

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

10 JASON KIRBY,

11 Plaintiff,

12 v.  
13

14 COUNTY OF LOS ANGELES AND  
15 JUAN NAVARRO

16 Defendants.  
17

CASE NO.: CV14-09161 PSG (GJS)

~~(PROPOSED)~~ ORDER ON  
STIPULATED PROTECTIVE  
ORDER

Action Filed: December 19, 2014  
Trial Date: None Set

18  
19 PURSUANT TO THE STIPULATION of the parties and good cause  
20 therefore, it is hereby ordered:

21  
22 1. A. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve the production of confidential,  
24 proprietary or private information for which special protection from public  
25 disclosure and from use for any purpose other than prosecuting this litigation may  
26 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
27  
28

1 enter the following Stipulated Protective Order. The parties acknowledge that this  
2 Order does not confer blanket protections on all disclosures or responses to  
3 discovery and that the protection it affords from public disclosure and use extends  
4 only to the limited information or items that are entitled to confidential treatment  
5 under the applicable legal principles.  
6

7  
8 B. GOOD CAUSE STATEMENT

9 This action is likely to involve the production of private, confidential and  
10 proprietary information for which special protection from public disclosure and  
11 from use for any purpose other than prosecution of this action is warranted. Such  
12 confidential and proprietary materials and information consist of, among other  
13 things, the medical and psychiatric records of plaintiff, as well as official  
14 government information such as, among other things, internal administrative  
15 investigations of officer-involved uses of force and internal complaints and  
16 external citizen complaints of police misconduct (including information  
17 implicating privacy rights of third parties), and information otherwise generally  
18 unavailable to the public, or which may be privileged or otherwise protected from  
19 disclosure under state or federal statutes, court rules, case decisions, or common  
20 law. Accordingly, to expedite the flow of information, to facilitate the prompt  
21 resolution of disputes over confidentiality of discovery materials, to adequately  
22 protect information the parties are entitled to keep confidential, to ensure that the  
23 parties are permitted reasonable necessary uses of such material in preparation for  
24  
25  
26  
27  
28

1 and in the conduct of trial, to address their handling at the end of the litigation, and  
2 serve the ends of justice, a protective order for such information is justified in this  
3 matter. It is the intent of the parties that information will not be designated as  
4 confidential for tactical reasons and that nothing be so designated without a good  
5 faith belief that it has been maintained in a confidential, non-public manner, and  
6 there is good cause why it should not be part of the public record of this case.  
7  
8

9 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER  
10 SEAL  
11

12 The parties further acknowledge, as set forth in Section 12.3, below, that  
13 this Stipulated Protective Order does not entitle them to file confidential  
14 information under seal; Local Civil Rule 79-5 sets forth the procedures that must  
15 be followed and the standards that will be applied when a party seeks permission  
16 from the court to file material under seal.  
17

18 There is a strong presumption that the public has a right of access to judicial  
19 proceedings and records in civil cases. In connection with non-dispositive  
20 motions, good cause must be shown to support a filing under seal. *See, Kamakana*  
21 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*  
22 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*  
23 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated  
24 protective orders require good cause showing), and a specific showing of good  
25 cause or compelling reasons with proper evidentiary support and legal justification,  
26  
27  
28

1 must be made with respect to Protected Material that a party seeks to file under  
2 seal. The parties' mere designation of Disclosure or Discovery Material as  
3 CONFIDENTIAL does not—without the submission of competent evidence by  
4 declaration, establishing that the material sought to be filed under seal qualifies as  
5 confidential, privileged, or otherwise protectable—constitute good cause.  
6

7  
8 Further, if a party requests sealing related to a dispositive motion or trial,  
9 then compelling reasons, not only good cause, for the sealing must be shown, and  
10 the relief sought shall be narrowly tailored to serve the specific interest to be  
11 protected. *See, Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.  
12 2010). For each item or type of information, document, or thing sought to be filed  
13 or introduced under seal in connection with a dispositive motion or trial, the party  
14 seeking protection must articulate compelling reasons, supported by specific facts  
15 and legal justification, for the requested sealing order. Again, competent evidence  
16 supporting the application to file documents under seal must be provided by  
17 declaration.  
18  
19  
20

21 Any document that is not confidential, privileged, or otherwise protectable  
22 in its entirety will not be filed under seal if the confidential portions can be  
23 redacted. If documents can be redacted, then a redacted version for public  
24 viewing, omitting only the confidential, privileged, or otherwise protectable  
25 portions of the document, shall be filed. Any application that seeks to file  
26  
27  
28

documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: this federal lawsuit, case number CV14-9161 PSG (GJS).

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

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under *Federal Rule of Civil Procedure* 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff) and Plaintiff in Pro Per.

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

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

1           2.7    Expert: a person with specialized knowledge or experience in a  
2 matter pertinent to the litigation who has been retained by a Party or its counsel to  
3 serve as an expert witness or as a consultant in this Action.  
4

5           2.8    House Counsel: attorneys who are employees of a party to this  
6 Action. House Counsel does not include Outside Counsel of Record or any other  
7 outside counsel.  
8

9           2.9    Non-Party: any natural person, partnership, corporation,  
10 association or other legal entity not named as a Party to this action.  
11

12          2.10   Outside Counsel of Record: attorneys who are not employees of a  
13 party to this Action but are retained to represent or advise a party to this Action  
14 and have appeared in this Action on behalf of that party or are affiliated with a law  
15 firm that has appeared on behalf of that party, and includes support staff.  
16

17          2.11   Party: any party to this Action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).  
20

21          2.12   Producing Party: a Party or Non-Party that produces Disclosure or  
22 Discovery Material in this Action.  
23

24          2.13   Professional Vendors: persons or entities that provide litigation  
25 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
26  
27  
28

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
2 and their employees and subcontractors.

3  
4 2.14 Protected Material: any Disclosure or Discovery Material that is  
5 designated as “CONFIDENTIAL.”

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery  
7 Material from a Producing Party.  
8

9 3. SCOPE

10 The protections conferred by this Stipulation and Order cover not only  
11 Protected Material (as defined above), but also (1) any information copied or  
12 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
13 compilations of Protected Material; and (3) any testimony, conversations, or  
14 presentations by Parties or their Counsel that might reveal Protected Material.  
15  
16

17 Any use of Protected Material at trial shall be governed by the orders of the  
18 trial judge. This Order does not govern the use of Protected Material at trial.  
19

20 4. DURATION

21 Once a case proceeds to trial, information that was designated as  
22 CONFIDENTIAL or maintained pursuant to this protective order used or  
23 introduced as an exhibit at trial becomes public and will be presumptively  
24 available to all members of the public, including the press, unless compelling  
25 reasons supported by specific factual findings to proceed otherwise are made to the  
26 trial judge in advance of the trial. *See, Kamakana*, 447 F.3d at 1180-81  
27  
28

(distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

## 5. DESIGNATING PROTECTED MATERIAL

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

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

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.



1           5.2   Manner and Timing of Designations. Except as otherwise provided in  
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
4 under this Order must be clearly so designated before the material is disclosed or  
5 produced.  
6

7  
8           Designation in conformity with this Order requires:

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

18           A Party or Non-Party that makes original documents available for inspection  
19 need not designate them for protection until after the inspecting Party has indicated  
20 which documents it would like copied and produced. During the inspection and  
21 before the designation, all of the material made available for inspection shall be  
22 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
23 documents it wants copied and produced, the Producing Party must determine  
24 which documents, or portions thereof, qualify for protection under this Order.  
25  
26  
27  
28 Then, before producing the specified documents, the Producing Party must affix

1 the “CONFIDENTIAL legend” to each page that contains Protected Material. If  
2 only a portion of the material on a page qualifies for protection, the Producing  
3 Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins).  
5

6 (b) for testimony given in depositions that the Designating Party identifies  
7 the Disclosure or Discovery Material on the record, before the close of the  
8 deposition all protected testimony.  
9

10 (c) for information produced in some form other than documentary and for  
11 any other tangible items, that the Producing Party affix in a prominent place on the  
12 exterior of the container or containers in which the information is stored the legend  
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
14 protection, the Producing Party, to the extent practicable, shall identify the  
15 protected portion(s).  
16  
17

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
19 failure to designate qualified information or items does not, standing alone, waive  
20 the Designating Party’s right to secure protection under this Order for such  
21 material. Upon timely correction of a designation, the Receiving Party must make  
22 reasonable efforts to assure that the material is treated in accordance with the  
23 provisions of this Order.  
24  
25

26 //

27  
28 //

1     6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2             6.1     Timing of Challenges. Any Party or Non-Party may challenge a  
3 designation of confidentiality at any time that is consistent with the Court's  
4 Scheduling Order.

5  
6             6.2     Meet and Confer. The Challenging Party shall initiate the dispute  
7 resolution process under Local Rule 37.1 et seq.

8  
9             6.3     The burden of persuasion in any such challenge proceeding shall be  
10 on the Designating Party. Frivolous challenges, and those made for an improper  
11 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
12 parties) may expose the Challenging Party to sanctions. Unless the Designating  
13 Party has waived or withdrawn the confidentiality designation, all parties shall  
14 continue to afford the material in question the level of protection to which it is  
15 entitled under the Producing Party's designation until the Court rules on the  
16 challenge.  
17  
18  
19

20     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

21             7.1     Basic Principles. A Receiving Party may use Protected Material that  
22 is disclosed or produced by another Party or by a Non-Party in connection with this  
23 Action only for prosecuting, defending or attempting to settle this Action. Such  
24 Protected Material may be disclosed only to the categories of persons and under  
25 the conditions described in this Order. When the Action has been terminated, a  
26 Receiving Party must comply with the provisions of section 13 below (FINAL  
27  
28

1 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
2 Party at a location and in a secure manner that ensures that access is limited to the  
3 persons authorized under this Order.  
4

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
6 otherwise ordered by the court or permitted in writing by the Designating Party, a  
7 Receiving Party may disclose any information or item designated  
8 “CONFIDENTIAL” only to:  
9

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
11 as employees of said Outside Counsel of Record to whom it is reasonably  
12 necessary to disclose the information for this Action;  
13

14 (b) the officers, directors, and employees (including House Counsel) of the  
15 Receiving Party to whom disclosure is reasonably necessary for this Action;  
16

17 (c) Experts (as defined in this Order) of the Receiving Party to whom  
18 disclosure is reasonably necessary for this Action and who have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
20

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and Professional  
24 Vendors to whom disclosure is reasonably necessary for this Action and who have  
25 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
26  
27  
28

1 (g) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
4 Action to whom disclosure is reasonably necessary provided: (1) the deposing  
5 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
6 they will not be permitted to keep any confidential information unless they sign the  
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
8 agreed by the Designating Party or ordered by the court. Pages of transcribed  
9 deposition testimony or exhibits to depositions that reveal Protected Material may  
10 be separately bound by the court reporter and may not be disclosed to anyone  
11 except as permitted under this Stipulated Protective Order; and  
12

13 (i) any mediator or settlement officer, and their supporting personnel,  
14 mutually agreed upon by any of the parties engaged in settlement discussions.  
15

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
17  
18 IN OTHER LITIGATION  
19

20 If a Party is served with a subpoena or a court order issued in other litigation  
21 that compels disclosure of any information or items designated in this Action as  
22 “CONFIDENTIAL,” that Party must:  
23

24 (a) promptly notify in writing the Designating Party. Such notification shall  
25 include a copy of the subpoena or court order;  
26  
27  
28

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

6 (c) cooperate with respect to all reasonable procedures sought to be pursued  
7 by the Designating Party whose Protected Material may be affected.  
8

9 If the Designating Party timely seeks a protective order, the Party served  
10 with the subpoena or court order shall not produce any information designated in  
11 this action as “CONFIDENTIAL” before a determination by the court from which  
12 the subpoena or order issued, unless the Party has obtained the Designating Party’s  
13 permission. The Designating Party shall bear the burden and expense of seeking  
14 protection in that court of its confidential material and nothing in these provisions  
15 should be construed as authorizing or encouraging a Receiving Party in this Action  
16 to disobey a lawful directive from another court.  
17  
18

19  
20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
21 PRODUCED IN THIS LITIGATION  
22

23 (a) The terms of this Order are applicable to information produced by a  
24 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
25 produced by Non-Parties in connection with this litigation is protected by the  
26 remedies and relief provided by this Order. Nothing in these provisions should be  
27 construed as prohibiting a Non-Party from seeking additional protections. (b) In  
28

1 the event that a Party is required, by a valid discovery request, to produce a Non-  
2 Party's confidential information in its possession, and the Party is subject to an  
3 agreement with the Non-Party not to produce the Non-Party's confidential  
4 information, then the Party shall:

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

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

14 (3) make the information requested available for inspection by the Non-  
15 Party, if requested.

17 If the Non-Party fails to seek a protective order from this court within 14  
18 days of receiving the notice and accompanying information, the Receiving Party  
19 may produce the Non-Party's confidential information responsive to the discovery  
20 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
21 not produce any information in its possession or control that is subject to the  
22 confidentiality agreement with the Non-Party before a determination by the court.  
23 Absent a court order to the contrary, the Non-Party shall bear the burden and  
24 expense of seeking protection in this court of its Protected Material.  
25  
26  
27  
28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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



1 work product protection, the parties may incorporate their agreement in the  
2 stipulated protective order submitted to the court.

3  
4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of  
6 any person to seek its modification by the Court in the future.

7  
8 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
9 Protective Order, no Party waives any right it otherwise would have to object to  
10 disclosing or producing any information or item on any ground not addressed in  
11 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
12 any ground to use in evidence of any of the material covered by this Protective  
13 Order.  
14

15  
16 12.3 Filing Protected Material. A Party that seeks to file under seal any  
17 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
18 may only be filed under seal pursuant to a court order authorizing the sealing of the  
19 specific Protected Material at issue. If a Party's request to file Protected Material  
20 under seal is denied by the court, then the Receiving Party may file the information  
21 in the public record unless otherwise instructed by the court.  
22  
23

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within  
26 60 days of a written request by the Designating Party, each Receiving Party must  
27 return all Protected Material to the Producing Party or destroy such material. As  
28

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

16  
17  
18  
19  
20  
21 14. VIOLATION

22 Any violation of this Order may be punished by appropriate measures  
23 including, without limitation, contempt proceedings and/or monetary sanctions.

24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25  
26 DATED: August 16, 2017

27  
28   
\_\_\_\_\_  
GAIL J. STANDISH  
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4  
5 I, \_\_\_\_\_ [print or type full name], of  
6 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
7  
8 that I have read in its entirety and understand the Stipulated Protective Order that  
9 was issued by the United States District Court for the Central District of California  
10 on [date] in the case of *Jason Kirby v. County of Los Angeles and Juan Navarro*,  
11 Case Number CV14-9161 PSG (GJS). I agree to comply with and to be bound by  
12 all the terms of this Stipulated Protective Order and I understand and acknowledge  
13 that failure to so comply could expose me to sanctions and punishment in the  
14 nature of contempt. I solemnly promise that I will not disclose in any manner any  
15 information or item that is subject to this Stipulated Protective Order to any person  
16 or entity except in strict compliance with the provisions of this Order.  
17  
18

19  
20 I further agree to submit to the jurisdiction of the United States District  
21 Court for the Central District of California for enforcing the terms of this  
22 Stipulated Protective Order, even if such enforcement proceedings occur after  
23 termination of this action. I hereby appoint \_\_\_\_\_ [print  
24 or type full name] of \_\_\_\_\_ [print or  
25 type full address and telephone number] as my California agent for service of  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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: \_\_\_\_\_