

1 MAHONEY LAW GROUP, APC
2 KEVIN MAHONEY (SBN 235367)
3 KATHERINE J. ODENBREIT (SBN 184619)
4 249 East Ocean Boulevard, Suite 814
5 Long Beach, CA 90802
6 Telephone: (562) 590.5550
7 Facsimile: (562) 590.8400

8 BRIANA KIM, PC
9 BRIANA M. KIM
10 249 E. Ocean Blvd., Suite 814
11 Long Beach, CA 90802
12 Telephone: (714) 482.6301
13 Facsimile: (714) 482.6302

14 Attorneys for Plaintiff
15 MARK ASHLEY

16 JACKSON LEWIS P.C.
17 NATHAN W. AUSTIN (SBN 219672)
18 EVAN D. BEECHER (SBN 280364)
19 400 Capitol Mall, Suite 1600
20 Sacramento, California 95814
21 Telephone: (916) 341-0404
22 Facsimile: (916) 341-0141

23 Attorneys for Defendant
24 SHERIFF DONNY YOUNGBLOOD

25 UNITED STATES DISTRICT COURT
26 EASTERN DISTRICT OF CALIFORNIA

27 MARK ASHLEY, INDIVIDUALLY AND ON
28 BEHALF OF THOSE SIMILARLY
SITUATED,

Plaintiff,

v.

SHERIFF DONNY YOUNGBLOOD, et al.

Defendants.

CASE NO. 1:16:cv-01638-JLT

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

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

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

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: Policies and procedures of the Kern
15 County Sheriff Office relating to the performance of law enforcement duties and the operation of
16 detention facilities; and training materials provided to Deputy Sheriffs and Detention Deputies
17 relating to the performance of their duties.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
19 as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or items that it
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among other things,
24 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
25 responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
27 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
28 consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a Party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

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

8 2.10 Party: any Party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

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

16 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material
22 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
23 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
25 However, the protections conferred by this Stipulation and Order do not cover the following
26 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
27 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
28 publication not involving a violation of this Order, including becoming part of the public record

1 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
2 disclosure or obtained by the Receiving Party after the disclosure from a source who
3 obtained the information lawfully and under no obligation of confidentiality to the Designating
4 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
14 or Non-Party that designates information or items for protection under this Order must take care to
15 limit any such designation to specific material that qualifies under the appropriate standards. The
16 Designating Party must designate for protection only those parts of material, documents, items, or
17 oral or written communications that qualify – so that other portions of the material, documents,
18 items, or communications for which protection is not warranted are not swept unjustifiably within
19 the ambit of this Order.

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
28 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

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

9 A Party or Non-Party that makes original documents or materials available for inspection
10 need not designate them for protection until after the inspecting Party has indicated which material
11 it would like copied and produced. During the inspection and before the designation, all of the
12 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting
13 Party has identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this Order. Then,
15 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”
16 legend to each page that contains Protected Material. If only a portion or portions of the material
17 on a page qualifies for protection, the Producing Party also must clearly identify the protected
18 portion(s) (e.g., by making appropriate markings in the margins).

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

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

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
3 in accordance with the provisions of this Order. For purposes of this section, a correction made
4 within a reasonable time of being put on notice of an inadvertent failure to designate shall constitute
5 a timely correction.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

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

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
28 Local Rules 141.1 and 251 within 21 days of the initial notice of challenge or within 14 days of the

1 Parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
2 Each such motion must be accompanied by a competent declaration affirming that the movant has
3 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
4 the Designating Party to make such a motion including the required declaration within 21 days (or
5 14 days, if applicable) shall waive the confidentiality designation for each challenged designation.
6 In addition, the Challenging Party may file a motion challenging a confidentiality designation at
7 any time if there is good cause for doing so, including a challenge to the designation of a deposition
8 transcript or any portions thereof. Any motion brought pursuant to this provision must be
9 accompanied by a competent declaration affirming that the movant has complied with the meet and
10 confer requirements imposed by the preceding paragraph.

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

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
28 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any

1 information or item designated “CONFIDENTIAL” only to:

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

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

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

12 (d) the court and its personnel;

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

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

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

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

27
28

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

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

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

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

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

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

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

25 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
26 Party’s confidential information in its possession, and the Party is subject to an agreement with the
27 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:
28

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

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

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

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

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
23 MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain inadvertently
25 produced material is subject to a claim of privilege or other protection, the obligations of the
26 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
27 is not intended to modify whatever procedure may be established in an e-discovery order that
28

1 provides for production without prior privilege review. The Parties' Stipulated Rule 502(d) Order
2 is incorporated herein by reference.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
5 seek its modification by the court in the future.

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

11 12.3 Filing Protected Material. Without written permission from the Designating Party
12 or a court order secured after appropriate notice to all interested persons, a Party may not file in the
13 public record in this action any Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
15 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
16 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the
17 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
18 protection under the law. If a Receiving Party's request to file Protected Material under seal
19 pursuant to Local Rule 141 is denied by the court, then the Receiving Party may file the information
20 in the public record pursuant to Local Rule 141 unless otherwise instructed by the court.

21 12.4 The Parties' duties described in this Protective Order to maintain the confidentiality
22 of "CONFIDENTIAL" information and only use such material and information for purposes of this
23 litigation shall commence upon execution of this document by their counsel regardless of when or
24 if the terms herein become an order of the Court

25 13. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
27 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
28 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
2 the Protected Material is returned or destroyed, the Receiving Party must submit a written
3 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
4 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
5 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any of the
7 Protected Material.

8 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
9 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
10 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
11 and expert work product, even if such materials contain Protected Material. Any such archival
12 copies that contain or constitute Protected Material remain subject to this Protective Order as set
13 forth in section 4 (DURATION).

14 **IT IS SO STIPULATED.**

15
16 Dated: January 23, 2020

MAHONEY LAW GROUP, APC

17 By: s/ Katherine J. Odenbreit (as authorized on 1/23/2020)

18 KEVIN MAHONEY

KATHERINE J. ODENBREIT

19 Attorneys for Plaintiff

20 MARK ASHLEY

21 Dated: January 23, 2020

JACKSON LEWIS P.C.

22 By: s/ Evan Beecher

23 NATHAN W. AUSTIN

EVAN D. BEECHER

24 Attorneys for Defendant

25 SHERIFF DONNY YOUNGBLOOD

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

ORDER

IT IS SO ORDERED.

Dated: January 24, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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

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
_____, 2020 in the case of *Mark Ashley v. Sheriff Donny Youngblood*, Case No. 1:16-cv-
01638-JLT. 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: _____