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

12 **JANE DOE, an individual,** ) **CASE NO. 1:15-CV-01641-WBS-JLT**  
13 )  
14 **Plaintiff,** ) **PROTECTIVE ORDER**  
15 **vs.** ) **~~PROPOSED ORDER~~**  
16 )  
17 **COUNTY OF KERN, a municipality;** ) **(Docs. 15, 16)**  
18 **GEORGE ANDERSON; an individual;** )  
19 **and DOES 1-10, inclusive,** )  
20 **Defendants.** )

21 **COME NOW** the Parties in this matter and jointly present this Protective Order for the  
22 Court's approval.

23 **PROTECTIVE ORDER**

24 **1. PURPOSES AND LIMITATIONS**

25 Disclosure and discovery activity in this action are likely to involve production of confidential,  
26 proprietary, or private information for which special protection from public disclosure and from use for  
27 any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties in Jane  
28 Doe v. County of Kern and George Anderson, USDC Eastern District of California Case No. 1:15-CV-  
01641-WBS-JLT petitioned the Court to enter the following Protective Order. Good cause appearing,  
the Court ORDERS as follows:

This Order does not confer blanket protections on all disclosures or responses to discovery and  
that the protection it affords from public disclosure and use extends only to the limited information or

1 items that are entitled to confidential treatment under the applicable legal principles. As set forth in  
2 Section 12.3, below, this Protective Order does not entitle the parties to file confidential information  
3 under seal.

4 **2. DEFINITIONS**

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
6 items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated,  
8 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil  
9 Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
11 their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
13 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

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

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

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

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

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

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1           2.10 Party: any party to this action, including all of its officers, directors, employees,  
2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

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

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

8           2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
9 “CONFIDENTIAL.”

10          2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
11 Party.

12 **3. SCOPE**

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

25 **4. DURATION**

26          Even after final disposition of this litigation, the confidentiality obligations imposed by this  
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
28 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and

1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
3 limits for filing any motions or applications for extension of time pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for Protection**

6 Each Party or Non-Party that designates information or items for protection under this Order  
7 must take care to limit any such designation to specific material that qualifies under the appropriate  
8 standards. The Designating Party must designate for protection only those parts of material, documents,  
9 items, or oral or written communications that qualify – so that other portions of the material,  
10 documents, items, or communications for which protection is not warranted are not swept unjustifiably  
11 within the ambit of this Order.

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

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

19 **5.2 Manner and Timing of Designations**

20 Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a)  
21 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
22 protection under this Order must be clearly so designated before the material is disclosed or produced.  
23 Designation in conformity with this Order requires:

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

1 margins). A Party or Non-Party that makes original documents or materials available for  
2 inspection need not designate them for protection until after the inspecting Party has indicated  
3 which material it would like copied and produced. During the inspection and before the  
4 designation, all of the material made available for inspection shall be deemed  
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied  
6 and produced, the Producing Party must determine which documents, or portions thereof,  
7 qualify for protection under this Order. Then, before producing the specified documents, the  
8 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected  
9 Material.

10 If only a portion or portions of the material on a page qualifies for protection, the Producing Party also  
11 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

20 **5.3 Inadvertent Failures to Designate**

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

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 **6.1 Timing of Challenges**

27 Any Party may challenge a designation of confidentiality at any time. Unless a prompt  
28 challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable,

1 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
2 litigation, the challenge must be brought within a reasonable time or it is waived.

3 **6.2 Meet and Confer**

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

16 **6.3 Judicial Intervention**

17 If the Parties cannot resolve a challenge after meeting and conferring, the Challenging Party  
18 SHALL initiate an informal, telephonic conference with the assigned Magistrate Judge. At that  
19 conference, the Court will attempt to resolve the matter without need for formal motion practice. If, in  
20 the Court's view, the matter can only be resolved through formal motion practice, the Court will  
21 authorize the Challenging Party to file a motion which SHALL comply with Local Rule 251(c).

