

1 James J. Arendt, Esq. Bar No. 142937
James@walaw-fresno.com

2 Michelle E. Sassano, Esq. Bar No. 232368
Michelle@walaw-fresno.com

3 WEAKLEY & ARENDT, LLP
4 1630 EAST SHAW AVE., SUITE 176
5 FRESNO, CALIFORNIA 93710
6 TELEPHONE: (559) 221-5256
FACSIMILE: (559) 221-5262

7 Attorneys for Defendants, Kings County, Kings County Sheriff's Department,
8 Shawn McRae and Marius Barsteceanu

9 **UNITED STATES DISTRICT COURT**

10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 THE ESTATE OF STEPHEN E. CRAWLEY,) CASE NO. 1:13-cv-02042 LJO SAB
12 NORMA CRAWLEY, individually and as)
13 successor in interest to THE ESTATE OF)
STEPHEN E. CRAWLEY, and JOHNNY)
14 CRAWLEY, individually,)

15 Plaintiffs,)

16 vs.)

17 KINGS COUNTY; KINGS COUNTY)
18 SHERIFF'S DEPARTMENT; SHAWN)
McRAE, individually, MARIUS)
19 BARSTECEANU, individually, and DOES 1-)
50, inclusive,)

20 Defendants.)

**STIPULATION FOR
PROTECTIVE ORDER AND
ORDER THEREON**

21 _____
22 **STIPULATED PROTECTIVE ORDER¹**

23 1. **PURPOSES AND LIMITATIONS**

24 Disclosure and discovery activity in this action are likely to involve
25 production of confidential, proprietary, or private information for which special
26 _____

27 _____
28 ¹ This document is based on the model protective order for standard litigation promulgated by the Northern District of California. It has been modified only to omit or replace references to that district and its local rules.

1 protection from public disclosure and from use for any purpose other than
2 prosecuting this litigation may be warranted. Accordingly, the parties hereby
3 stipulate to and petition the court to enter the following Stipulated Protective Order.
4 The parties acknowledge that this Order does not confer blanket protections on all
5 disclosures or responses to discovery and that the protection it affords from public
6 disclosure and use extends only to the limited information or items that are entitled
7 to confidential treatment under the applicable legal principles. The parties further
8 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
9 Order does not entitle them to file confidential information under seal. Local Rule
10 141 sets forth the procedures that must be followed and the standards that will be
11 applied when a party seeks permission from the court to file material under seal.
12

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation
15 of information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for protection
18 under Federal Rule of Civil Procedure 26(c).
19

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House
21 Counsel (as well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as:
24

25 **CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER**

26 **Estate of Stephen E. Crawley, et al. v. County of Kings, et al.**

27 2.5 Disclosure or Discovery Material: all items or information, regardless of
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6
7 2.7 House Counsel: attorneys who are employees of a party to this action.
8 House Counsel does not include Outside Counsel of Record or any other outside
9 counsel.

10 2.8 Non-Party: any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 2.9 Outside Counsel of Record: attorneys who are not employees of a party
13 to this action but are retained to represent or advise a party to this action and have
14 appeared in this action on behalf of that party or are affiliated with a law firm which
15 has appeared on behalf of that party.

16 2.10 Party: any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and Outside Counsel of Record (and their
18 support staffs).

19 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this action.

21 2.12 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)
24 and their employees and subcontractors.

25 2.13 Protected Material: any Disclosure or Discovery Material that is
26 designated as “Confidential Material.”

27 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or extracted
4 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
5 Protected Material; and (3) any testimony, conversations, or presentations by Parties
6 or their Counsel that might reveal Protected Material. However, the protections
7 conferred by this Stipulation and Order do not cover the following information: (a)
8 any information that is in the public domain at the time of disclosure to a Receiving
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as
10 a result of publication not involving a violation of this Order, including becoming part
11 of the public record through trial or otherwise; and (b) any information known to the
12 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
13 disclosure from a source who obtained the information lawfully and under no
14 obligation of confidentiality to the Designating Party. Any use of Protected Material at
15 trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
21 without prejudice; and (2) final judgment herein after the completion and exhaustion
22 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
23 limits for filing any motions or applications for extension of time pursuant to
24 applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that
3 qualify – so that other portions of the material, documents, items, or communications
4 for which protection is not warranted are not swept unjustifiably within the ambit of
5 this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber or retard the case development process or to
9 impose unnecessary expenses and burdens on other parties) expose the Designating
10 Party to sanctions.

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

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” pursuant
23 to section 2.4 above, to each page that contains protected material. If only a portion or
24 portions of the material on a page qualifies for protection, the Producing Party also
25 must clearly identify the protected portion(s) (e.g., by making appropriate markings in
26 the margins).

27 A Party or Non-Party that makes original documents or materials available for
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and
2 before the designation, all of the material made available for inspection shall be
3 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
4 it wants copied and produced, the Producing Party must determine which documents,
5 or portions thereof, qualify for protection under this Order. Then, before producing the
6 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend
7 to each page that contains Protected Material. If only a portion or portions of the
8 material on a page qualifies for protection, the Producing Party also must clearly
9 identify the protected portion(s) (e.g., by making appropriate markings in the
10 margins).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,
12 that the Designating Party identify on the record, before the close of the deposition,
13 hearing, or other proceeding, all protected testimony.

