

1 Mark E. Merin (State Bar No. 043849)
Paul H. Masuhara (State Bar No. 289805)
2 LAW OFFICE OF MARK E. MERIN
1010 F Street, Suite 300
3 Sacramento, California 95814
Telephone: (916) 443-6911
4 Facsimile: (916) 447-8336
E-Mail: mark@markmerin.com
5 paul@markmerin.com

6 Attorneys for Plaintiffs
MELISSA M. NEYLON and
7 SHAWN P. NEYLON

8 **P O R T E R | S C O T T**
A PROFESSIONAL CORPORATION
9 Carl L. Fessenden, SBN 161494
Jeffrey A. Nordlander, SBN 308929
10 350 University Avenue, Suite 200
Sacramento, California 95825
11 TEL: 916.929.1481
FAX: 916.927.3706

12 Attorneys for Defendants
13 COUNTY OF INYO, BILL LUTZE,
and DOUGLAS RICHARDS
14

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA
17 FRESNO DIVISION

18 MELISSA M. NEYLON, et al.,
19 Plaintiffs,
20 vs.
21 COUNTY OF INYO, et al.,
22 Defendants.

Case No. 1:16-cv-00712-AWI-JLT

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

(Doc. 31)

23 **1. PURPOSE AND LIMITATIONS**

24 Disclosure and discovery activity in this action could potentially to involve production of
25 confidential or private information for which special protection from public disclosure and from use for
26 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
27 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
28 acknowledge that this Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under Fed. R. Civ. P. 26(c). The parties
3 further acknowledge that this Stipulated Protective Order does not entitle them to file confidential
4 information under seal; E.D. Cal. L.R. 141 sets forth the procedures that must be followed and the
5 standards that will be applied when a party seeks permission from the Court to file material under seal.

6 **2. DEFINITIONS**

7 2.1 Challenging Party: a Party to this litigation that challenges the designation of information or
8 items under this Order.

9 2.2 “CONFIDENTIAL” Information or “CONFIDENTIAL” Item: information or tangible things that
10 qualify for protection under Fed. R. Civ. P. 26(c).

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

12 2.4 Designating Party: a Party to this litigation that designates information or items that it produces in
13 disclosures or in responses to discovery as “CONFIDENTIAL.”

14 2.5 Disclosure Material or Discovery Material: any item or information that is produced or generated
15 in disclosures or responses to discovery in this matter.

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

19 2.7 Party: any Party to this litigation, including its officers, directors, employees, consultants, retained
20 experts, and Counsel of Record (and their support staff).

21 2.8 Producing Party: a Party to this litigation that produces Disclosure Material or Discovery Material
22 in this action.

23 2.9 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
25 organizing, storing, or retrieving data in any form or medium) and their employees and
26 subcontractors.

27 2.10 Protected Material: any Disclosure Material or Discovery Material that is designated as
28 “CONFIDENTIAL” by a Producing Party.

1 2.11 Receiving Party: a Party to this litigation that receives Disclosure Material or Discovery Material
2 from a Producing Party.

3 **3. SCOPE**

4 The protections conferred by this Stipulated Protective Order cover not only Protected Material,
5 but also (1) any information copied or extracted from Protected Material; (2) copies, excerpts,
6 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations
7 by a Party or their Counsel that might reveal Protected Material.

8 The protections conferred by this Stipulated Protective Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
11 publication not involving a violation of this Order, including becoming part of the public record through
12 trial or otherwise; or (b) any information known to the Receiving Party prior to the disclosure or obtained
13 by the Receiving Party after the disclosure from a source who obtained the information lawfully and
14 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial
15 shall be governed by a separate agreement or order.

16 **4. DURATION**

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

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each Party that designates
25 information or items for protection under this Stipulated Protective Order must take care to limit any
26 such designation to specific material that qualifies under Fed. R. Civ. P. 26(c). The Designating Party
27 must designate for protection only those parts of material, documents, items, or oral or written
28 communications that qualify so that other portions of the material, documents, items, or communications

1 for which protection is not warranted are not swept unjustifiably within the ambit of this Stipulated
2 Protective Order.

3 A party may only designate as “CONFIDENTIAL” Information or Items which it has determined
4 in good faith to be sufficient to justify the Court’s entry of a protective order pursuant to Fed. R. Civ. P.
5 26(c) and E.D. Cal. L.R. 141.1.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
7 without substantial justification or that have been made for an improper purpose (*e.g.*, to impose
8 unnecessary expenses and burdens on other parties) shall subject the Designating Party to sanctions.

