

1 **OFFICE OF COUNTY COUNSEL**
 2 **COUNTY OF KERN, STATE OF CALIFORNIA**
 3 **By Andrew C. Thomson, Deputy (Bar # 149057)**
 4 **County Administrative Center**
 5 **1115 Truxtun Avenue, Fourth Floor**
 6 **Bakersfield, California 93301**
 7 **Telephone: (661) 868-3800**
 8 **Facsimile: (661) 868-3805**

6 **Attorney for Defendants,**
 7 **County of Kern, Kern County**
 8 **Sheriff's Office, Otis Whinery,**
 9 **Douglas Jauch, Edward Tucker**
 10 **and Patrick Neal**

9 **UNITED STATES DISTRICT COURT**
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 **LATOYA MCKENZIE, an individual;**
 12 **B.M., an individual; C.M., an**
 13 **individual by and through her**
 14 **Guardian Ad Litem Latoya**
 15 **McKenzie; R.M., JR., an individual**
 16 **by and through his Guardian Ad**
 17 **Litem Latoya McKenzie; Z.P., an**
 18 **individual by and through her**
 19 **Guardian Ad Litem Latoya**
 20 **McKenzie; A.M. an individual by**
 21 **and through her Guardian Ad Litem**
 22 **Brittney Shelby; Z.H. and individual**
 23 **by and through her Guardian Ad**
 24 **Litem Denise Harris; J.J. an**
 25 **individual by and through his**
 26 **Guardian Ad Litem Monica Joiner;**

20 **Plaintiffs,**

21 **v.**

22 **KERN COUNTY; KERN COUNTY**
 23 **SHERIFF'S DEPARTMENT; OTIS**
 24 **WHINERY; DOUGLAS JAUCH;**
 25 **EDWARD TUCKER; PATRICK**
 26 **NEAL; AND DOES 1-200**
 27 **INCLUSIVE,**

25 **Defendants.**

Case No. 1:09-CV-01658-AWI-DLB

STIPULATION OF THE PARTIES FOR A
PROTECTIVE ORDER REGARDING THE
PEACE OFFICER RECORDS OF
DEFENDANTS WHINERY, JAUCH,
TUCKER AND NEAL; and
ORDER

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1 **COME NOW**, the Parties herein, by and through their respective counsel of record:
2 Tyler R. Dowdall, Esq., Sayre & Levitt, for Plaintiffs LaToya McKenzie, B.M., C.M., R.M.,
3 Jr., Z.P., A.M., Z.H., and J.J. (hereinafter collectively "Plaintiffs"); Andrew C. Thomson,
4 Deputy, Office of Kern County Counsel, for Defendants County of Kern, Kern County
5 Sheriff's Office, Otis Whinery, Douglas Jauch, Edward Tucker and Patrick Neal (hereinafter
6 collectively "County Defendants") and Mildred K. O'Linn, Esq. and Tony M. Sain, Esq.,
7 Manning & Kass, Ellrod, Ramirez, Trester, Attorneys for Defendant TASER International.

8 The Parties, with the authority of their respective clients, agree as follows:

9 1. The Parties have repeatedly met and conferred regarding various issues regarding
10 discovery in this matter in an effort to informally resolve various issues.

11 2. Plaintiffs have, through written discovery, requested Defendant County of Kern to
12 produce records which qualify as peace officer personnel records under California Penal
13 Code §§832.7 and 832.8 with respect to Defendants Whinery, Jauch, Tucker and Neal.

14 3. Counsel for County Defendants is informed and believes that a protective order is
15 needed in order to protect the peace officers' rights and records from inappropriate use
16 and/or disclosure, including but not limited to the personnel records of Defendants
17 Whinery, Jauch, Tucker and Neal.

18 4. In order to comply with Plaintiffs' discovery demands, and also to avoid occupying
19 the Court's time with numerous requests to view the documents in camera pursuant to
20 California Evidence Code §§1043 and 1045, the Parties are willing to agree that the
21 documents may be produced provided the attached Protective Order is issued by the Court
22 prior to production of the documents.

