintiffs,

22 v.

23 CONTRA COSTA COUNTY; CONTRA
 24 COSTA COUNTY OFFICE OF
 EDUCATION.

25 Defendants.

Case No. C 13-3667-SBA

STIPULATED PROTECTIVE ORDER

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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 and General Order 62 set forth the procedures that must be followed and
14 the standards that will be applied when a party seeks permission from the court to
15 file material under seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c) or that implicate a party or
22 non-party’s constitutional right to privacy or other statutory privacy right. Such
23 documents include but are not limited to medical records, psychological or
24 psychiatric records, juvenile court records, and educational records protected by the
25 Family Educational Rights and Privacy Act.

26 2.3 Counsel (without qualifier): Outside Counsel of Record and House
27 Counsel (as well as their support staff).
28

1 2.4 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.5 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this action.

11 2.7 House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

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

16 2.9 Outside Counsel of Record: attorneys who are not employees of a
17 party to this action but are retained to represent or advise a party to this action and
18 have appeared in this action on behalf of that party or are affiliated with a law firm
19 which has appeared on behalf of that party. Outside Counsel of Record specifically
20 includes attorneys from the Contra Costa County Counsel’s Office.

21 2.10 Party: any party to this action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this action.

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

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.
13 However, the protections conferred by this Stipulation and Order do not cover the
14 following information: (a) any information that is in the public domain at the time
15 of disclosure to a Receiving Party or becomes part of the public domain after its
16 disclosure to a Receiving Party as a result of publication not involving a violation
17 of this Order, including becoming part of the public record through trial or
18 otherwise; and (b) any information known to the Receiving Party prior to the
19 disclosure or obtained by the Receiving Party after the disclosure from a source
20 who obtained the information lawfully and under no obligation of confidentiality to
21 the Designating Party. Any use of Protected Material at trial shall be governed by a
22 separate agreement or order.

23 4. DURATION

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

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify - so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

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

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

22 5.2 Manner and Timing of Designations. Except as otherwise provided in
23 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
25 under this Order must be clearly so designated before the material is disclosed or
26 produced.

27 Designation in conformity with this Order requires:
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1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
4 page that contains protected material. If only a portion or portions of the material
5 on a page qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
7 or Non-Party that makes original documents or materials available for inspection
8 need not designate them for protection until after the inspecting Party has indicated
9 which material it would like copied and produced. During the inspection and
10 before the designation, all of the material made available for inspection shall be
11 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
12 documents it wants copied and produced, the Producing Party must determine
13 which documents, or portions thereof, qualify for protection under this Order.
14 Then, before producing the specified documents, the Producing Party must affix the
15 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
16 portion or portions of the material on a page qualifies for protection, the Producing
17 Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins).

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

22 (c) for information produced in some form other than documentary and
23 for any other tangible items, that the Producing Party affix in a prominent place on
24 the exterior of the container or containers in which the information or item is stored
25 the legend “CONFIDENTIAL.” If only a portion or portions of the information or
26 item warrant protection, the Producing Party, to the extent practicable, shall identify
27 the protected portion(s).
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party’s right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of
23 notice. In conferring, the Challenging Party must explain the basis for its belief that
24 the confidentiality designation was not proper and must give the Designating Party
25 an opportunity to review the designated material, to reconsider the circumstances,
26 and, if no change in designation is offered, to explain the basis for the chosen
27 designation. A Challenging Party may proceed to the next stage of the challenge
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1 process only if it has engaged in this meet and confer process first or establishes
2 that the Designating Party is unwilling to participate in the meet and confer process
3 in a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
5 court intervention, the Designating Party shall file and serve a motion to retain
6 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
7 79-5 and General Order 62, if applicable) within 21 days of the initial notice of
8 challenge or within 14 days of the parties agreeing that the meet and confer process
9 will not resolve their dispute, whichever is earlier. Each such motion must be
10 accompanied by a competent declaration affirming that the movant has complied
11 with the meet and confer requirements imposed in the preceding paragraph. Failure
12 by the Designating Party to make such a motion including the required declaration
13 within 21 days (or 14 days, if applicable) shall automatically waive the
14 confidentiality designation for each challenged designation. In addition, the
15 Challenging Party may file a motion challenging a confidentiality designation at
16 any time if there is good cause for doing so, including a challenge to the
17 designation of a deposition transcript or any portions thereof. Any motion brought
18 pursuant to this provision must be accompanied by a competent declaration
19 affirming that the movant has complied with the meet and confer requirements
20 imposed by the preceding paragraph.

