

NOTE: CHANGES MADE BY
THE COURT

1 LEROY SMITH, State Bar No. 107702
County Counsel, County of Ventura
2 EMILY T. GARDNER, State Bar No. 246980
Assistant County Counsel
3 Emily.Gardner@ventura.org
800 South Victoria Avenue, L/C #1830
4 Ventura, California 93009
Telephone: (805) 654-2573
5 Facsimile: (805) 654-2185

6 Attorneys for Defendants County of Ventura,
Ventura County Sheriff's Office, Ventura County
7 Sheriff Geoff Dean

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JENNIFER HYATT,

11 Plaintiff,

12 vs.

13 COUNTY OF VENTURA;
14 VENTURA COUNTY SHERIFF'S
OFFICE; VENTURA COUNTY
15 SHERIFF GEOFF DEAN in his
official capacity; DOES 1-15 in each
16 of their individual and official
capacities,

17 Defendants.
18

Case No. 2:18-CV-3877 PA (PLAx)

STIPULATED PROTECTIVE
ORDER

Complaint Served: May 31, 2018

Current Response Date: June 20, 2018

New Response Date: July 11, 2018

Judge: Hon. Percy Anderson

19 **A. PURPOSES AND LIMITATIONS**

20 Discovery in this action is likely to involve production of confidential,
21 proprietary or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting or defending this
23 litigation may be warranted. Accordingly, the parties hereby stipulate to and
24 petition the court to enter the following Stipulated Protective Order ("Order").^{1/}
25 The parties acknowledge that this Order does not confer blanket protections on all
26

27 ^{1/} This Stipulated Protective Order is based substantially on the model
28 protective order provided under Magistrate Judge Alexander F. MacKinnon's
Procedures.

1 disclosures or responses to discovery and that the protection it affords from public
2 disclosure and use extends only to the limited information or items that are entitled
3 to confidential treatment under the applicable legal principles.

4 **B. GOOD CAUSE STATEMENT**

5 This action is likely to involve information otherwise generally unavailable
6 to the public, or which may be privileged or otherwise protected from disclosure
7 under state or federal statutes, court rules, case decisions, or common law,
8 including but not limited to video footage and photographs of plaintiff without her
9 hijab and peace officer personnel records. Accordingly, to expedite the flow of
10 information, to facilitate the prompt resolution of disputes over confidentiality of
11 discovery materials, to adequately protect information the parties are entitled to
12 keep confidential, to ensure that the parties are permitted reasonable necessary uses
13 of such material in preparation for and in the conduct of trial, to address their
14 handling at the end of the litigation, and serve the ends of justice, a protective order
15 for such information is justified in this matter. It is the intent of the parties that
16 information will not be designated as confidential for tactical reasons and that
17 nothing be so designated without a good faith belief that it has been maintained in
18 a confidential, non-public manner, and there is good cause why it should not be
19 part of the public record of this case.

20 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**
21 **UNDER SEAL**

22 The parties further acknowledge, as set forth in section 12.3, below, that this
23 Order does not entitle them to file confidential information under seal; Local Civil
24 Rule 79-5 sets forth the procedures that must be followed and the standards that
25 will be applied when a party seeks permission from the court to file material under
26 seal.

27 ///

28 ///

1 There is a strong presumption that the public has a right of access to judicial
2 proceedings and records in civil cases. In connection with non-dispositive
3 motions, good cause must be shown to support a filing under seal. (See *Kamakana*
4 *v. City and County of Honolulu* (9th Cir. 2006) 447 F.3d 1172, 1176
5 (“*Kamakana*”), *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.* (9th Cir.
6 2002) 307 F.3d 1206, 1210-11, *Makar-Welbon v. Sony Electronics, Inc.* (E.D. Wis.
7 1999) 187 F.R.D. 576, 577 [even stipulated protective orders require good cause
8 showing].) A specific showing of good cause or compelling reasons with proper
9 evidentiary support and legal justification must be made with respect to protected
10 material that a party seeks to file under seal. The parties’ mere designation of
11 Disclosure or Discovery Material as CONFIDENTIAL does not – without the
12 submission of competent evidence by declaration, establishing that the material
13 sought to be filed under seal qualifies as confidential, privileged, or otherwise
14 protectable – constitute good cause.

15 Further, if a party requests sealing related to a dispositive motion or trial,
16 then compelling reasons, not only good cause, for the sealing must be shown, and
17 the relief sought shall be narrowly tailored to serve the specific interest to be
18 protected. (See *Pintos v. Pacific Creditors Ass’n.* (9th Cir. 2010) 605 F.3d 665,
19 677-679.) For each item or type of information, document, or thing sought to be
20 filed or introduced under seal in connection with a dispositive motion or trial, the
21 party seeking protection must articulate compelling reasons, supported by specific
22 facts and legal justification, for the requested sealing order. Again, competent
23 evidence supporting the application to file documents under seal must be provided
24 by declaration.

