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11 and Donny Youngblood

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14
15 WESTON ANTHONY SMITH,)
16)
Plaintiff,)
17 vs.)
18)
COUNTY OF KERN, a public entity,)
DONNY YOUNGBLOOD, an individual)
19)
20 Defendants.)
21)

CASE NO: 15-CV-01749-MCE-JLT
STIPULATION FOR AND
[PROPOSED] PROTECTIVE ORDER

22 **COME NOW** Plaintiff Weston Anthony Smith and Defendants County of Kern and
23 Donny Youngblood, the Parties in this matter, by and through their respective counsel jointly
24 present this Stipulation for Protective Order for the Court's approval.

25 **PROTECTIVE ORDER**

26 **1. PURPOSE AND LIMITATIONS**

27 Disclosure and discovery activity in this action are likely to involve production of
28 confidential, proprietary, or private information for which special protection from public

1 disclosure and from use for any purpose, other than prosecuting this litigation may be warranted.
2 Accordingly, the parties petition the Court to enter the following Protective Order. Good cause
3 appearing, the Court ORDERS as follows:

4 This Order does not confer blanket protections on all disclosures or responses to discovery,
5 and that the protection it affords from public disclosure and use, extends only to the limited
6 information or items that are entitled to confidential treatment under the applicable legal
7 principals. .

8 **2. DEFINITIONS**

9 2.1 Challenging Party: A Party or Non-party that challenges the designation of
10 information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or items: Information (regardless of how it is
12 generated, stored or maintained) or tangible things that qualify for protection under California law.

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
14 well as their support staff).

15 2.4 Designating party: A Party or Non-party that designates information or items that
16 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.” Each page or
17 portion of such document or information that is asserted as CONFIDENTIAL must be specifically
18 so marked (and those portions or pages only), as set forth below.

19 2.5 Disclosure or Discovery Material: All items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among other things,
21 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
22 responses to discovery in this matter if appropriately marked in accordance with this Order

23 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to
24 the litigation who has been retained by a party, or its counsel, to serve as an expert witness or as a
25 consultant in this action.

26 2.7 House Counsel: Attorneys who are employees of a party to this action. House
27 Counsel does not include outside counsel of record or any other outside counsel.

28

1 2.8 Non-party: Any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: Attorneys who are not employees of a party to this
4 action, but are retained to represent or advise a party to this action, and have appeared in this
5 action on behalf of that party, or are affiliated with a law firm which has appeared on behalf of that
6 party.

7 2.10 Party: Any party to this action, including all of its officers, directors, employees,
8 consultants, retained experts, and outside counsel of record (and their support staffs).

9 2.11 Producing Party: A Party or Non-party that produces Disclosure or Discovery
10 Material in this action.

11 2.12 Professional Vendors: Persons or entities that provide litigation support services
12 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
13 organizing, storing, or retrieving data in any form or medium) and their employees and
14 subcontractors.

15 2.13 Protected material: Any disclosure or discovery material that is designated as
16 “CONFIDENTIAL” in accordance with this Order.

17 2.14 Receiving party: A Party that receives disclosure or discovery material from a
18 producing party.

19 **3. SCOPE**

20 The protections conferred by this Order cover not only protected material (as defined
21 above), but also (1) any information copied or extracted from protected material; (2) all copies,
22 excerpts, summaries, or compilations of protected material; and (3) any testimony, conversations,
23 or presentations by parties or their counsel that might reveal protected material. However, the
24 protections conferred by this Order do not cover the following information: (a) any information
25 that is in the public domain at the time of disclosure to a receiving party, or becomes part of the
26 public domain after its disclosure to a receiving party, as a result of publication not involving a
27 violation of this Order, including becoming part of the public record through trial or otherwise;
28 and (b) any information known to the receiving party, prior to the disclosure or obtained by the

1 receiving party, after the disclosure from another source. Any use of protected material at trial
2 shall be governed by a separate agreement or order.

3 **4. DURATION**

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

11 **5. DESIGNATING PROTECTED MATERIAL**

12 **5.1 Exercise of Restraint and care in Designating Material for Protection**

13 Each Party or Non-party that designates information or items for protection under this
14 Order, must take care to limit any such designation to specific material that qualifies under the
15 appropriate standards. The designating party must designate for protections only those parts of
16 material, documents, items, or oral or written communications that qualify – so that other portions
17 of the materials, documents, items, or communications for which protection is not warranted, are
18 not swept unjustifiable within the ambit of this Order.

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

23 If it comes to a designating party's attention that information or items that it designated for
24 protections do not qualify for protection, the designating party must promptly notify all other
25 parties that it is withdrawing the mistaken designation.

