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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

29 JAMES CURREY, SR., J.C., a minor by and
30 through his guardian ad litem JAMES CURREY;
31 EMERIO RIVERA, AMALIA RIVERA,
32 J.R.R.C., a minor by and through his guardian ad
33 litem DENISE RIVERA; ROBERT PITTS,
34 REBECCA PITTS, and K.B.P. a minor, by and
35 through her guardian ad litem, REBECCA
36 PITTS,

37 3:17-cv-00386-WGC

38 **CONFIDENTIALITY AGREEMENT
39 AND PROTECTIVE ORDER**

40 Plaintiffs,

41 v.

42 CARSON CITY SCHOOL DISTRICT; LEE
43 CONLEY; SUSAN MOULDEN; JAN
44 ALBERTSON; VALENTINA MIDBOE;
45 JENNIFER PALMER; TRAVIS LEE; CARLI
46 BIANCHI and DOES 1-30;

47 Defendants.

1 Pursuant to the Stipulation contained herein by and among counsel for Plaintiffs and
2 counsel for Defendants, the Court hereby finds as follows:

3 PURPOSES AND LIMITATIONS

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

17 1. The "Litigation" shall mean the above-captioned case, filed in the United States
18 District Court, District of Nevada Case No. 3:17-cv-00386-HDM-WGC.

19 2. "Documents" or "Information" shall mean and include any documents or portions
20 thereof, or information extracted therefrom, (whether in hard copy or electronic form), records,
21 correspondence, analyses, assessments, statements (financial or otherwise), responses to
22 discovery, tangible articles or things, whether documentary or oral, and other information
23 provided, served, disclosed, filed, or produced, whether voluntarily or through discovery or other
24 means, in connection with this Litigation. A draft or non-identical copy is a separate document
25 within the meaning of these terms.

26 3. "Party" (or "Parties") shall mean one party (or all parties) in this Litigation and
27 their in-house and outside counsel. "Producing Party" shall mean any person or entity who
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1 provides, serves, discloses, files, or produces any Documents or Information. "Receiving Party"
2 shall mean any person or entity who receives any such Documents or Information.

3 4. Any Party may designate any document, object, file, photograph, video, tangible
4 thing, interrogatory answers, answers to requests for admissions, testimony, or other material or
5 copies thereof (collectively, the "Discovery Material") as "Confidential Information" or following
6 a good faith determination that the information so designated is or may reveal confidential, or
7 proprietary matters.

8 EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR
9 PROTECTION

10 5. Each Party or Non-Party that designates information or items for protection under
11 this Order must take care to limit any such designation to specific material that qualifies under the
12 appropriate standards. Indiscriminate or routinized designations are prohibited.

13 MANNER AND TIMING OF DESIGNATIONS

14 6. CONFIDENTIAL Documents shall be so designated prior to their production by
15 marking or stamping each page of the Document produced to or received from a Party with the
16 legend "CONFIDENTIAL." The application of the legend must be made in a manner so as not to
17 render the documents illegible, illegible after photocopying, or incapable of being subjected to
18 Optical Scanning Recognition. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
20 appropriate markings in the margins).

21 7. Testimony taken at a deposition, or in other pretrial or trial proceedings, may be
22 designated as CONFIDENTIAL by any Party making a statement to that effect on the record at
23 the deposition. Arrangements shall be made with the court reporter taking and transcribing such
24 deposition to separately bind such portions of the transcript and deposition exhibits containing
25 Information designated as CONFIDENTIAL, and to label such portions appropriately. Counsel
26 for the Parties may also designate an entire deposition transcript as CONFIDENTIAL at the time
27 of the deposition. A party's failure to designate testimony confidential at the time of deposition

1 shall not constitute the party's waiver of its right to correct its failure prior to a date ten business
2 days after the party's receipt of the transcript, in which case all receiving parties shall honor the
3 late designation as it would an inadvertent disclosure pursuant to paragraph 16 below.

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

9 ACCESS TO AND USE OF PROTECTED MATERIAL

10 9. CONFIDENTIAL Information shall be maintained in strict confidence by the
11 Parties who receive such information, shall be used solely for the purposes of this Litigation, and
12 shall not be disclosed to any person except:

13 (a) The United States District Court, District of Nevada, or any other court to
14 which this matter may be transferred (the "Court"), so long as the party seeking to file a
15 confidential document under seal complies with the Ninth Circuit's directives in *Kamakana v. City*
16 and *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and the Court's electronic filing procedures
17 set forth in Local Rule 10-5(b);

18 (b) In the event of an appeal, the United States Court of Appeals (the "Appellate
19 Court") and/or the United States Supreme Court (the "Supreme Court"), so long as that document
20 is filed under seal;

21 (c) The attorneys of record in this Litigation and their co-shareholders, co-
22 directors, partners, employees, and associates who are assisting in the Litigation (collectively
23 hereafter referred to as "Outside Counsel");

24 (d) A Party, or an officer, director, or employee of a Party or of a Party's
25 affiliate, as long as any such person agrees to be bound by the terms and conditions of this
26 Agreement.

