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10 Attorneys for Defendants

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA – FRESNO

13 MICHAEL CLARK,

14 Plaintiff,

15 vs.

16 COUNTY OF TULARE; BILL WITTMAN,  
17 individually and in his official capacity as  
18 TULARE COUNTY SHERIFF; and DOES 1  
19 through 10,

20 Defendants.

**Case Number: 1:09-cv-02106-JLO-  
GSA**

**STIPULATED PROTECTIVE  
ORDER RE: TULARE COUNTY  
SHERIFF'S DEPARTMENT  
POLICIES & PROCEDURES,  
REPORTS AND  
CORRESPONDENCE AND  
ORDER THEREON**

21 WHEREAS, the parties believe, in good faith, that the following documents subject to  
22 discovery requests, contain information that is or may be: (a) confidential, sensitive, or  
23 potentially invasive of an individual's privacy interests; (b) not generally known; and  
24 (c) not normally revealed to the public or third parties or, if disclosed to third parties, would  
25 require such third parties to maintain the information in confidence: Tulare County Sheriff's  
26 Department Policies and Procedures, Reports and Correspondence.

1 IT IS HEREBY STIPULATED, by, among and between the parties hereto through  
2 their counsel of record, that documents may be designated as "Confidential" by the parties  
3 and produced subject to the following Protective Order:  
4

5 1. The disclosed documents shall be used solely in connection with the civil case  
6 of Michael Clark vs. County of Tulare, et al.; Case Number 1:09-cv-02106-JLO-GSA  
7 (Eastern District of California) and in the preparation and trial of the case, or any related  
8 proceeding. The parties are not waiving any objections to the admissibility of the documents  
9 or portions of the documents in future proceedings, including the trials of the matters.  
10

11 2. A party producing confidential documents and materials may designate those  
12 materials by affixing a mark labeling them as Confidential as set forth in paragraph 9 below.  
13 If any Confidential materials cannot be labeled with the aforementioned marking, those  
14 materials shall be placed in a sealed envelope or other container that is in turn marked  
15 Confidential as set forth in paragraph 6.  
16

17 3. Documents or materials designated under this Protective Order as  
18 "Confidential" may only be disclosed to the following persons:  
19

- 20 a) Counsel for the parties;
- 21 b) Paralegals and/or legal assistants regularly employed by counsel for the parties,  
22 and stenographic deposition reporters or videographers retained in connection  
23 with this action;
- 24 c) Clerical and secretarial personnel regularly employed by counsel for the parties;
- 25 d) Court personnel including stenographic reporters or videographers engaged in  
26 proceedings as are necessarily incidental to the preparation for the trial of the  
27 civil action;
- 28 e) Any expert, consultant or investigator retained in connection with this action;
- f) The finder of fact at the time of trial, subject to the court's rulings on in limine  
motions and objections of counsel;
- g) Any employee of COUNTY OF TULARE or the CITY OF WOODLAKE,  
described in paragraph 5 below; and
- h) Outside litigation support services retained by counsel, to the extent necessary  
to assist such counsel in this litigation, limited to copy services and scanning  
services.

1           4.       Prior to the disclosure of any Confidential information to any person identified  
2 in paragraph 3, sections (e), (f), (g), and (h) each such recipient of Confidential information  
3 shall be provided with a copy of this Stipulated Protective Order, which he or she shall read.  
4 Upon reading this Stipulated Protective Order, such person shall acknowledge in writing or on  
5 the record that he or she has read this Stipulated Protective Order and shall abide by its terms.  
6 Such person must also consent to be subject to the jurisdiction of the United States District  
7 Court, Eastern District of California, with respect to any proceeding related to enforcement of  
8 this Protective Order, including without limitation, any proceeding for contempt. Provisions  
9 of this Protective Order, insofar as they restrict disclosure and use of the material, shall be in  
10 effect until further order of this Court. Receiving counsel shall be responsible for internally  
11 tracking the identities of those individuals to whom copies of documents marked Confidential  
12 are given. The producing party may not request the identities of said individuals, however,  
13 until the final termination of the litigation or if it is able to demonstrate a good faith basis that  
14 the receiving party, or an agent thereof, has breached the Stipulated Protective Order.  
15

16           5.       Nothing herein shall limit a party's ability to use Confidential information to  
17 examine or cross-examine witnesses who are current or former officers or employees who  
18 took part in or have knowledge relating of the creation and/or implementation of the  
19 confidential documents, including any witness designated under FRCP 30(b)(6) by the County  
20 of Tulare.  
21

22           6.       All documents or materials designated as Confidential pursuant to this  
23 Protective Order, and all papers or documents containing information or materials designated  
24 as Confidential, that are filed with the Court for any purpose, shall be filed and served under  
25 seal, pursuant to Local Rule 141.  
26  
27  
28

1           7.       The designation of information as Confidential, and the subsequent production  
2 thereof, is without prejudice to the right of any party to oppose the admissibility of the  
3 designated information.  
4