14 (c) for information produced in some form other than documentary and for
15 any other tangible items, that the Producing Party affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the
17 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
18 warrant protection, the Producing Party, to the extent practicable, shall identify the
19 protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
21 failure to designate qualified information or items does not, standing alone, waive the
22 Designating Party’s right to secure protection under this Order for such material.
23 Upon timely correction of a designation, the Receiving Party must make reasonable
24 efforts to assure that the material is treated in accordance with the provisions of this
25 Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
28 designation of confidentiality at any time. Unless a prompt challenge to a Designating

1 Party's confidentiality designation is necessary to avoid foreseeable, substantial
2 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
3 litigation, a Party does not waive its right to challenge a confidentiality designation by
4 electing not to mount a challenge promptly after the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
6 process by providing written notice of each designation it is challenging and
7 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
8 has been made, the written notice must recite that the challenge to confidentiality is
9 being made in accordance with this specific paragraph of the Protective Order. The
10 parties shall attempt to resolve each challenge in good faith and must begin the
11 process by conferring directly (in voice to voice dialogue; other forms of
12 communication are not sufficient) within 14 days of the date of service of notice. In
13 conferring, the Challenging Party must explain the basis for its belief that the
14 confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if
16 no change in designation is offered, to explain the basis for the chosen designation. A
17 Challenging Party may proceed to the next stage of the challenge process only if it has
18 engaged in this meet and confer process first or establishes that the Designating Party
19 is unwilling to participate in the meet and confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain
22 confidentiality within 21 days of the initial notice of challenge or within 14 days of
23 the parties agreeing that the meet and confer process will not resolve their dispute,
24 whichever is earlier. Each such motion must be accompanied by a competent
25 declaration affirming that the movant has complied with the meet and confer
26 requirements imposed in the preceding paragraph. Failure by the Designating Party to
27 make such a motion including the required declaration within 21 days (or 14 days, if
28 applicable) shall automatically waive the confidentiality designation for each

1 challenged designation. In addition, the Challenging Party may file a motion
2 challenging a confidentiality designation at any time if there is good cause for doing
3 so, including a challenge to the designation of a deposition transcript or any portions
4 thereof. Any motion brought pursuant to this provision must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and
6 confer requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
10 expose the Challenging Party to sanctions. Unless the Designating Party has waived
11 the confidentiality designation by failing to file a motion to retain confidentiality as
12 described above, all parties shall continue to afford the material in question the level
13 of protection to which it is entitled under the Producing Party's designation until the
14 court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case
18 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When the litigation has been terminated, a Receiving Party
21 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
28 only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
2 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this litigation and who have signed the “Acknowledgment
4 and Agreement to Be Bound” that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this litigation and
7 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants,
13 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
14 for this litigation and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the “Acknowledgment and Agreement to
18 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
19 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
20 reveal Protected Material must be separately bound by the court reporter and may not
21 be disclosed to anyone except as permitted under this Stipulated Protective Order.

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

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

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

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

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

9 If the Designating Party timely seeks a protective order, the Party served with
10 the subpoena or court order shall not produce any information designated in this
11 action as “CONFIDENTIAL” before a determination by the court from which the
12 subpoena or order issued, unless the Party has obtained the Designating Party’s
13 permission. The Designating Party shall bear the burden and expense of seeking
14 protection in that court of its confidential material – and nothing in these provisions
15 should be construed as authorizing or encouraging a Receiving Party in this action to
16 disobey a lawful directive from another court.

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

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be
23 construed as prohibiting a Non-Party from seeking additional protections.

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

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality agreement
2 with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
5 specific description of the information requested; and

6 (3) make the information requested available for inspection by the Non-
7 Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court
9 within 14 days of receiving the notice and accompanying information, the Receiving
10 Party may produce the Non-Party's confidential information responsive to the
11 discovery request. If the Non-Party timely seeks a protective order, the Receiving
12 Party shall not produce any information in its possession or control that is subject to
13 the confidentiality agreement with the Non-Party before a determination by the court.
14 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
15 of seeking protection in this court of its Protected Material.

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
21 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
22 persons to whom unauthorized disclosures were made of all the terms of this Order,
23 and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted to
8 the court.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected Material.
20 A Party that seeks to file under seal any Protected Material must comply with Local
21 Rule 141. Protected Material may only be filed under seal pursuant to a court order
22 authorizing the sealing of the specific Protected Material at issue. A sealing order will
23 issue only upon a request establishing that the Protected Material at issue is
24 privileged, protectable as a trade secret, or otherwise entitled to protection under the
25 law. If a Receiving Party's request to file Protected Material under seal is denied by
26 the court, then the Receiving Party may file the information in the public record unless
27 otherwise instructed by the court.

28 ///

1 13. FINAL DISPOSITION

2 Within 60 days after the final disposition of this action, as defined in paragraph
3 4, each Receiving Party must return all Protected Material to the Producing Party or
4 destroy such material. As used in this subdivision, “all Protected Material” includes
5 all copies, abstracts, compilations, summaries, and any other format reproducing or
6 capturing any of the Protected Material. Whether the Protected Material is returned or
7 destroyed, the Receiving Party must submit a written certification to the Producing
8 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
9 deadline that (1) identifies (by category, where appropriate) all the Protected Material
10 that was returned or destroyed and (2) affirms that the Receiving Party has not
11 retained any copies, abstracts, compilations, summaries or any other format
12 reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and
16 expert work product, even if such materials contain Protected Material. Any such
17 archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: December 24, 2014

21 WILLIAM L. SCHMIDT, ATTORNEY AT LAW, P.C.

22 By: /s/ William L. Schmidt
23 William L. Schmidt,
24 Attorneys for Plaintiffs

25 DATED: December 24, 2014

26 WEAKLEY & ARENDT, LLP

27 By: /s/ James J. Arendt
28 James J. Arendt
Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: December 29, 2014


UNITED STATES MAGISTRATE JUDGE