27 (e) Subject to the terms of Paragraph 14 below, experts or consultants and their
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1 staff, retained by the Parties and/or Outside Counsel in this Litigation for the purposes of this
2 Litigation;

3 (f) Any other person, only if the Receiving Party has given written notice to
4 the Producing Party of an intent to disclose specified CONFIDENTIAL Information to said person,
5 who shall be identified by name, address, phone number, and relationship, if any, to the Receiving
6 Party, and the Producing Party has not provided a written objection to the disclosure within ten
7 (10) business days of delivery of the notification. In the event of an objection, no disclosure shall
8 be made pending the resolution of the objection. If the disclosure includes information that is
9 protected by FERPA, the objection can only be resolved by stipulation of the parties or court order
10 which includes a provision allowing CCSD to provide no less than fourteen (14) days' notice to
11 the parents of the children that may be implicated in any disclosure. Before any person may receive
12 Documents or Information pursuant to this subparagraph, he or she must comply with the
13 requirements of Paragraph 13 below.

14 (g) Any person identified on the document itself as having created, sent, received,
15 or otherwise already viewed, the document.

16 (h) Any person testifying at deposition in this matter, subject to the paragraph 9
17 below.

18 10. If a witness is providing or is provided CONFIDENTIAL Information during a
19 deposition, counsel for the Producing Party may request that all persons other than the witness and
20 persons entitled by this Order to have access to the CONFIDENTIAL Information leave the
21 deposition room during that portion of the deposition other than the court reporter. Failure of any
22 person to comply with such a request will constitute sufficient justification for the witness to refuse
23 to answer the question, or for the Producing Party to demand that CONFIDENTIAL Information
24 not be provided to the witness, pending resolution of the issue.

25 CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 11.1 a) Any Party or Non-Party may challenge a designation of confidentiality at any time.

b) Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

11.2 a) The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge.

b) To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order.

c) The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice.

d) In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation.

e) Neither Party may proceed to the next stage of the challenge process unless it has engaged in this meet and confer process first or establishes that the other Party is unwilling to participate in the meet and confer process in a timely manner.

f) If, at the conclusion of the meet and confer process the dispute has not been resolved, or if after 14 days from the date of the notice of challenge, Challenging Party alleges that it has been established that Designating party has is unwilling to participate in the meet and confer process in a timely manner, Challenging Party shall provide Designating Party with written notice that they have 14 days to file a motion to establish confidentiality pursuant to paragraph 11.3, otherwise the confidential designation is automatically waived.

g) If after 14 days has passed Designating Party has not filed a motion pursuant to paragraph 11.3, all parties shall consider the confidential designation waived for each disputed document.

11.3 a) If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to establish confidentiality within 14 days of receiving notice from Challenging Party of their deadline to do so. Any oppositions and replies are to be filed and served in compliance with Local Rules 7-2 and 7-3.

b) Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph.

c) The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

d) Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.

e) Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

INADVERTENT FAILURE TO DESIGNATE

12. The inadvertent production of any Information without it being properly marked or otherwise designated shall not be deemed to waive any claim of confidentiality with respect to such Information. If a Producing Party, through inadvertence, produces any CONFIDENTIAL Information without marking or designating it as such in accordance with the provisions of this Order, including deposition testimony, the Producing Party may, promptly on discovery, furnish a substitute copy properly marked along with written notice to all Parties (or written notice alone as to non-documentary Information) that such Information is deemed CONFIDENTIAL and should

1 be treated as such in accordance with the provisions of this Order. Each receiving person must
2 treat such Information as CONFIDENTIAL in accordance with the notice from the date such
3 notice is received. Disclosure of such CONFIDENTIAL Information prior to the receipt of such
4 notice shall not be deemed a violation of this Confidentiality Agreement. A Receiving Party who
5 has disclosed such CONFIDENTIAL Information prior to the receipt of such notice shall take
6 steps to cure such disclosure by requesting return of the original document and substituting it with
7 the properly marked one.

8 NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
9 LITIGATION

10 13. The terms of this Order are applicable to information produced by a Non-Party in
11 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
12 connection with this litigation is protected by the remedies and relief provided by this Order.
13 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
14 additional protections.

15 14. A copy of this Order shall be shown to each attorney acting as counsel for a Party
16 and to each person to whom CONFIDENTIAL Information will be disclosed.

17 15. Nothing in this Order shall be construed as an admission or agreement that any
18 specific Information is or is not confidential, subject to discovery, relevant, or admissible in
19 evidence in any future proceeding.

20 16. Right to Further Relief. Nothing in this Order abridges the right of any person to
21 seek its modification by the court in the future.