5           8.       A party may apply to the Court for an order that information or materials  
6 labeled Confidential are not, in fact, confidential. Prior to so applying, the party seeking to  
7 reclassify Confidential information shall meet and confer with the producing party. Until the  
8 matter is resolved by the parties or the Court, the information in question shall continue to be  
9 treated according to its designation under the terms of this Order. The producing party shall  
10 have the burden of establishing the propriety of the Confidential designation. A party shall  
11 not be obligated to challenge the propriety of a confidentiality designation at the time made,  
12 and a failure to do so shall not preclude a subsequent challenge thereto.  
13  
14

15           9. Copies of Confidential Documents: The following procedures shall be utilized by  
16 the parties in production of documents and materials designated Confidential:

- 17           a)       The receiving party's counsel shall not furnish, disclose, or otherwise divulge  
18 any information contained in the confidential documents to any individual other  
19 than those specifically authorized herein without further order of the Court or  
20 authorization from counsel for the producing party.  
21           b)       Plaintiff shall produce documents and materials designated Confidential to  
22 Defendants with a marking on each page labeled:

23                   “CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER

24                               Michael Clark vs. County of Tulare, et al.

25                               USDC, Eastern District, Case No. 1:09-cv-02106-JLO-GSA

26                               Julia C. Langley, Deputy County Counsel, Attorneys for Defendants”

- 27           c)       If any document or information designated as Confidential pursuant to this  
28 Protective Order is used or disclosed during the course of a deposition, that  
portion of the deposition record reflecting such material shall be stamped with  
the appropriate designation and access shall be limited pursuant to the terms of  
this Protective Order. The Court Reporter for the deposition shall mark the  
deposition transcript cover page and all appropriate pages or exhibits, and each  
copy thereof, in accordance with paragraph 9(b) of this Protective Order. Only  
individuals who are authorized by this Protective Order to see or receive such

1 material may be present during the discussion or disclosure of such material.

2 10. Notwithstanding the provisions of paragraph 3, confidential information  
3 produced pursuant to this Protective Order may not be delivered, exhibited or otherwise  
4 disclosed to any reporter, writer or employee of any trade publication, newspaper, magazine  
5 or other media organization.  
6

7 11. Should any information designated as confidential be disclosed, through  
8 inadvertence or otherwise, to any person or entity not authorized to receive it under this  
9 Protective Order, the disclosing person(s) shall promptly:  
10

- 11 a) Inform counsel for the producing party of the recipient(s) and the circumstances  
12 of the unauthorized disclosure; and
- 13 b) Use reasonable efforts to bind the recipient(s) to the terms of this Protective  
14 Order.

15 No information shall lose its Confidential status because it was disclosed to a person  
16 not authorized to receive it under this Protective Order.

17 12. After the conclusion of this litigation, all documents and materials, in whatever  
18 form stored or reproduced, containing confidential information will remain confidential, and  
19 if filed with the Court, shall remain under seal. No later than 30 days following settlement or  
20 of receiving notice of the entry of an order, judgment, or decree terminating this action, all  
21 persons having received the confidential documents shall destroy said documents. Within 30  
22 days of destruction of the confidential documents, counsel for the receiving party shall  
23 provide counsel for the producing party with a declaration setting forth the number of copies  
24 that were made during the litigation, the number of copies destroyed at the end of litigation,  
25 the manner in which the documents were destroyed, and the date of destruction. This  
26 declaration shall be signed under penalty of perjury by counsel for the receiving party. The  
27 conclusion of this litigation means a termination of the case following trial or settlement.  
28

1           13.     If any party appeals a jury verdict or order terminating the case, counsel for the  
2 receiving party shall retain possession of all confidential documents pending final outcome of  
3 the appeal after which they shall be destroyed by the receiving party's counsel, pursuant to the  
4 terms set out in paragraph 12.  
5

6           14.     This Stipulated Protective Order shall remain in full force and effect and shall  
7 continue to be binding on all parties and affected persons after this litigation terminates,  
8 subject to any subsequent modifications of this Stipulated Protective Order for good cause  
9 shown by this Court or any Court having jurisdiction over an appeal of this action. After this  
10 action terminates, any party may seek to modify or dissolve this Stipulated Protective Order  
11 by Court order for good cause shown or by the parties' stipulation.  
12

13           15.     The Court shall retain jurisdiction, even after this lawsuit terminates, (a) to  
14 make such amendments, modifications and additions to this Protective Order as it may from  
15 time to time deem appropriate upon good cause shown and (b) to adjudicate any dispute  
16 respecting improper use or disclosure of confidential material.  
17  
18

19 Dated: February 17, 2010

KATHLEEN BALES-LANGE,  
County Counsel

21  
22 By:           /s/ Julia C. Langley            
23 Julia C. Langley  
24 Deputy County Counsel  
Attorneys for Defendants  
County of Tulare, Bill Wittman

25 Dated: February 17, 2010

26 By:           s/ Andrew A. Magwood            
27 Andrew Armour Magwood  
MAGWOOD LAW FIRM  
28 Attorney for Plaintiff Michael Clark

**ORDER**

Upon reviewing the stipulation of the parties, the stipulation is hereby adopted.

IT IS SO ORDERED.

Dated: February 19, 2010

/s/ Gary S. Austin

The Honorable Gary S. Austin  
United States Magistrate Judge

NAN/2/11/2010/20091627/295009