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 CALIFORNIA FORENSIC MEDICAL
 8 GROUP; TAYLOR FITHIAN, M.D. and
 ELIUD GARCIA, M.D. (erroneously sued herein as
 9 ELUID GARCIA, M.D.)

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 San Jose Division

14 ESTATE OF SANDRA VELA, deceased, by and
 through ANNAMARIE MORENO;
 15 ANNAMARIE MORENO; and BERNADETTE
 ALVERADO,

16 Plaintiff,

17 vs.

18 COUNTY OF MONTEREY; SHERIFF STEVE
 19 BERNAL, in his individual and official
 capacities; COMMANDER JAMES BASS, in his
 20 individual and official capacities; SERGEANT
 ERIKA KAYE, in her individual capacity;
 21 SERGEANT CAROL WHITE, in her individual
 capacity; DEPUTY BARBARA FULKERSON,
 22 in her individual capacity; DEPUTY N.
 QUINTERO, in her individual capacity;
 23 FORMER SHERIFF SCOTT MILLER, in his
 individual capacity; CALIFORNIA FORENSIC
 24 MEDICAL GROUP, TAYLOR FITHIAN, MD;
 ELUID GARCIA, MD,

25 Defendants.
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Case No. 16-CV-02375 BLF

**STIPULATION AND ~~PROPOSED~~
 ORDER REQUIRING
 CALIFORNIA FORNESIC
 MEDICAL GROUP TO PRODUCE
 MEDICAL AND MENTAL
 HEALTH RECORDS IN RESPONSE
 TO PLAINTIFF'S REQUEST FOR
 PRODUCTION OF DOCUMENTS,
 SET ONE**

Judge: Hon. Beth Labson Freeman

27 ESTATE OF SANDRA VELA, deceased, by and through ANNAMARIE MORENO;
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1 ANNAMARIE MORENO; and BERNADETTE ALVERADO (“Plaintiffs”), and CALIFORNIA
2 FORENSIC MEDICAL GROUP, TAYLOR FITHIAN, M.D., and ELIUD GARCIA, M.D., and
3 COUNTY OF MONTEREY, on behalf of Monterey County Sheriff’s Office (“County”)
4 (collectively “Defendants”), by and through their respective counsel, hereby stipulate as follows.

5 1. This case was filed against Defendants on May 2, 2016. (Dkt No. 1.)

6 2. Plaintiffs have propounded on defendant CALIFORNIA FORENSIC MEDICAL
7 GROUP a Request for Production of Documents, Set One, which includes a request for medical
8 and mental health records, Quality Assurance reviews, communications, and non-privileged
9 investigation reports generated by, and in the possession of, CALIFORNIA FORENSIC
10 MEDICAL GROUP regarding inmates who committed suicide and/or attempted suicide at the
11 Monterey County Jail during the period from January 1, 2010 to present.

12 3. Additionally, the Court ordered the production of “All documents reflecting
13 communications by, to, from, or received by you relating to individuals who committed and/or
14 attempted suicide at Monterey County Jail from January 1, 2007 to present.” ECF 92. The
15 documents were to be produced within 15 days following the October 18, 2017 Order. All
16 documents have been redacted and produced in compliance with the Court’s Order [ECF 92],
17 and the parties’ agreement to produce documents responsive to plaintiffs’ Request for Production
18 of Documents, Set One.

19 4. The Health Insurance Portability and Accountability Act of 1996, and its
20 implementing regulations at 45 C.F.R. Parts 160 and 164 (“HIPAA”), prohibit covered entities
21 from disclosing “protected health information,” except under certain limited circumstances. 45
22 C.F.R. §164.502. CALIFORNIA FORENSIC MEDICAL GROUP provides health care to
23 inmates at the Monterey County Jail and is a covered entity. Protected health information is
24 defined as “individually identifiable health information” that is recorded in any form or medium
25 that “[r]elates to the past, present or future physical or mental health or condition of the
26 individual; the provision of health care to an individual; or the past, present, or future payment
27 for the provision of health care to an individual.” 45 C.F.R. §160.103. Thus, the medical and
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1 mental health records, Quality Assurance reviews, communications, and non-privileged
2 investigation reports generated by, and in the possession of, CALIFORNIA FORENSIC
3 MEDICAL GROUP regarding inmates at the Monterey County Jail who committed suicide
4 and/or attempted suicide during the period from January 1, 2010 to present are considered
5 “protected health information” under HIPAA.