25 Any document that is not confidential, privileged, or otherwise protectable
26 in its entirety will not be filed under seal if the confidential portions can be
27 redacted. If documents can be redacted, then a redacted version for public

28 ///

1 viewing, omitting only the confidential, privileged, or otherwise protectable
2 portions of the document, shall be filed. Any application that seeks to file
3 documents under seal in their entirety should include an explanation of why
4 redaction is not feasible.

5 **2. DEFINITIONS**

6 2.1 Action: *Jennifer Hyatt v. County of Ventura, et al.*; Case No. 2:18-cv-
7 03877-PA (PLAx).

8 2.2 Challenging Party: A party or non-party that challenges the designation
9 of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for
12 protection under Federal Rules of Civil Procedure rule 26(c), and as specified above
13 in the good cause statement.

14 2.4 Counsel: Counsel of record and in-house attorneys employed by a party
15 (as well as their support staff).

16 2.5 Designating Party: A party or non-party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: All items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained
21 (including, among other things, testimony, transcripts, and tangible things), that are
22 produced or generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: A person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a party or its counsel to serve as
25 an expert witness or as a consultant in this action.

26 2.8 Non-Party: Any natural person, partnership, corporation, association or
27 other legal entity not named as a party to this action.

28 ///

1 2.9 Outside Counsel of Record: Attorneys who are retained to represent or
2 advise a party to this action and have appeared in this action on behalf of that
3 party or are affiliated with a law firm or other entity that has appeared on behalf of
4 that party, and includes support staff.

5 2.10 Party: Any party to this action, including all of its officers, directors,
6 employees, consultants, retained experts, and outside counsel of record (and their
7 support staff).

8 2.11 Producing Party: A party or non-party that produces disclosure or
9 discovery material in this action.

10 2.12 Professional Vendors: Persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or
13 medium) and their employees and subcontractors.

14 2.13 Protected Material: Any disclosure or discovery material that is
15 designated as “CONFIDENTIAL.”

16 2.14 Receiving Party: A party that receives disclosure or discovery material
17 from a producing party.

18 **3. SCOPE**

19 The protections conferred by this Order cover not only Protected Material (as
20 defined above), but also (1) any information copied or extracted from Protected
21 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
22 and (3) any testimony, conversations, or presentations by parties or their Counsel
23 that might reveal Protected Material.

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

26 **4. DURATION**

27 Once a case proceeds to trial, information that was designated as
28 CONFIDENTIAL or maintained pursuant to this Order used or introduced as an

1 exhibit at trial becomes public and will be presumptively available to all members
2 of the public, including the press, unless compelling reasons supported by specific
3 factual findings to proceed otherwise are made to the trial judge in advance of the
4 trial. (See *Kamakana, supra*, 447 F.3d at pp. 1180-81 [distinguishing “good cause”
5 showing for sealing documents produced in discovery from “compelling reasons”
6 standard when merits-related documents are part of court record].) Accordingly, the
7 terms of this Order do not extend beyond the commencement of the trial.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

10 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
12 qualifies under the appropriate standards. The Designating Party must designate for
13 protection only those parts of material, documents, items or oral or written
14 communications that qualify so that other portions of the material, documents, items
15 or communications for which protection is not warranted are not swept unjustifiably
16 within the ambit of this Order.

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

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

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

28 ///

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this order requires:

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

11 A Party or Non-Party that makes original documents available for inspection
12 need not designate them for protection until after the inspecting Party has indicated
13 which documents it would like copied and produced. During the inspection and
14 before the designation, all of the material made available for inspection shall be
15 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
16 documents it wants copied and produced, the Producing Party must determine
17 which documents, or portions thereof, qualify for protection under this Order.
18 Then, before producing the specified documents, the Producing Party must affix the
19 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
20 portion of the material on a page qualifies for protection, the Producing Party also
21 must clearly identify the protected portion(s) (e.g., by making appropriate markings
22 in the margins).

23 (b) For testimony given in depositions, that the Designating Party
24 identifies the Disclosure or Discovery Material and all protected testimonies on the
25 record, before the close of the deposition.

26 (c) For information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on
28 the exterior of the container or containers in which the information is stored the

1 legend “CONFIDENTIAL.” If only a portion or portions of the information
2 warrants protection, the Producing Party, to the extent practicable, shall identify the
3 protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such material.
7 Upon timely correction of a designation, the Receiving Party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this
9 Order.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37-1 et seq.

16 6.3 Joint Stipulation. Any challenge submitted to the court shall be via a
17 joint stipulation pursuant to Local Rule 37-2.

18 6.4 The burden of persuasion in any such challenge proceeding shall be on
19 the Designating Party. Frivolous challenges and those made for an improper
20 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
21 parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall
23 continue to afford the material in question the level of protection to which it is
24 entitled under the Producing Party’s designation until the court rules on the
25 challenge.

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

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this

1 Action only for prosecuting, defending or attempting to settle this Action. Such
2 Protected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the action has been terminated, a
4 Receiving Party must comply with the provisions of section 13 below (**FINAL**
5 **DISPOSITION**).

