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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIA R., an individual; KARI R., an individual; VICKY P., an individual; NATASHA P., an individual;

Plaintiffs,

vs.

WILLIAM NULICK, an individual; TULARE COUNTY SHERIFF, a California governmental entity; COUNTY OF TULARE, a California governmental entity; and DOES 1 to 50, inclusive,

Defendants.

CASE NO. 1:15-cv-01378-JAM-EPG

STIPULATED PROTECTIVE ORDER

1. PURPOSE

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties, defendants, COUNTY OF TULARE and TULARE COUNTY SHERIFF, defendant, WILLIAM NULICK, and plaintiffs, MARIA R., KARI R., VICKY P., and NATASHA P., hereby stipulate to and petition the court to enter the following Stipulated Protective Order.



1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the
3 designation of information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House
8 Counsel (as well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL.”

12 2.5 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as
18 an expert witness or as a consultant in this action.

19 2.7 House Counsel: attorneys who are employees of a party to this action.
20 House Counsel does not include Outside Counsel of Record or any other outside
21 counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a
25 party to this action but are retained to represent or advise a party to this action and
26 have appeared in this action on behalf of that party or are affiliated with a law firm
27 which has appeared on behalf of that party.

28 2.10 Party: any party to this action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their
2 support staffs).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation
6 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
7 demonstrations, and organizing, storing, or retrieving data in any form or medium)
8 and their employees and subcontractors.

9 2.13 Protected Material: any Disclosure or Discovery Material that is
10 designated as “CONFIDENTIAL.”

11 2.14 Receiving Party: a Party that receives Disclosure or Discovery
12 Material from a Producing Party.

13 3. SCOPE

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

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Manner and Timing of Designations. Except as otherwise provided in
12 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
13 that qualifies for protection under this Order must be clearly so designated before
14 the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that
18 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains
19 protected material.

20 A Party or Non-Party that makes original documents or materials available for
21 inspection need not designate them for protection until after the inspecting Party has
22 indicated which material it would like copied and produced. During the inspection
23 and before the designation, all of the material made available for inspection shall be
24 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine which
26 documents, or portions thereof, qualify for protection under this Order. Then, before
27 producing the specified documents, the Producing Party must affix the
28 “CONFIDENTIAL” legend to each page that contains Protected Material.

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

4 (c) for information produced in some form other than documentary and for
5 any other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information or item is stored the
7 legend “CONFIDENTIAL.”

8 5.2 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party’s right to secure protection under this Order for such material.
11 Upon timely correction of a designation, the Receiving Party must make reasonable
12 efforts to assure that the material is treated in accordance with the provisions of this
13 Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time. Unless a prompt challenge to a
17 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
18 substantial unfairness, unnecessary economic burdens, or a significant disruption or
19 delay of the litigation, a Party does not waive its right to challenge a confidentiality
20 designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process by providing written notice of each designation it is challenging
24 and describing the basis for each challenge. A Challenging Party may proceed to the
25 next stage of the challenge process only if it has engaged in this meet and confer
26 process first or establishes that the Designating Party is unwilling to participate in
27 the meet and confer process in a timely manner.

28 ///

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
2 court intervention, the Challenging Party may file a motion challenging a
3 confidentiality designation if there is good cause for doing so, including a challenge
4 to the designation of a deposition transcript or any portions thereof. Any motion
5 brought pursuant to this provision must be accompanied by a competent declaration
6 affirming that the movant has complied with the meet and confer requirements
7 imposed by the preceding paragraph.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 case only for prosecuting, defending, or attempting to settle this litigation. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the litigation has been terminated, a
14 Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

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

19 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 “CONFIDENTIAL” only to:

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

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this litigation and
2 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

6 (d) the court and its personnel;

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

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

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

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
21 PRODUCED IN OTHER LITIGATION

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

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

27 (b) promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification shall include a copy of
2 this Stipulated Protective Order; and

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

5 The Party served with the subpoena or court order shall not produce any
6 information designated in this action as “CONFIDENTIAL” before a determination
7 by the court from which the subpoena or order issued, unless the Party has obtained
8 the Designating Party’s permission.

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

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

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

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

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

26 (3) make the information requested available for inspection by the Non-
27 Party.

28 (c) If the Non-Party fails to object or seek a protective order from this court

1 within 14 days of receiving the notice and accompanying information, the Receiving
2 Party may produce the Non-Party's confidential information responsive to the
3 discovery request. If the Non-Party timely seeks a protective order, the Receiving
4 Party shall not produce any information in its possession or control that is subject to
5 the confidentiality agreement with the Non-Party before a determination by the
6 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
7 expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
18 OTHERWISE PROTECTED MATERIAL

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

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all interested
11 persons, a Party may not file in the public record in this action any Protected
12 Material. A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rule 141.

14 13. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in
16 paragraph 4, each Receiving Party must return all Protected Material to the
17 Producing Party or destroy such material. As used in this subdivision, “all Protected
18 Material” includes all copies, abstracts, compilations, summaries, and any other
19 format reproducing or capturing any of the Protected Material. Whether the
20 Protected Material is returned or destroyed, the Receiving Party must submit a
21 written certification to the Producing Party (and, if not the same person or entity, to
22 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
23 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
24 that the Receiving Party has not retained any copies, abstracts, compilations,
25 summaries or any other format reproducing or capturing any of the Protected
26 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
27 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
28 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney

1 work product, and consultant and expert work product, even if such materials
2 contain Protected Material. Any such archival copies that contain or constitute
3 Protected Material remain subject to this Protective Order as set forth in Section 4
4 (DURATION).

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED: November 4, 2016

LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By: /s/ Michael S. Moss

9 Dana Alden Fox

10 Michael S. Moss

11 Attorneys for Defendants, COUNTY OF
12 TULARE and TULARE COUNTY
SHERIFF

13 DATED: November 4, 2016

KOBATECK BROWN KELLNER LLP

14
15 By: /s/ Benjamin Hakimfar

16 Benjamin Hakimfar

17 Attorneys for Plaintiffs, MARIA R., KARI
18 R., VICKY P., and NATASHA P.

19 DATED: November 4, 2016

LEBEAU THELEN LLP

20 By: /s/ Gary Logan

21 Gary Logan

22 Attorneys for Defendant, WILLIAM
23 NULICK

24
25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26
27 DATED: 11/8/2016

/s/ John A. Mendez

28 United States District Court 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 Eastern District of California on
[date] in the case of *Maria R. et al. v. Tulare County Sheriff et al.*, Case No. 1:15-cv-
01378-JAM-EPG. 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
Eastern 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: _____