6 5. Under HIPAA, disclosure is permitted, pursuant to a court order, subpoena, or
7 discovery request when the health care provider “receives satisfactory assurance from the party
8 seeking the information that reasonable efforts have been made by such party to secure a
9 qualified protective order.” 45 C.F.R. §164.512(e)(1)(ii)(B). The protective order must prohibit
10 “using or disclosing the protected health information for any purpose other than the litigation,”
11 and “require the return to the [physician] or destruction of the protected health information – at
12 the end of the litigation or proceeding.” 45 C.F.R. §164.512(e)(1)(v)(B).

13 6. Similarly, California’s Confidentiality of Medical Information Act (“CMIA”),
14 governs “medical information” (*i.e.*, any individually identifiable information in possession of a
15 provider of health care regarding a patient’s medical history, mental or physical condition, or
16 treatment). The medical and mental health records, Quality Assurance reviews,
17 communications, and non-privileged investigation reports generated by, and in the possession of,
18 CALIFORNIA FORENSIC MEDICAL GROUP regarding inmates at the Monterey County Jail
19 who committed suicide and/or attempted suicide during the period from January 1, 2010 to
20 present are “medical information” under CMIA.

21 7. CMIA requires a provider to disclose medical information in response to an
22 authorization by the subject of the information, a subpoena, or a court order. Cal. Civ. Code
23 §56.10(b)(1).

24 8. The confidentiality provisions of the California Lanterman-Petris-Short Act
25 (“LPS”) at California Welfare and Institutions Code Sections 5328 – 5328.9 govern “[a]ll
26 information and records obtained in the course of providing services” to LPS patients, including
27 but not limited to the mental health records of patients who are treated or evaluated under
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1 Sections 5150 – 5344 of the LPS and LPS patients who receive mental health treatment at a
2 county psychiatric ward, facility, or hospital. Thus, the mental health records of inmates at the
3 Monterey County Jail in the possession of California Forensic Medical Group are subject to the
4 confidentiality provisions of LPS.

5 9. LPS prohibits the disclosure of LPS inmates’ mental health information unless
6 expressly permitted under Sections 5328 to 5329. Section 5328(f) requires records to be
7 disclosed if so ordered by the courts “to the courts, as necessary for the administration of
8 justice.”

9 10. Federal law at 42 U.S.C. Section 290-dd2(g) and its implementing regulations at
10 42 C.F.R. Part 2 (Part 2), Confidentiality of Substance Use Disorder Patient Records, govern
11 records from a covered treatment program that identify a patient as having or having had a
12 substance use disorder either directly, by reference to publicly available information, or through
13 verification of such identification by another person. 42 C.F.R. §2.12(a). The substance use
14 disorder records of inmates at the Monterey County Jail may be governed by Part 2.

15 11. Part 2 prohibits the redisclosure of records received by persons or entities, such as
16 CALIFORNIA FORENSIC MEDICAL GROUP, from a covered program with the patient’s
17 consent unless the written consent expressly permits such redisclosure, or it is otherwise
18 permitted by Part 2. 42 C.F.R. §2.13. Part 2 permits the redisclosure of certain records governed
19 by Part 2 with an authorizing court order. 42 C.F.R §§2.63 – 2.64.

20 12. The right of privacy is not an absolute bar to discovery. Rather, courts balance
21 the need for the information against the claimed privacy right. *Ragge v. MCA/Universal Studios*
22 (CD CA 1995) 165 FRD 601, 604 (right of privacy may be invaded for litigation purposes.) The
23 privacy interest in one’s confidential medical records in conditional and a limited impairment of
24 the right may be allowed if properly justified. *Soto v. City of Concord*, 162 F.R.D. 603, 618
25 (N.D. Cal. 1995). Additionally, the physician-patient privilege is not recognized by federal
26 common law, federal statute, or the U.S. Constitution. *Soto, Id.* Where application of state law
27 would be clearly inconsistent with federal law, state law privileges do not apply. *Pagano v.*
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1 *Oroville Hospi.*, 145 F.R.D. 683, 688 (E.D. Cal. 1993). Similarly, with respect to the CMIA,
2 federal privilege laws, not state laws, apply. *Delaney v. Tilton*, 2008 U.S. Dist. LEXIS 111668,
3 *9.