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

12 5.2 Manner and Timing of Designations: Except as otherwise provided in this Stipulated Protective
13 Order, or as otherwise stipulated or ordered, Disclosure Material or Discovery Material that qualifies for
14 protection under this Stipulated Protective Order must be clearly designated before the material is
15 disclosed or produced. In the absence of substantial unfairness, economic burden, or a significant
16 disruption or delay of the litigation, a Party does not waive its right to designate material as
17 “CONFIDENTIAL” by not doing so before disclosure or production upon a showing of reasonable
18 cause.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (*e.g.*, paper or electronic documents, but excluding
21 transcripts of depositions or other pre-trial or trial proceedings), that the Producing Party affix the legend
22 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion or portions of the
23 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
24 portion(s) (*e.g.*, by making appropriate markings in the margins). A Party that makes original documents
25 or materials available for inspection need not designate them for protection until after the inspecting
26 Party has indicated which material it would like copied and produced. During the inspection and before
27 the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.”
28 After the inspecting Party has identified the documents it wants copied and produced, the Producing

1 Party must determine which documents, or portions thereof, qualify for protection under this Stipulated
2 Protective Order. Then, before producing the specified documents, the Producing Party must affix the
3 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or portions of
4 the material on a page qualifies for protection, the Producing Party also must clearly identify the
5 protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

13 5.3 Non-Designation: A Party’s non-designation of any information or item implies that it is not
14 Protected Material.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

21 6.2 Timing of Motion for Protective Order: Within ten (10) calendar days of a Challenging Party’s
22 challenge to the Producing Party’s designation, the Producing Party must move for a protective order
23 pursuant to E.D. Cal. L.R. 251, if it seeks to maintain the Protected Material’s designation as
24 “CONFIDENTIAL” and subject to this Stipulated Protective Order. If the Producing Party fails to move
25 for a protective order within the specified ten (10) calendar days, the Producing Party automatically
26 waives each challenged Protected Material’s designation as “CONFIDENTIAL” and subject to this
27 Stipulated Protective Order.

28 6.3 Judicial Intervention: If the Parties cannot resolve a challenge without Court intervention, the

1 Producing Party’s motion for protective order must be accompanied by a competent declaration affirming
2 that the movant has complied with section 5.1 of this Stipulated Protective Order (“Exercise of Restraint
3 and Care in Designating Material for Protection”). Nothing in Stipulated Protective Order precludes a
4 Challenging Party from filing a separate or parallel motion challenging a confidentiality designation at
5 any time, if there is good cause for doing so.

6 Nothing in this Stipulated Protective Order changes or modifies the Designating Party’s burden of
7 persuasion or substantive or procedural obligation in any such confidentiality challenge proceeding,
8 pursuant to Fed. R. Civ. P. 26(c) and E.D. Cal. L.R. 141.1. Unless the Designating Party has waived the
9 confidentiality designation by failing to file a motion for protective order, as described above, all parties
10 shall continue to afford the material in question the level of protection to which it is entitled under the
11 Producing Party’s designation until the Court rules on the challenge.

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

13 7.1 **Basic Principles**: A Receiving Party may use Protected Material that is disclosed or produced by
14 another Party in connection with this case only for prosecuting, defending, or attempting to settle this
15 litigation. Such Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Stipulated Protective Order. Protected Material must be stored and
17 maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to
18 the persons authorized under this Stipulated Protective Order.

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

- 22 (a) the Receiving Party’s Counsel of Record in this action;
- 23 (b) the officers, directors, and employees/staff of the Receiving Party;
- 24 (c) Experts of the Receiving Party;
- 25 (d) the Court and its personnel;
- 26 (e) Court reporters and their employees/staff, professional jury or trial consultants, mock
27 jurors, and Professional Vendors;
- 28 (f) witnesses in the action, during their deposition, unless otherwise agreed by the

1 Designating Party or ordered by the Court; and

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

4 IT IS SO STIPULATED.

5 Dated: December 20, 2016

Respectfully Submitted,

6 /s/ Mark E. Merin

7 By: _____

8 Mark E. Merin
9 Paul H. Masuhara
10 LAW OFFICE OF MARK E. MERIN
1010 F Street, Suite 300
Sacramento, California 95814

11 Attorneys for Plaintiffs
12 MELISSA M. NEYLON and
SHAWN P. NEYLON

13 Dated: December 19, 2016

Respectfully Submitted,

14 /s/ Jeffrey A. Nordlander
15 (as authorized on December 19, 2016)

By: _____

16 Carl L. Fessenden
17 Jeffrey A. Nordlander
18 **PORTER | SCOTT**
350 University Avenue, Suite 200
Sacramento, California 95825

19 Attorneys for Defendants
20 COUNTY OF INYO, BILL LUTZE, and
DOUGLAS RICHARDS

21
22
23 IT IS SO ORDERED.

24 Dated: December 21, 2016

/s/ Jennifer L. Thurston
25 UNITED STATES MAGISTRATE JUDGE