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

14 **KERNEL MILITY,**) **Case No.: 1:17-CV-00446-JLT**
15)
16 **Plaintiff,**) **STIPULATION FOR A PROTECTIVE**
17 **v.**) **ORDER; EXHIBIT A; [PROPOSED]**
18) **ORDER**
19 **COUNTY OF KERN, CA; PHIL**) **(Doc. 52)**
20 **TAYLOR; CHRIS RODRIGUEZ;**)
21 **RICHARD CARILLO; DAVE**)
22 **LANGELLA**)
23 **Defendants.**)
24)
25)
26)
27)
28)

21 This Stipulation for a Protective Order (hereinafter the “Stipulation”), based upon the 9th Circuit
22 Model Protective Order, is agreed to by Plaintiff Kernel Mility (hereinafter “Plaintiff”), and
23 Defendants, County of Kern (hereinafter “County”), Phil Taylor (hereinafter “Taylor”), Chris
24 Rodriguez (hereinafter “Rodriguez”), Richard Carillo (hereinafter “Carillo”), Dave Langella
25 (hereinafter “Langella”), (hereinafter County, Taylor, Rodriguez, Carillo and Langella are
26 collectively referred to as “Defendants”) (hereinafter Plaintiff and Defendants are collectively
27 referred to as the “Parties”), by and through their respective attorneys of record.

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1 **PROTECTIVE ORDER**

2 **1. PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the Parties in **Kernel Mility v. County of Kern et al.**, USDC Eastern District of
7 California Case No. **1:17-CV-00446-JLT** petition the Court to enter the following Protective
8 Order, with good cause appearing therefore:

9 This Order does not confer blanket protections on all disclosures or responses to discovery
10 and the protection it affords from public disclosure and use extends only to the limited information
11 or items that are entitled to confidential treatment under the applicable legal principles. As set
12 forth in Section 12.3, below, this Protective Order does not entitle the Parties to file confidential
13 information under seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
16 items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
18 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
19 Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces
23 in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

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1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a Party to this action. House Counsel does
5 not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
7 named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
9 retained to represent or advise a party to this action and have appeared in this action on behalf of
10 that party or are affiliated with a law firm which has appeared on behalf of that party.

11 2.10 Party: any party to this action, including all of its officers, directors, employees, consultants,
12 retained experts, and Outside Counsel of Record (and their support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
14 this action.

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

18 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
21 Party.

22 **3. SCOPE**

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

1 public domain after its disclosure to a Receiving Party as a result of publication not involving a
2 violation of this Order, including becoming part of the public record through trial or otherwise;
3 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
4 Receiving Party after the disclosure from a source who obtained the information lawfully and
5 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
6 trial shall be governed by a separate agreement or order.

7 **4. DURATION**

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

15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for Protection

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

23 If it comes to a Designating Party’s attention that information or items that it designated
24 for protection 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 protection under this Order must be clearly so designated before the material is disclosed or
2 produced. Designation in conformity with this Order requires:

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

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

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

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

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1 5.3 Inadvertent Failure to Designate

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

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges

8 Any Party may challenge a designation of confidentiality at any time. Unless a prompt
9 challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable,
10 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
11 litigation, the challenge must be brought within a reasonable time or it is waived.

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. In conferring, the Challenging Party
20 must explain the basis for its belief that the confidentiality designation was not proper and must
21 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
24 it 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.

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27 6.3 Judicial Intervention

1 If the Parties cannot resolve a challenge after meeting and conferring, the Challenging
2 Party SHALL initiate an informal, telephonic conference with the assigned Magistrate Judge as
3 required by the scheduling order. At that conference, the Court will attempt to resolve the matter
4 without need for formal motion practice. If, in the Court’s view, the matter can only be resolved
5 through formal motion practice, the Court will authorize the Challenging Party to file a motion
6 which SHALL comply with Local Rule 251(c).

7 As with motions to compel, the Challenging Party SHALL bear the initial burden of
8 demonstrating that the Designating Party has improperly marked the material as confidential. If
9 this showing is made, the burden will shift and as with motions for protective orders under Federal
10 Rules of Civil Procedure 26(c), the burden of establishing the need for the confidentiality—as
11 with any evidentiary privilege—must be borne by the Designating Party who is asserting it.
12 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
14 sanctions. All Parties shall continue to afford the material in question the level of protection to
15 which it is entitled under the Producing Party’s designation until the court rules on the challenge.

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

17 7.1 Basic Principles

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

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

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27 7.2 Disclosure of “CONFIDENTIAL” Information or Items

1 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
2 Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

13 (d) the court and its personnel;

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

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

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

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27 **8. PROTECTED MATERIAL SUBPOENAED AND/OR ORDERED PRODUCED IN**
28 **OTHER LITIGATION**

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

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

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

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

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

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

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

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

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

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

5 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
6 receiving the notice and accompanying information, the Receiving Party may produce the Non-
7 Party's 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 possession
9 or control that is subject to the confidentiality agreement with the Non-Party before a
10 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
11 burden and expense of seeking protection in this court of its Protected Material.

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

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

20 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
21 **PROTECTED MATERIAL**

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

1 protection, the Parties may incorporate their agreement in the stipulated protective order
2 submitted to the court.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief

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

7 12.2 Right to Assert Other Objections

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

12 12.3 Filing Protected Material

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

22 **13. FINAL DISPOSITION**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
24 Receiving Party must return all Protected Material to the Producing Party or destroy such
25 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
28 submit a written certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
2 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
3 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
5 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
6 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
7 product, and consultant and expert work product, even if such materials contain Protected
8 Material. Any such archival copies that contain or constitute Protected Material remain subject
9 to this Protective Order as set forth in Section 4.

10 Dated July 9, 2018

LAW OFFICE OF RANDY RUMPH

11 By: /s/ Randy M. Rumph
12 Randy M. Rumph, Esq.
13 Attorneys for Plaintiff Kernel Mility

14 Dated: July 10, 2018

MARK L. NATIONS, COUNTY COUNSEL

15 By: /s/ Andrew C. Thomson
16 Andrew C. Thomson, Chief Deputy
17 Attorneys for Defendants County of Kern,
Richard Carillo and Dave Langella

18 Dated: July 10, 2018

ROBINSON & KELLAR

19 By: /s/ Michael Kellar
20 Michael Kellar, Esq.
21 Attorneys for Defendants Phil Taylor and
Chris Rodriguez

22 IT IS SO ORDERED.

23 Dated: **July 12, 2018**

24 **/s/ Jennifer L. Thurston**
25 UNITED STATES MAGISTRATE JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Protective Order that was issued by the United States District Court for the Eastern District
6 of California on _____ [date] in the case of **Kernel Mility v. County of Kern et al.**, USDC
7 Eastern District of California Case No. **1:17-CV-00446-JLT**.

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

13 I further agree to submit to the jurisdiction of the United States District Court for the Eastern
14 District 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 I hereby appoint _____ [print/type full name] of
17 _____ [print/type full address and telephone number]
18 as my California agent for service of process in connection with this action or any proceedings
19 related to enforcement of this Protective Order.

20
21 Date: _____

22
23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

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