4 13. Here, the heirs of individual inmates who committed suicide and/or the inmates
5 who attempted suicide at the Monterey County Jail during the period from January 1, 2010 to
6 present, may not rely on the physician-patient privilege and medical records privilege, nor may
7 they rely on the right of privacy, since the right is only available explicitly under the California
8 Constitution and may be abrogated where justified under federal law. *Soto, Id.* Furthermore, the
9 parties have stipulated to a protective order which protects the third parties' medical records.
10 This protective order is nearly identical to the June 19, 2017 Order of this Court for production
11 of third party records containing protected health information. (ECF 77). The protective order
12 satisfies the requirements of HIPAA because it (1) prohibits the parties from using or disclosing
13 the protected health information for any purpose other than the litigation or proceeding for which
14 such information was requested [Paragraph 20]; and (2) requires the return of the protected
15 material at the conclusion of the litigation [Paragraph 21]. 45 C.F.R. §164.512(e)(1)(v). Thus,
16 the protective order is adequate under HIPAA to protect third party medical records. A similar
17 protective order was found to be sufficient in *Allen v. Woodford*, U.S. Dist. LEXIS 11026 (E.D.
18 Cal. 2007). In *Allen*, the court found that a protective order and proper redaction safeguarded
19 third parties' privacy interests.

20 14. Plaintiffs contend that records pertaining to inmates who committed suicide
21 and/or attempted suicide at the Monterey County Jail during the period from January 1, 2010 to
22 present are potentially relevant to their case.

23 15. Accordingly, plaintiffs and defendants agree that a court order compelling the
24 disclosure of protected health information regarding inmates who committed suicide and/or
25 attempted suicide at the Monterey County Jail during the period from January 1, 2010 to present,
26 including medical and mental health records, Quality Assurance reviews, communications, and
27 non-privileged investigation reports generated by, and in the possession of, CALIFORNIA
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1 FORENSIC MEDICAL GROUP is the most effective mechanism to ensure discovery of this
2 potentially relevant information.

3 16. The protected health information produced pursuant to this Stipulation and
4 Protective Order regarding inmates who committed suicide and/or attempted suicide at the
5 Monterey County Jail during the period from January 1, 2010 to present, including medical and
6 mental health records, Quality Assurance reviews, communications, and non-privileged
7 investigation reports generated by, and in the possession of, CALIFORNIA FORENSIC
8 MEDICAL GROUP shall be considered “confidential information”. Access to this “confidential
9 information” will be restricted to the Court, its officers, court personnel and stenographic parties
10 engaged in proceedings in this matter, plaintiff and defense experts, and plaintiff and defense
11 counsel (defined herein to include: attorneys in this action and their support staff, including
12 paralegals, legal interns, and legal assistants), and other testifying or consulting experts, where
13 production is required by the Federal Rules of Civil Procedure, or where production is ordered
14 by the Court. Any attorney, the attorney’s support staff or expert to whom disclosure is made
15 will be furnished with a copy of this Stipulation and Protective Order.

16 17. The designation of a document or portion thereof as “confidential
17 information” shall be made, whenever possible prior to production, by placing or affixing
18 on each page of such material in a manner that will not interfere with its legibility the
19 words “confidential information.” If such designation is not possible prior to the
20 production, the designation must be made in writing by the producing party, and
21 replacement documents bearing the “confidential information” designation shall be
22 provided as soon as practicable. In the event that documents subject to confidentiality, or
23 portions thereof, are inadvertently produced without being designated “confidential
24 information”, they shall be treated as “confidential information” as of the date of
25 designation.

