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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO

MICHAEL CLARK,

Plaintiff,

vs.

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

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**

WHEREAS, the parties believe, in good faith, that the following documents subject to discovery requests, contain information that is or may be: (a) confidential, sensitive, or potentially invasive of an individual's privacy interests; (b) not generally known; and (c) not normally revealed to the public or third parties or, if disclosed to third parties, would require such third parties to maintain the information in confidence: Tulare County Sheriff's 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 1. The disclosed documents shall be used solely in connection with the civil case
5 of Michael Clark vs. County of Tulare, et al.; Case Number 1:09-cv-02106-JLO-GSA
6 (Eastern District of California) and in the preparation and trial of the case, or any related
7 proceeding. The parties are not waiving any objections to the admissibility of the documents
8 or portions of the documents in future proceedings, including the trials of the matters.

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

14 3. Documents or materials designated under this Protective Order as
15 “Confidential” may only be disclosed to the following persons:

16 a) Counsel for the parties;
17 b) Paralegals and/or legal assistants regularly employed by counsel for the parties,
18 and stenographic deposition reporters or videographers retained in connection
19 with this action;
20 c) Clerical and secretarial personnel regularly employed by counsel for the parties;
21 d) Court personnel including stenographic reporters or videographers engaged in
22 proceedings as are necessarily incidental to the preparation for the trial of the
23 civil action;
24 e) Any expert, consultant or investigator retained in connection with this action;
25 f) The finder of fact at the time of trial, subject to the court’s rulings on in limine
26 motions and objections of counsel;
27 g) Any employee of COUNTY OF TULARE or the CITY OF WOODLAKE,
28 described in paragraph 5 below; and
29 h) Outside litigation support services retained by counsel, to the extent necessary
30 to assist such counsel in this litigation, limited to copy services and scanning
31 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
5 Upon reading this Stipulated Protective Order, such person shall acknowledge in writing or on
6 the record that he or she has read this Stipulated Protective Order and shall abide by its terms.
7 Such person must also consent to be subject to the jurisdiction of the United States District
8 Court, Eastern District of California, with respect to any proceeding related to enforcement of
9 this Protective Order, including without limitation, any proceeding for contempt. Provisions
10 of this Protective Order, insofar as they restrict disclosure and use of the material, shall be in
11 effect until further order of this Court. Receiving counsel shall be responsible for internally
12 tracking the identities of those individuals to whom copies of documents marked Confidential
13 are given. The producing party may not request the identities of said individuals, however,
14 until the final termination of the litigation or if it is able to demonstrate a good faith basis that
15 the receiving party, or an agent thereof, has breached the Stipulated Protective Order.
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18 5. Nothing herein shall limit a party's ability to use Confidential information to
19 examine or cross-examine witnesses who are current or former officers or employees who
20 took part in or have knowledge relating of the creation and/or implementation of the
21 confidential documents, including any witness designated under FRCP 30(b)(6) by the County
22 of Tulare.
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25 6. All documents or materials designated as Confidential pursuant to this
26 Protective Order, and all papers or documents containing information or materials designated
27 as Confidential, that are filed with the Court for any purpose, shall be filed and served under
28 seal, pursuant to Local Rule 141.

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

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
authorization from counsel for the producing party.
20 b) Plaintiff shall produce documents and materials designated Confidential to
Defendants with a marking on each page labeled:
21

22 “CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER
Michael Clark vs. County of Tulare, et al.
23 USDC, Eastern District, Case No. 1:09-cv-02106-JLO-GSA
24 Julia C. Langley, Deputy County Counsel, Attorneys for Defendants”
25

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

9 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
Order.

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

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

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

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

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

Dated: February 17, 2010

KATHLEEN BALES-LANGE,
County Counsel

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

Dated: February 17, 2010

By: s/ Andrew A. Magwood
Andrew Armour Magwood
MAGWOOD LAW FIRM
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