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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
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19

20 **HARRY SHARP, et al.,**
21
22 Petitioners,
23
24 **v.**
25 **XAVIER BECERRA, in his official capacity**
as Attorney General of California, et al.,
26 Respondents.

Case No. 2:18-cv-02317-MCE-AC

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

Judge: The Honorable Morrison C.
England, Jr.
Action Filed: July 11, 2018

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 In particular, discovery may be sought of information relating to the computer, Internet, and
6 network systems of Defendants and Plaintiffs, public disclosure of which could compromise the
7 security of these systems.

8 Accordingly, the parties hereby stipulate to and petition the court to enter the following
9 Stipulated Protective Order. The Parties agree that this Stipulated Protective Order is consistent
10 with Local Rule 141.1. It does not confer blanket protection on all disclosures or responses to
11 discovery, the protection it affords from public disclosure and use extends only to the limited
12 information or items that are entitled to confidential treatment under applicable legal principles,
13 and it does not presumptively entitle parties to file confidential information under seal.

14 **2. DEFINITIONS**

15 2.1 “Challenging Party”: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “Confidential Information”: information (regardless of how it is generated, stored or
18 maintained) or tangible things that a Party in its reasonable and good faith judgment determines
19 includes confidential, proprietary, or other information for which special protection from public
20 disclosure is warranted and justified under Federal Rule of Civil Procedure 26(c); information
21 that is publicly available is not considered “Confidential Information.”

22 2.3 “Counsel” (without qualifier): Outside Counsel of Record and House Counsel (as well
23 as their support staff).

24 2.4 “Designating Party”: a Party or Non-Party that designates information or items that it
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 2.5 “Disclosure or Discovery Material”: all items or information, regardless of the medium
27 or manner in which it is generated, stored, or maintained (including, among other things,
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1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.6 “Expert”: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action.

6 2.7 “House Counsel”: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 “Non-Party”: any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.9 “Outside Counsel of Record”: attorneys who are not employees of a party to this action
11 but are retained to represent or advise a party to this action and have appeared in this action on
12 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

13 2.10 “Party”: any party to this action, including all of its officers, directors, employees,
14 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

15 2.11 “Producing Party”: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.

17 2.12 “Professional Vendors”: persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
19 organizing, storing, or retrieving data in any form or medium) and their employees and
20 subcontractors.

21 2.13 “Protected Material”: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL.”

23 2.14 “Receiving Party”: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
28 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the following
3 information: (a) any information that is in the public domain at the time of disclosure to a
4 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
5 a result of publication not involving a violation of this Order, including becoming part of the
6 public record through trial or otherwise; and (b) any information known to the Receiving Party
7 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
8 obtained the information lawfully and under no obligation of confidentiality to the Designating
9 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

10 **4. DURATION**

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

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or
20 Non-Party that designates information or items for protection under this Order must take care to
21 limit any such designation to specific material that qualifies under the appropriate standards. The
22 Designating Party must designate for protection only those parts of material, documents, items, or
23 oral or written communications that qualify – so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept unjustifiably within
25 the ambit of this Order.

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

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

6 This Order is being entered into without prejudice to any party's right to seek Court
7 approval for a higher level of protection—e.g., an "Attorney Eyes Only" designation—should the
8 necessity for such protection become evident.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
10 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
11 or Discovery Material that qualifies for protection under this Order must be clearly so designated
12 before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

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

20 A Party or Non-Party that makes original documents or materials available for inspection
21 need not designate them for protection until after the inspecting Party has indicated which
22 material it would like copied and produced. During the inspection and before the designation, all
23 of the material made available for inspection shall be deemed "CONFIDENTIAL" or as identified
24 by the Producing Party. After the inspecting Party has identified the documents it wants copied
25 and produced, the Producing Party must determine which documents, or portions thereof, qualify
26 for protection under this Order. Then, before producing the specified documents, the Producing
27 Party must affix the "CONFIDENTIAL" legend to each page that contains Protected Material. If
28 only a portion or portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony. The Designating Party may also, within 10 days after
6 receiving a deposition transcript, designate portions of the transcript, or exhibits thereto, as
7 Confidential Information.

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

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the Designating Party's
15 right to secure protection under this Order for such material. Upon timely correction of a
16 designation, the Receiving Party must make reasonable efforts to assure that the material is
17 treated in accordance with the provisions of this Order.

18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Challenge to Confidentiality Designation. The Parties reserve the right to file a motion
26 to unseal or unredact if either Party believes that documents filed under seal or redacted: (a) do
27 not contain Confidential Information and/or do not meet the applicable legal standard for sealing,
28 and therefore should be neither sealed nor redacted; or (b) contain Confidential Information but

1 should be redacted rather than sealed, or redacted differently. The Parties shall make a good faith
2 effort to meet and confer regarding any such proposed motion.