26 18. Counsel for any party retains the right to challenge the designation of a
27 particular document or portion thereof as “confidential information.” The burden of
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1 proof with respect to the propriety or correctness of the designation of any document or
2 portion thereof as “confidential information” will rest on the designating party. If any
3 party believes any designation of a document or portion thereof as “confidential
4 information” is inappropriate, the Parties will meet and confer and attempt to resolve the
5 issue on an expedited basis. If the Parties are unable to mutually agree on a resolution, the
6 Parties will seek appropriate Court intervention, including a request for a discovery
7 conference or call with the Judge, and where appropriate, submit the documents to the
8 Judge under seal to determine whether and to what extent such documents or portions
9 thereof should be deemed “confidential information” in accordance with Paragraphs 1
10 and 3 of this Protective Order. Specifically, the Judge shall determine whether the party
11 seeking to designate “confidential information” has satisfied the requirements for filing
12 the document or portion thereof sought to be designated under seal in accordance with
13 Federal Rule of Civil Procedure 26(c), Local Rule 79-5, and controlling federal case law.
14 Where requested or permitted by the Court, the Parties may provide the Court with
15 separate statements containing the challenges by the party opposing the “confidential
16 information” designation and the justifications by the party designating the documents or
17 portions thereof as “confidential information.”

18 19. Either party may challenge the designation of a deposition transcript, or a
19 portion thereof, as “confidential information”, under the procedure set forth in paragraph
20 15, above.

21 20. The parties agree that “confidential information” subject to this Stipulation and
22 Protective Order shall be used solely for the purpose of this litigation, and in no other litigation,
23 except as unsealed by the Court or filed in the public record in this action.

24 21. Within thirty (30) days after the conclusion of the litigation in this action, all
25 “confidential information” covered by this Stipulation and Protective Order not received in
26 evidence shall be returned to the producing party, unless the parties agree that the material may
27 be destroyed instead of being returned, in which instance counsel shall certify that the documents
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1 have been destroyed. The parties agree to request that the Clerk of the Court return to the
2 producing party, or destroy, any sealed material covered by this Stipulation and Protective Order
3 used as evidence at the end of the litigation, including appeals. This confidentiality agreement
4 shall survive the discontinuance or other resolution of the action.

5 22. Nothing in this Stipulation and Protective Order precludes plaintiffs or defendants
6 from seeking or obtaining, on an appropriate showing, additional protection with respect to the
7 confidentiality of documents or portions thereof, or relief from the Stipulation and Protective
8 Order.

9 23. Each person designated in paragraph 13, by receiving and reading a copy of this
10 Stipulation and Protective Order, agrees to abide by its provisions and to see that its provisions
11 are known and adhered to by those under his or her supervision or control, and to submit to the
12 jurisdiction of the Court in the event the Protective Order is breached.

13 24. Whenever a deposition or court proceeding involves the disclosure of
14 “confidential information” covered by this Stipulation and Protective Order, the following
15 procedures will apply:

16 a. The court reporter will be directed to bind those portions of the transcript
17 containing “confidential information” separately. This request will be made on the record
18 whenever possible.

19 b. The cover of any portion of a deposition or court proceeding transcript that
20 contains testimony or documentary evidence containing “confidential information” covered by
21 this Stipulation and Protective Order, will be prominently marked:

22 **CONFIDENTIAL/SUBJECT TO STIPULATION AND PROTECTIVE ORDER.**

23 c. All portions of deposition or court proceeding transcripts containing
24 “confidential information” covered by this Stipulation and Protective Order will be sealed and
25 will not be disseminated except to the persons designated in paragraph 13.

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1 **IT IS SO STIPULATED.**

2 DATED: December 27, 2017

SHEUERMAN, MARTINI, TABARI,
ZENERE & GARVIN

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By: /s/Marc G. Cowden
Marc G. Cowden

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Attorneys for Defendants CALIFORNIA FORENSIC
MEDICAL GROUP, INC., TAYLOR FITHIAN, M.D.
and ELUID GARCIA, M.D,

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10 DATED: December 27, 2017

Respectfully submitted,

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HADSELL, STORMER & RENICK, LLP

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By: /s/Lori Rifkin
Lori Rifkin

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Attorneys for Plaintiffs

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DATED: December 27, 2017

OFFICE OF THE COUNTY COUNSEL
COUNTY OF MONTEREY

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By: /s/Michael R. Philippi
Michael R. Philippi
Deputy County Counsel

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Attorneys for Defendants COUNTY OF MONTEREY,
SHERIFF STEVE BERNAL, CAPTAIN JAMES
BASS, SERGEANT ERIKA KAYE, SERGEANT
CAROL WHITE, DEPUTY N. QUINTERO and
SCOTT MILLER

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Pursuant to Northern District General Order 45(X)(B), I hereby attest that I have on file approvals for any signatures indicated by a “conformed” signature (/s/) within this efiled document.