22 As with motions to compel, the Challenging Party SHALL bear the initial burden of  
23 demonstrating that the Designating Party has improperly marked the material as confidential. If this  
24 showing is made, the burden will shift and as with motions for protective orders under Federal Rules of  
25 Civil Procedure 26(c), the burden of establishing the need for the confidentiality—as with any  
26 evidentiary privilege—must be borne by the Designating Party who is asserting it. Frivolous  
27 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses  
28 and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue

1 to afford the material in question the level of protection to which it is entitled under the Producing  
2 Party's designation until the court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 **7.1 Basic Principles**

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

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

12 **7.2 Disclosure of "CONFIDENTIAL" Information or Items**

13 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
14 Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
17 the information for this litigation and who have signed the "Acknowledgment and Agreement  
18 to Be Bound" that is attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
20 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
23 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
24 Agreement to Be Bound" (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,  
27 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
28 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

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

9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
10 **LITIGATION**

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

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

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

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
19 Designating Party who’s Protected Material may be affected. If the Designating Party timely  
20 seeks a protective order, the Party served with the subpoena or court order shall not produce  
21 any information designated in this action as “CONFIDENTIAL” before a determination by the  
22 court from which the subpoena or order issued, unless the Party has obtained the Designating  
23 Party’s permission. The Designating Party shall bear the burden and expense of seeking  
24 protection in that court of its confidential material – and nothing in these provisions should be  
25 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
26 directive from another court.

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

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

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

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

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

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

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

25 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
27 Material to any person or in any circumstance not authorized under this Protective Order, the Receiving  
28 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b)

1 use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
2 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
3 such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached  
4 hereto as Exhibit A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
6 **MATERIAL**

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

15 **12. MISCELLANEOUS**

16 **12.1 Right to Further Relief**

17 Nothing in this Order abridges the right of any person to seek its modification by the court in  
18 the future.

19 **12.2 Right to Assert Other Objections**

20 The entry of this Protective Order does not imply any Party’s waiver of any right it otherwise  
21 would have to object to disclosing or producing any information or item on any ground not addressed in  
22 this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of  
23 any of the material covered by this Protective Order.

24 **12.3 Filing Protected Material**

25 Without written permission from the Designating Party or a court order secured after  
26 appropriate notice to all interested persons, a Party may not file in the public record in this action any  
27 Protected Material. A Party that seeks to file under seal any Protected Material must comply with the  
28 applicable local rules. Protected Material may only be filed under seal pursuant to a court order

1 authorizing the sealing of the specific Protected Material at issue. A sealing order will issue only upon a  
2 request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
3 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material  
4 under seal is denied by the court, then the Receiving Party may file the information in the public record  
5 unless otherwise instructed by the court.

6 **13. FINAL DISPOSITION**

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

21 Dated: February \_\_\_\_, 2016

**CHAIN-COHN-STILES**

22 By /s/ Neil K. Gehlawat  
23 David K. Cohn and Neil K. Gehlawat  
24 Attorneys for Plaintiff, Jane Doe

25 Dated: February \_\_\_\_, 2016

**THERESA A. GOLDNER, COUNTY COUNSEL**

26 By /s/ Kathleen Rivera  
27 Kathleen Rivera and Andrew C. Thomson  
28 Attorneys for Defendant, County of Kern

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Dated: February \_\_\_, 2016

**WEAKLEY AND ARENDT**

By /s/ Leslie M. Dillahunty  
James D. Weakley and Leslie M. Dillahunty  
Attorneys for Defendant, George Anderson

IT IS SO ORDERED.

Dated: February 3, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE 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 Protective Order that was issued by the United States District Court for the Eastern District of California on [date] in the case of Jane Doe v. County of Kern and George Anderson, USDC Eastern District of California Case No. 1:15-CV-01641-WBS-JLT.

I agree to comply with and to be bound by all the terms of this 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 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 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print/type full name] of \_\_\_\_\_ [print/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 Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_