23 5. The Parties each agree to be bound by the terms of the Protective Order and
24 counsel, by signing this stipulation, are representing to the Court that they have informed
25 or will inform their clients of the terms of the protective order prior to production of the
26 documents.

27 6. The Parties agree that this stipulation may be signed in counterpart.

28 7. The Parties respectfully request the Court's consideration of this request.

1 **THEREFORE, IT IS HEREBY STIPULATED:**

2 1. All documents produced by the County of Kern in response to Plaintiffs' propounded
3 discovery which qualify as peace officer records under California Penal Code §§ 832.7 and
4 832.8, (including but not limited to personnel records, internal affairs reports, interviews,
5 investigative reports, statements, employment evaluations, or other information from an
6 officer's personnel file, including but not limited to allegations of excessive force, infliction
7 of bodily injury, untruthfulness, assault and/or battery, physical altercations and/or conduct
8 unbecoming) shall be subject to the following orders:

9 a) The records shall not be copied or disseminated outside of any attorney's
10 office except for review by retained experts or a party to this action.

11 b) The only persons who shall be authorized to view the records will be the
12 involved attorneys, the attorneys' office staff, retained experts and/or parties to this action.

13 c) The contents of the records shall not be discussed with, or disseminated to,
14 (either verbally, in writing, or in any other form) any person that is not one of the involved
15 attorneys, the attorneys' office staff, retained experts and/or parties to this action.

16 d) The records shall not be provided to the news media directly or indirectly in
17 any form or manner.

18 e) The records shall be utilized only in connection with this litigation and for no
19 other purpose whatsoever, at any time, ever.

20 f) At the conclusion of this litigation, all produced peace officer records and any
21 copies thereof, including exhibits to depositions, shall be returned to the offices of Kern
22 County Counsel.

23 2. All personal information incorporated in the personnel records, including but not
24 limited to home addresses, phone numbers, birth dates and relatives names, may be
25 redacted. If the redacted portion is subsequently determined by this Court or by stipulation
26 to be relevant, the non-redacted relevant material will be produced but shall be subject to
27 a more restrictive protective order.

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1 3. No counsel shall file with this Court, or any other court, any of the produced peace
2 officer records subject to this protective order, either as an exhibit to a motion or otherwise,
3 unless the subject court has previously issued an order sealing such record.

4 4. Any person, or persons, violating this order shall be subject to sanctions and costs of
5 motion.

6 Dated: January 19, 2011

MANNING & KASS, ELLROD, RAMIREZ, TRESTER

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8 By /s/ Tony M. Sain _____
9 Mildred K. O'Linn, Esq.
10 Tony M. Sain, Esq.
Attorneys for Defendant TASER International

11 Dated: January 19, 2011

SAYRE & LEVITT

12
13 By /s/ Tyler R. Dowdall _____
14 Tyler R. Dowdall, Esq.
15 Attorneys for Plaintiffs LaToya McKenzie, B.M.,
C.M., R.M., Jr., Z.P., A.M., Z.H., J.J.

16 Dated: January 19, 2011

OFFICE OF KERN COUNTY COUNSEL

17
18 By /s/ Andrew C. Thomson _____
19 Andrew C. Thomson, Deputy
20 Attorneys for Defendants County of Kern, Kern
County Sheriff's Office, Otis Whinery, Douglas
Jauch, Edward Tucker and Patrick Neal

21
22 **ORDER**

23 The parties having stipulated thereto and good cause appearing therefor, with the
24 exception of paragraph 3 above which shall be amended to read as follows:

25 3. No counsel shall file with this Court, or any other court, any of the produced peace
26 officer records subject to this protective order, either as an exhibit to a motion or otherwise,
27 unless counsel shall have applied to the subject court for leave to file the records under
28 seal and received a ruling on the motion. Motions to seal filed with this Court shall comply

1 with Local Rule 141,

2 IT IS SO ORDERED.

3 Dated: January 20, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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