DATED: December 27, 2017

SHEUERMAN, MARTINI, TABARI,
ZENERE & GARVIN

By: /s/Marc G. Cowden
Marc G. Cowden

Attorneys for Defendants CALIFORNIA FORENSIC
MEDICAL GROUP, INC., TAYLOR FITHIAN, M.D.
and ELUID GARCIA, M.D,

1 ~~PROPOSED~~ ORDER

2 The Court, having reviewed the above Stipulation, and good cause appearing, enters
3 these Findings and Order as an Order of the Court.

4 **THE COURT FINDS THE FOLLOWING WITH REGARDS TO CERTAIN**
5 **MEDICAL, MENTAL HEALTH, AND SUBSTANCE USE DISORDER RECORDS:**

6 1. Disclosure of the information contained in medical and mental health records,
7 Quality Assurance reviews, communications, and non-privileged investigation reports generated
8 by, and in the possession of, CALIFORNIA FORENSIC MEDICAL GROUP regarding inmates
9 who committed suicide and/or attempted at the Monterey County Jail during the period from
10 January 1, 2010 to present may be relevant to plaintiffs' claims;

11 2. The public interest will be served by disclosure of said information and the need
12 for disclosure outweighs the potential injury to the patient, the physician-patient and/or the
13 psychotherapist-patient relationship, and the treatment services; and

14 3. Disclosure of the information contained in said records can be effectively limited
15 to the Court, plaintiffs' counsel, and defendants' counsel;

16 **GOOD CAUSE APPEARING, IT IS ORDERED THAT:**

17 4. For inmates at the Monterey County Jail identified in response to plaintiffs'
18 Request for Production of Documents, Set One, to defendant CALIFORNIA FORENSIC
19 MEDICAL GROUP served on December 22, 2016, defendant CALIFORNIA FORENSIC
20 MEDICAL GROUP shall disclose all relevant "protected health information" governed by
21 HIPAA, "medical information" governed by CMIA, mental health records governed by LPS, and
22 substance use disorder records governed by 42 C.F.R. Part 2. Relevant documents are limited to
23 those documents subject to HIPAA, CMIA, LPS, and/or 42 C.F.R. Part 2 specifically medical
24 and mental health records, Quality Assurance reviews, communications, and non-privileged
25 investigation reports generated by, and in the possession of, CALIFORNIA FORENSIC
26 MEDICAL GROUP regarding inmates at the Monterey County Jail who committed suicide
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1 and/or attempted suicide during the period from January 1, 2010 to present. The information
2 disclosed shall be used only for the limited purpose of prosecuting or defending this litigation.


3 5. Any documents disclosed pursuant to this Order shall be considered “confidential
4 information.” Any person obtaining copies of documents disclosed pursuant to this Order shall
5 maintain their confidentiality in accordance with state and federal law and this Order, and shall
6 make no further disclosure except as required by law or by order of this Court.

7 6. The Clerk of the Court shall seal from public access such “confidential
8 information,” including any documents that may become part of this Court’s records. For
9 pleadings or reports that contain “confidential information,” the filing party shall file under seal
10 consistent with Civil Local Rule 79-5. Per Civil Local Rule 79-5(d)(2), courtesy copies of
11 Pleadings containing “confidential information” shall be filed in a sealed envelope prominently
12 marked with the caption of this case, the identity of the party filing the envelope, and the
13 notation: “**COURTESY [or CHAMBERS] COPY - - DOCUMENTS SUBMITTED UNDER**
14 **SEAL.**”

15 7. These confidentiality requirements for “confidential information” shall survive
16 the termination of this litigation.

17 **IT IS SO ORDERED.**

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19 DATED: _____, 2017



Beth Labson Freeman
United States District Judge

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