26 **5.2 Manner and Timing of Designations**

27 Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2 (a)
28 below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for

1 protections under this Order must be clearly so designated before the material is disclosed or
2 produced. Designation in conformity with Order requires:

3 ///

4 (a) For information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that
6 the producing party affix the legend “CONFIDENTIAL,” to each page that
7 contains protected material. If only a portion or portions of the material on a page
8 qualifies for protection the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins). A party or non-
10 party that makes original documents or materials available for inspection need not
11 designate them for protection, until after the inspecting party has indicated which
12 material it would like copied and produced. During the inspection and before the
13 designation, all of the material made available for inspection shall be deemed
14 “CONFIDENTIAL.” After the inspecting party has identified the documents it
15 wants copied and produced, the producing party must determine which documents,
16 or portions thereof, qualify for protection under this Order. Then, before producing
17 the specified documents, the producing party must affix the “CONFIDENTIAL”
18 legend to each page that contains protected material. If only a portion or portions
19 of the material on a page qualifies for protection, the producing party also must
20 clearly identify the protected portion(s) (e.g., by making appropriate markings in
21 the margins).

22 (b) For testimony given in deposition or in other pretrial or trial proceedings,
23 that the designating party identify on the record, before the close of the deposition,
24 hearing, or other proceeding, all protected testimony.

25 (c) For information produced in some form, other than documentary and for
26 any other tangible items, that the producing party affix in a prominent place on the
27 exterior of the container, or containers, in which the information or item is stored
28 the legend “CONFIDENTIAL.” If only a portion or portions of the information or

1 item warrant protection, the producing party, to the extent practicable, shall
2 identify the protected portion(s).

3 ///

4 **5.3 Inadvertent Failures to Designate**

5 If timely corrected, an inadvertent failure to designate qualified information or items does
6 not, standing alone, waive the designating party's right to secure protection under this Order for
7 such material. Upon timely correction of a designation, the receiving party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this Order.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 **6.1 Timing of Challenges**

11 Any Party may challenge a designation of confidentiality at any time.

12 **6.2 Meet and Confer**

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

27 **6.3 Judicial Intervention**

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1 If the Parties cannot resolve a challenge after meeting and conferring, the Challenging
2 Party shall bring a formally noticed motion.

3 As with motions to compel, the Challenging Party SHALL bear the initial burden of
4 demonstrating that the designating party has improperly marked the material as confidential. If
5 this showing is made, the burden will shift and the burden of establishing the need for the
6 confidentiality – as with any evidentiary privilege – must be borne by the designating party who is
7 asserting it. Frivolous designations or challenges, and those made for an improper purpose (e.g.,
8 to harass or impose unnecessary expenses and burdens on other parties) may expose the
9 challenging or designating party to sanctions. All parties shall continue to afford the material in
10 question the level of protection to which it is entitled under the Producing Party’s designation until
11 the Court rules on the challenge.

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

13 **7.1 Basic Principles**

14 A receiving party may use protected material that is disclosed or produced by another party
15 or by a non-party in connection with this this case only for prosecuting, defending, or attempting
16 to settle this litigation. Such protected material may be disclosed only to the categories of persons
17 and under the conditions described in this Order. When the litigation has been terminated, a
18 receiving party must comply with the provisions of section 13 below (FINAL DISPOSITION).

19 Protected material must be stored and maintained by a receiving party at a location and in a
20 secure manner that reasonably ensures that access is limited to the persons authorized under this
21 Order.

22 **7.2 Disclosure of “CONFIDENTIAL” Information or Items**

23 Unless otherwise ordered by the court or permitted in writing by the designating party, a
24 receiving party may disclose any information or item designated “CONFIDENTIAL” only to:

- 25 (a) The receiving party’s outside counsel of record in this action, as well as employees
26 of said outside counsel of record to whom it is reasonably necessary to disclose the
27 information for this litigation and who have signed the “Acknowledgement and Agreement
28 to Be Bound” that is attached hereto as Exhibit A;

1 (b) The officers, directors, and employees (including House Counsel) of the Receiving
2 party to whom disclosure is reasonably necessary for this litigation and who have signed
3 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

7 (d) The court and its personnel;

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

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

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

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

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

25 (a) Promptly notify in writing the designating party. Such notification shall include a
26 copy of the subpoena or court order;

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

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

3 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the
4 designating party who's protected material may be affected. If the designating party timely
5 seeks a protective order, the party served with the subpoena or court order shall not
6 produce any information designated in this action as "CONFIDENTIAL" before a
7 determination by the court from which the subpoena or order issued, unless the party has
8 obtained the designating party's permission unless required by law. The designating party
9 shall bear the burden and expense of timely seeking protection in that court of its
10 confidential material – and nothing in these provisions should be construed as authorizing
11 or encouraging a Receiving party in this action to disobey a lawful directive from another
12 court.