21 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Frivolous challenges, and those made for an improper purpose
23 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
24 expose the Challenging Party to sanctions. Unless the Designating Party has
25 waived the confidentiality designation by failing to file a motion to retain
26 confidentiality as described above, all parties shall continue to afford the material in
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1 question the level of protection to which it is entitled under the Producing Party’s
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
19 as employees of said Outside Counsel of Record to whom it is reasonably necessary
20 to disclose the information for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
22 A;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this litigation
25 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
26 A);

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
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1 disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants,
5 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
6 for this litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement
10 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
11 ordered by the court. Pages of transcribed deposition testimony or exhibits to
12 depositions that reveal Protected Material must be marked “CONFIDENTIAL
13 PURSUANT TO PROTECTIVE ORDER” by the court reporter and may not be
14 disclosed to anyone except as permitted under this Stipulated Protective Order.

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

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this action as
21 “CONFIDENTIAL,” that Party must:

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

24 (b) promptly notify in writing the party who caused the subpoena or order
25 to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification shall
27 include a copy of this Stipulated Protective Order; and
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1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.

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4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this
6 action as “CONFIDENTIAL” before a determination by the court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material - and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this action
11 to disobey a lawful directive from another court.

12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
13 PRODUCED IN THIS LITIGATION

14 (a) The terms of this Order are applicable to information produced by a
15 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the
17 remedies and relief provided by this Order. Nothing in these provisions should be
18 construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the Party is
21 subject to an agreement with the Non-Party not to produce the Non-Party’s
22 confidential information, then the Party shall:

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

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

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

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

12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
16 writing the Designating Party of the unauthorized disclosures, (b) use its best
17 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
18 person or persons to whom unauthorized disclosures were made of all the terms of
19 this Order, and (d) request such person or persons to execute the "Acknowledgment
20 and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other
25 protection, the obligations of the Receiving Parties are those set forth in Federal
26 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
27 whatever procedure may be established in an e-discovery order that provides for
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1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or work
4 product protection, the parties may incorporate their agreement in the stipulated
5 protective order submitted to the court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in
12 this Stipulated Protective Order. Similarly, no Party waives any right to object on
13 any ground to use in evidence of any of the material covered by this Protective
14 Order.

15 12.3 Filing Protected Material. Without written permission from the
16 Designating Party or a court order secured after appropriate notice to all interested
17 persons, a Party may not file in the public record in this action any Protected
18 Material. A Party that seeks to file under seal any Protected Material must comply
19 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be
20 filed under seal pursuant to a court order authorizing the sealing of the specific
21 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order
22 62, a sealing order will issue only upon a request establishing that the Protected
23 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
24 protection under the law. If a Receiving Party's request to file Protected Material
25 under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by
26 the court, then the Receiving Party may file the information in the public record
27 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.
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DATED: January 13, 2014

LAURA FAER
PUBLIC COUNSEL

/s/
Laura Faer
Attorneys for Plaintiffs

DATED: January 13, 2014

GRACE A. CARTER
GINA GUARIENTI COOK
PAUL HASTINGS LLP

/s/
Grace A. Carter
Attorneys for Plaintiffs

DATED: January 13, 2014

COUNTY COUNSEL FOR THE COUNTY OF
CONTRA COSTA

/s/
D. Cameron Baker
Attorneys for Defendant CONTRA COSTA
COUNTY

DATED: January 13, 2014

FAGEN FRIEDMAN & FULFROST, LLP

/s/
Kimberly Smith
Attorneys for Defendant CONTRA COSTA
COUNTY OFFICE OF EDUCATION

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 1/14/2014

Sandra B. Armstrong
Judge Sandra B. Armstrong
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Northern District of
California on [date] in the case of *G.F., et al. v. Contra Costa County, et al.*, Case
No. C 13-3667-SBA. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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I, Mary-Lee K. Smith, am the ECF User whose ID and password are being used to file this STIPULATED PROTECTIVE ORDER. In compliance with General Order 45, X.B., I hereby attest that Laura Faer, Grace A. Carter, Kimberly Smith and D. Cameron Baker have concurred in this filing and the use of their electronic signatures above.

DATED: January 13, 2014

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES
PUBLIC COUNSEL
PAUL HASTINGS LLP

/s/

Mary-Lee K. Smith
Attorneys for Plaintiffs