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

27 18. The Parties shall comply with the requirements of Local Rule 10-5(b), and the
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1 Ninth Circuit's decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th
2 Cir. 2006), with respect to any documents filed under seal in this matter.

3 19. This Order shall not be construed to prevent any Party from making use of or
4 disclosing Information that was lawfully obtained by a Party independent of discovery in this
5 Litigation, whether or not such material is also obtained through discovery in this Litigation, or
6 from using or disclosing its own CONFIDENTIAL Information as it deems appropriate.

7 20. If either Party becomes required by law, regulation, or order of a court or
8 governmental entity to disclose any CONFIDENTIAL Information that has been produced to it
9 under the terms of this Order, such Party will reasonably notify the other Parties, in writing, so that
10 the original Producing Party has an opportunity to prevent or restrict such disclosure. The Party
11 required to disclose any CONFIDENTIAL Information shall use reasonable efforts to maintain the
12 confidentiality of such CONFIDENTIAL Information and shall cooperate with the Party that
13 originally produced the Information in its efforts to obtain a protective order or other protection
14 limiting disclosure; however, the Party required to disclose the Information shall not be required
15 to seek a protective order or other protection against disclosure in lieu of, or in the absence of,
16 efforts by the Producing Party to do so.

17 21. Upon termination of this Litigation, either by settlement or other action, any Party
18 and its counsel that obtained CONFIDENTIAL Information through discovery shall, upon request,
19 return all such CONFIDENTIAL Information to the Producing Party or certify as to its destruction.
20 Counsel may retain CONFIDENTIAL Information solely for archival purposes. The restrictions
21 of this Protective Order shall apply to Counsel for as long as they hold such archival Documents.

22 22. The obligation to treat all Information designated as CONFIDENTIAL in
23 accordance with the terms of this Order and not to disclose such CONFIDENTIAL Information
24 shall survive any settlement or other termination of this Litigation.

25 23. The inadvertent production of any Information during discovery in this action shall
26 be without prejudice to any claim that such Information is subject to the attorney-client privilege
27 or is protected from discovery as attorney work product. No Party shall be held to have waived
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1 any rights by such inadvertent production. Upon notification of inadvertent production, the
2 receiving Party shall not use or divulge the contents of such Information unless subsequently
3 agreed to by the Producing Party or permitted by the Court. Any such inadvertently produced
4 Information shall be returned by the Receiving Party within three business days of any written
5 request therefore. The Receiving Party retains the right to challenge the Information as not
6 privileged or otherwise protected and discoverable.

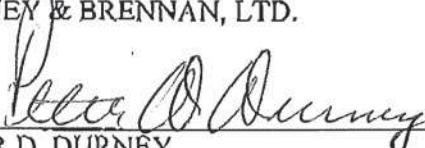
7 24. The Parties may seek modification of this Order by the Court at any time, by
8 stipulation or for good cause.

9
10 **IT IS SO STIPULATED.**

11 Date: THE LAW OFFICES OF WILLIAM F. HECKMAN, APC

12
13 By: 
14 WILLIAM F. HECKMAN
15 Attorneys for Plaintiffs

16 Date: DURNEY & BRENNAN, LTD.

17
18 By: 
19 PETER D. DURNEY
20 Attorneys for Plaintiffs

21 Date: LAW OFFICES OF TODD BOLEY

22
23 By:
24 TODD A. BOLEY
25 Attorneys for Plaintiffs

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2 receiving Party shall not use or divulge the contents of such Information unless subsequently
3 agreed to by the Producing Party or permitted by the Court. Any such inadvertently produced
4 Information shall be returned by the Receiving Party within three business days of any written
5 request therefore. The Receiving Party retains the right to challenge the Information as not
6 privileged or otherwise protected and discoverable.

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8 stipulation or for good cause.

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10 IT IS SO STIPULATED.

11 Date: THE LAW OFFICES OF WILLIAM F. HECKMAN, APC

12
13 By: WILLIAM F. HECKMAN
14 Attorneys for Plaintiffs

15
16 Date: DURNEY & BRENNAN, LTD.

17
18 By: PETER D. DURNEY
19 Attorneys for Plaintiffs

20
21 Date: LAW OFFICES OF TODD A. BOLEY

22 By: TODD A. BOLEY
23 Attorneys for Plaintiffs

1 Date: 11-6-17

ERICKSON, THORPE & SWAINSTON, LTD.

2 By: Ann M. Alexander
3 ANN M. ALEXANDER
4 Attorney for Defendants

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6 **ORDER**

7 The parties are reminded that all future documents must bear the correct case
8 number 3:17-cv-00386-WGC.

9 **IT IS SO ORDERED.**

10 DATED: November 8, 2017.

11 Walter G. Cobb
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13 UNITED STATES MAGISTRATE JUDGE

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