13 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
14 **THIS LITIGATION**

15 (a) The terms of this Order are applicable to information produced by a non-party in
16 this action and designated as "CONFIDENTIAL" unless otherwise agreed or consented to
17 by the parties hereto. Such information produced by non-parties in connection with this
18 litigation is protected by the remedies and relief provided by this Order. Nothing in these
19 provisions should be construed as prohibiting a non-party or party from seeking additional
20 or other protections.

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

25 (1) Promptly notify in writing the requesting party and the non-party that
26 some or all of the information requested is subject to a confidentiality agreement
27 with a non-party;

1 (2) Promptly provide the non-party with a copy of the Protective Order in this
2 litigation, the relevant discovery request(s), and a reasonably specific description of
3 the information requested; and

4 (3) Make the information requested available for inspection by the non-party.

5 (c) If the non-party fails to timely object or seek a protective order after receiving the
6 notice and accompanying information, the receiving party may produce the non-party's
7 confidential information responsive to the discovery request. If the non-party timely
8 seeks a protective order, the receiving party shall not produce any information in its
9 possession or control that is subject to the confidentiality agreement with the non-party
10 before a determination by the court unless required by law. Absent a court order to the
11 contrary, the non-party shall bear the burden and expense of seeking protection in this
12 court of its protected material.

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

14 If a Receiving party learns that, by inadvertence or otherwise, it has disclosed protected
15 material to any person or in any circumstance not authorized under this Protective Order, the
16 receiving party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c)
18 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
19 Order, and (d) request such person or persons to execute the "Acknowledgement and Agreement
20 to Be Bound" that is attached hereto to as Exhibit A.

21 **11. INADVERTENT PRODUCTION OF PROTECTED MATERIAL**

22 A producing party may give notice to receiving parties that certain inadvertently produced
23 material is subject to a claim of protection. After being notified, a receiving party must promptly
24 return, sequester, or destroy the specified information and any copies it has; must not use or
25 disclose the information until the claim is resolved; and must take reasonable steps to retrieve the
26 information if the receiving party disclosed it before being notified. The producing party must
27 preserve the information until the claim is resolved.

28 **12. MISCELLANEOUS**

1 **12.1 Right to Further Relief**

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

4 **12.2 Right to Assert Other Obligations**

5 The entry of this Protective Order does not imply any party’s waiver of any right it
6 otherwise would have to object to disclosing or producing any information or item on any ground
7 not addressed in this Protective Order. Additionally, the entry of this Protective Order does not
8 expressly nor impliedly constitute a waiver of any peace officer, regardless of whether said officer
9 is a party or non-party, of the right to require a *Pitchess* Motion and in-camera review before the
10 disclosure or production of any of said peace officer’s personnel files, or personnel materials,
11 pursuant to California Evidence Code, Section 1043 et. seq. and California Penal Code, Section
12 832.7. Similarly, no Party waives any right to object on any ground to use in evidence of any of
13 the material covered by this Protective Order.

14 **12.3 Filing Protected material**

15 Without written permission from the designating party or a court order secured after
16 appropriate notice to all interested persons, a party may not file in the public record in this action
17 any protected material. A Party that seeks to file under seal any protected material must comply
18 with the applicable local rules. If a Receiving party’s request to file protected material under seal
19 is denied by the court, then the Receiving party may file the information in the public record
20 unless otherwise instructed by the court.

21 **13. FINAL DISPOSITION**

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
23 Receiving party must return all protected material to the Producing Party or destroy such material.
24 It is the designation parties obligation and expense to obtain such materials at a reasonable time
25 upon reasonable notice. As used in this subdivision, “all Protected Material” includes all copies,
26 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
27 Protected material. Whether the protected material is returned or destroyed, the receiving party
28 must submit a written certification to the producing party (and, if not the same person or entity, to

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Protective Order that was" issued by the United States
6 District Court, Eastern District of California, in Smith v. County of Kern, et al., Case No. 15-CV-
7 01749-MCE-JLT."

8 I agree to comply with and to be bound by all the terms of this Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any matter
11 any information or item that is subject to this Protective Order to any person or entity except in
12 strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the Kern County Superior Court of the State
14 of California for the purpose of enforcing the terms of this Protective Order, even if such
15 enforcement proceedings occur after termination of this action.

16
17 Date: _____

18 Printed name: _____

19 Signature: _____

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