3 6.3 Meet and Confer. The Parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding
5 designations of Confidential Information or for a protective order must include a certification, in
6 the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and
7 confer conference with other affected Parties in an effort to resolve the dispute without court
8 action. The certification must list the date, manner, and participants to the conference. A good
9 faith effort to confer requires a face-to-face meeting or a telephone conference.

10 6.4 Judicial Intervention. If the Parties cannot resolve a challenge without court
11 intervention, the following procedure shall be used: the Party opposing designation of the
12 material as Confidential Information may make an application to this Court (to be lodged
13 conditionally under seal if necessary) for an Order that the material specifically identified not be
14 treated as Confidential Information. The designated material shall be treated as Confidential
15 Information until the issue is resolved by Order of this Court or by agreement of the Parties.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
18 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
20 the categories of persons and under the conditions described in this Order. When the litigation
21 has been terminated, a Receiving Party must comply with the provisions of section 13 below
22 (FINAL DISPOSITION).

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

25 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
26 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
27 information or item designated “CONFIDENTIAL” only to:
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1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
2 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
3 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
4 attached hereto as Exhibit A;

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

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

11 (d) the court and its personnel;

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

15 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
16 necessary, and their counsel, and who have signed the "Acknowledgment and Agreement to Be
17 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
19 must be separately bound by the court reporter and may not be disclosed to anyone except as
20 permitted under this Stipulated Protective Order.

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

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
24 **LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels
26 disclosure of any information or items designated in this action as "CONFIDENTIAL" that Party
27 must:
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1 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
2 of the subpoena or court order;

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

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

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

15 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
16 **LITIGATION**

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

22 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
23 Party’s Protected Material in its possession, and the Party is subject to an agreement with the
24 Non-Party not to produce the Non-Party’s Protected Material, then the Party shall:

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

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

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

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

12 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
24 **MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the
27 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
28 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order that provides for production without prior privilege review. Pursuant to Federal Rule of
2 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
3 communication or information covered by the attorney-client privilege or work product
4 protection, the parties may incorporate their agreement in the stipulated protective order
5 submitted to the court.

6 **12. MISCELLANEOUS**

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

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

14 12.3 Filing Protected Material. Without written permission from the Designating Party or a
15 court order secured after appropriate notice to all interested persons, a Party may not file in the
16 public record in this action any Protected Material. A Party seeking to file under seal any
17 Confidential Information must comply with Local Rule 141. Confidential Information may be
18 filed under seal only pursuant to a court order that makes specific findings that the relevant legal
19 standards have been met. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176
20 (9th Cir. 2006); *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678-679 (9th Cir. 2010).

21 If a Receiving Party's request to file Protected Material under seal pursuant to Local Rule
22 141 is denied by the court, then the Receiving Party may file the information in the public record
23 unless (1) the Designating Party seeks reconsideration within four days of the denial, or (2) as
24 otherwise instructed by the Court.

25 12.4 Filing Motions, Oppositions, and Replies Under Seal. In the event that either party
26 files a motion, opposition, or reply under seal, the provisions of Local Rule 141 shall apply.

27 12.5 Use of Information Subject to Stipulated Protective Order. Use of any information or
28 documents subject to this Stipulated Protective Order, including all information within the scope

1 of Section 3, shall be restricted to use in this litigation (subject to the applicable rules of evidence
2 and subject to the confidentiality of such materials being maintained), and shall not be used by
3 anyone subject to the terms of this Stipulated Protective Order for any purpose outside of this
4 litigation or in any other proceeding between the Parties. Confidential Information is protected
5 from disclosure in response to requests under the Freedom of Information Act or the California
6 Public Records Act. Nothing in this Stipulated Protective Order shall limit or in any way restrict
7 the use of information obtained outside of this litigation that would merit designation of
8 Confidential Information had it been disclosed in discovery in this litigation.

9 **13. FINAL DISPOSITION**

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

25 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.
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1 Dated: March 6, 2019

/s/ George M. Lee (signature used by permission granted March 6, 2019)

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11 Dated: March 6, 2019

/s/ John W. Killeen

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18 Deputy Attorney General
19 *Attorneys for Defendants*

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20 **ORDER**

21 PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

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24 DATED: _____
25 United States District/Magistrate 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 Eastern District of California on [date] in the case of *Sharp v. Becerra* (2:18-cv-02317-MCE-AC). 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 Eastern 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: _____

CERTIFICATE OF SERVICE

Case Name: **Sharp, Harry, et al. v. Xavier** No. **2:18-cv-02317-MCE-AC**
Becerra, et al.

I hereby certify that on March 6, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATION AND [PROPOSED] PROTECTIVE ORDER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 6, 2019, at Sacramento, California.

Tracie L. Campbell
Declarant

/s/ Tracie L. Campbell
Signature