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6
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BERNARDINO

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 RIVERSIDE

12 DAVID DENKIN, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 COUNTY OF SAN BERNARDINO, a
16 legal subdivision of the State of
California, and DOES 1-10, inclusive,

17 Defendants.
18

Case No. 5:16-cv-00044 JGB (KKx)

**STIPULATED PROTECTIVE
ORDER**

Judge: Hon. Jesus G. Bernal
Dept.: 1

Complaint Filed: January 7, 2016
Trial Date: September 5, 2017

19 1. 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 this litigation may
23 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
24 enter the following Stipulated Protective Order. The parties acknowledge that this
25 Order does not confer blanket protections on all disclosures or responses to
26 discovery and that the protection it affords from public disclosure and use extends
27 only to the limited information or items that are entitled to confidential treatment
28 under the applicable legal principles. The parties further acknowledge, as set forth in

1 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
 2 file confidential information under seal; Civil Local Rule 79-5 sets forth the
 3 procedures that must be followed and the standards that will be applied when a party
 4 seeks permission from the court to file material under seal.

5 B. GOOD CAUSE STATEMENT

6 In this collective action under the Fair Labor Standards Act, 19 U.S.C. § 201,
 7 et seq., Plaintiffs, social workers employed by Defendant, claims they performed
 8 work in their capacity as social workers for which they claim they were not paid by
 9 Defendant. Plaintiffs work in the Department of Aging and Adult Services and as
 10 part of their job duties interact with at-risk or vulnerable individuals (the “clients”)
 11 and their families and/or guardians, and have knowledge of the clients’ private
 12 information such as personal contact and identification information, the factual
 13 details requiring the intervention of the County, and medical and psychological
 14 information of the clients. This information is contained in emails between
 15 Plaintiffs and their supervisors, and in reports prepared by Plaintiffs. These emails
 16 and reports may be relevant to Plaintiffs’ claim to the extent such documents
 17 indicate the time the work was performed and the amount of time needed to prepare
 18 the email, report, etc. Such confidential information contained in these documents
 19 implicates the privacy rights of third persons in addition to the clients, and is
 20 deemed confidential pursuant to Cal. Welfare and Institutions Code sec. 10850 et
 21 seq. Accordingly, to expedite the flow of information, to facilitate the prompt
 22 resolution of disputes over confidentiality of discovery materials, to adequately
 23 protect information the parties are entitled to keep confidential, to ensure that the
 24 parties are permitted reasonable necessary uses of such material in preparation for
 25 and in the conduct of trial, to address their handling at the end of the litigation, and
 26 serve the ends of justice, a protective order for such information is justified in this
 27 matter. It is the intent of the parties that information will not be designated as
 28 confidential for tactical reasons and that nothing be so designated without a good

1 faith belief that it has been maintained in a confidential, non-public manner, and
 2 there is good cause why it should not be part of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: this pending federal law suit.

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation
 6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 8 how it is generated, stored or maintained) or tangible things that qualify for
 9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
 12 their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or
 14 items that it produces in disclosures or in responses to discovery as
 15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless
 17 of the medium or manner in which it is generated, stored, or maintained (including,
 18 among other things, testimony, transcripts, and tangible things), that are produced or
 19 generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
 21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
 22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
 24 House Counsel does not include Outside Counsel of Record or any other outside
 25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
 27 other legal entity not named as a Party to this action.

28 2.10 Outside Counsel of Record: attorneys who are not employees of a party

1 to this Action but are retained to represent or advise a party to this Action and have
 2 appeared in this Action on behalf of that party or are affiliated with a law firm which
 3 has appeared on behalf of that party, and includes support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors,
 5 employees, consultants, retained experts, and Outside Counsel of Record (and their
 6 support staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
 8 Discovery Material in this Action.

9 2.13 Professional Vendors: persons or entities that provide litigation support
 10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 12 and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is
 14 designated as “CONFIDENTIAL.”

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
 16 from a Producing Party.

17 3. SCOPE

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

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

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
 27 imposed by this Order shall remain in effect until a Designating Party agrees
 28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
2 or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
4 including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or Non-Party that designates information or items for protection under
9 this Order must take care to limit any such designation to specific material that
10 qualifies under the appropriate standards. The Designating Party must designate for
11 protection only those parts of material, documents, items, or oral or written
12 communications that qualify so that other portions of the material, documents,
13 items, or communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order.

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

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

23 5.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.

28 ///

1 Designation in conformity with this Order requires:

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

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

21 (b) for testimony given in depositions that the Designating Party
22 identify the Disclosure or Discovery Material on the record, before the close of the
23 deposition all protected testimony.

24 (c) for information produced in some form other than documentary
25 and for any other tangible items, that the Producing Party affix in a prominent place
26 on the exterior of the container or containers in which the information is stored the
27 legend “CONFIDENTIAL.” If only a portion or portions of the information
28

1 warrants protection, the Producing Party, to the extent practicable, shall identify the
2 protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court's
12 Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37.1 et seq.

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

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

1 Receiving Party must comply with the provisions of section 13 below (FINAL
 2 DISPOSITION).

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

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

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

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

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

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

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

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

27 (h) during their depositions, witnesses, and attorneys for witnesses,
 28 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing

1 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
 2 they will not be permitted to keep any confidential information unless they sign the
 3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
 4 agreed by the Designating Party or ordered by the court. Pages of transcribed
 5 deposition testimony or exhibits to depositions that reveal Protected Material may
 6 be separately bound by the court reporter and may not be disclosed to anyone except
 7 as permitted under this Stipulated Protective Order; and

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

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

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

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with
 25 the subpoena or court order shall not produce any information designated in this
 26 action as “CONFIDENTIAL” before a determination by the court from which the
 27 subpoena or order issued, unless the Party has obtained the Designating Party’s
 28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action
3 to disobey a lawful directive from another court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
5 PRODUCED IN THIS LITIGATION

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

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party’s confidential information in its possession, and the Party is
13 subject to an agreement with the Non-Party not to produce the Non-Party’s
14 confidential information, then the Party shall:

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

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

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

23 (c) If the Non-Party fails to seek a protective order from this court within
24 14 days of receiving the notice and accompanying information, the Receiving Party
25 may produce the Non-Party’s confidential information responsive to the discovery
26 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
27 not produce any information in its possession or control that is subject to the
28 confidentiality agreement with the Non-Party before a determination by the court.

1 Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

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

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

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

1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: March 13, 2017

LAW OFFICE OF ALEXANDER E.
PAPAEFTHIMIOU

7
8 By: /s/ Alexander E. Papaefthimiou
Alexander E. Papaefthimiou
Attorneys for Plaintiffs

10 Dated: March 13, 2017

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

12
13 By: /s/ Paul G. Szumiak
Nate J. Kowalski
Paul G. Szumiak
Attorneys for Defendant COUNTY OF
SAN BERNARDINO

15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

17 Dated: March 13, 2017

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20 _____
Hon. Kenly Kiya Kato
United States 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 Central District of California
on [date] in the case of **David Denkin v. County of San Bernardino, C.D. Cal.**
Case No. 5:16-cv-00044 JGB (KKx). 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 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: _____