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

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

13 (a) The Receiving Party’s Counsel of Record in this action, as well as
14 employees of said Counsel of Record to whom it is reasonably necessary to disclose
15 the information for this action;

16 (b) The officers, directors, and employees (including in-house counsel) of
17 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

22 (d) The court and its personnel;

23 (e) Court reporters and their staff;

24 (f) Professional jury or trial consultants, mock jurors and Professional
25 Vendors to whom disclosure is reasonably necessary for this action and who have
26 signed the Acknowledgment and Agreement to Be Bound;

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

1 (h) During their depositions, witnesses, and attorneys for witnesses, in the
2 action to whom disclosure is reasonably necessary provided: (1) the deposing
3 party requests that the witness sign the Acknowledgment and Agreement to Be
4 Bound; and (2) they will not be permitted to keep any “CONFIDENTIAL”
5 Information unless they sign the Acknowledgment and Agreement to Be Bound,
6 unless otherwise agreed by the designating party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Protected
8 Material may be separately bound by the court reporter and may not be disclosed to
9 anyone except as permitted under this Order; and

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

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

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

17 (a) Promptly notify in writing the Designating Party. Such notification
18 shall include a copy of the subpoena or court order;

19 (b) Promptly notify in writing the Party who caused the subpoena or order
20 to issue in the other litigation that some or all of the material covered by the
21 subpoena or order is subject to this Order. Such notification shall include a copy of
22 this Order; and

23 (c) Cooperate with respect to all reasonable procedures sought to be
24 pursued by the Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with
26 the subpoena or court order shall not produce any information designated in this
27 action as “CONFIDENTIAL” before a determination by the court from which the
28

1 subpoena or order issued, unless the party has obtained the Designating Party's
2 permission. The Designating Party shall bear the burden and expense of seeking
3 protection in that court of its "CONFIDENTIAL" Material and nothing in these
4 provisions should be construed as authorizing or encouraging a Receiving Party in
5 this action to disobey a lawful directive from another court.

6 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
7 **PRODUCED IN THIS LITIGATION**

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

13 (b) In the event that a Party is required, by a valid discovery request, to
14 produce a Non-Party's "CONFIDENTIAL" Information in its possession, and the
15 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
16 "CONFIDENTIAL" Information, then the Party shall:

17 (1) Promptly notify in writing the requesting Party and the Non-
18 Party that some or all of the information requested is subject to a confidentiality
19 agreement with a Non-Party;

20 (2) Promptly provide the Non-Party with a copy of this Order, the
21 relevant discovery request(s), and a reasonably specific description of the
22 information requested; and

23 (3) Make the information requested available for inspection by the
24 Non-Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this court within
26 14 days of receiving the notice and accompanying information, the Receiving Party
27 may produce the Non-Party's "CONFIDENTIAL" Information responsive to the
28 discovery request. If the Non-Party timely seeks a protective order, the Receiving

1 Party shall not produce any information in its possession or control that is subject to
2 the confidentiality agreement with the Non-Party before a determination by the
3 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
4 expense of seeking protection in this court of its Protected Material.

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

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

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

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

26 **12. MISCELLANEOUS**

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Order, no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Order.
4 Similarly, no Party waives any right to object on any ground to use in evidence of
5 any of the material covered by this Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Local Civil Rule 79-5. Protected Material
8 may only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. If a Party's request to file Protected Material
10 under seal is denied by the court, then the Receiving Party may file the information
11 in the public record unless otherwise instructed by the court. **Good cause must be**
12 **shown for the under seal filing.**

13 **13. FINAL DISPOSITION**

14 After the final disposition of this action, as defined in paragraph 4, within 60
15 days of a written request by the Designating Party, each Receiving Party must
16 return all Protected Material to the Producing Party or destroy such material. As
17 used in this subdivision, "all Protected Material" includes all copies, abstracts,
18 compilations, summaries and any other format reproducing or capturing any of the
19 Protected Material. Whether the Protected Material is returned or destroyed, the
20 Receiving Party must submit a written certification to the Producing Party (and, if
21 not the same person or entity, to the Designating Party) by the 60-day deadline that
22 (1) identifies (by category, where appropriate) all the Protected Material that was
23 returned or destroyed and (2) affirms that the Receiving Party has not retained any
24 copies, abstracts, compilations, summaries or any other format reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, counsel
26 are entitled to retain an archival copy of all pleadings, motion papers, trial,
27 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
28 and trial exhibits, expert reports, attorney work product, and consultant and expert

work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Order as set forth in section 4 (**DURATION**).

14. VIOLETION

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

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

ERIN DARLING
Law Offices of Erin Darling

Dated: July 30, 2018

By /s/
ERIN DARLING
Attorney at Law

Attorneys for Plaintiff Jennifer Hyatt

LEROY SMITH
County Counsel, County of Ventura

Dated: July 30, 2018

By _____ /s/

EMILY T. GARDNER
Assistant County Counsel

Attorneys for Defendants County of
Ventura, Ventura County Sheriff's Office
and Ventura County Sheriff Geoff Dean

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Paul L. Abramson

Dated: August 1, 2018

Hon. Paul L. Abrams
United States Magistrate Judge

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 Central District of California on [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. 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 Central District of California for 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:
