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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK J. CAVANAUGH,

Plaintiff,

vs.

DONNY YOUNGBLOOD, et al.,

Defendants.

Case No.: 1:17-cv-00832-LJO-JLT

**STIPULATED PROTECTIVE ORDER
RE KERN BEHAVIORAL HEALTH
AND RECOVERY SERVICE'S
RECORDS, [PROPOSED] ORDER**

(Doc. 52)

STIPULATION

The parties, Plaintiff Cavanaugh; Defendants Youngblood, Hull, Jennings, Fuentez (County Defendants); and Defendants David Landrum, David Fennell, Christopher Guzman, Dillion Morgan (State Defendants) by and through counsel, enter this stipulation for a protective order concerning Kern Behavioral Health & Recovery Services' records of medical and/or mental health care given to Plaintiff.

1 **A. Recitals**

2 1. Plaintiff subpoenaed Kern Behavioral Health & Recovery Services' records of
3 medical and/or mental health care given to Plaintiff, and defendants have joined in that
4 subpoena.

5 2. On information and belief, the subpoenaed records implicate medical and mental
6 health records protected by public policy and Plaintiff's privacy rights.

7 3. On information and belief, Kern Behavioral Health & Recovery Services
8 requires specific authorization from Plaintiff Cavanaugh before it will produce the records
9 subpoenaed.

10 4. Plaintiff Cavanaugh seeks to condition the authorization to release the
11 subpoenaed records on a Court-issued protective order.

12 **B. Protective Order**

13 1. Unless otherwise ordered by the Court or permitted in writing by the
14 Defendants' attorney, the subject records of Kern Behavioral Health and Recovery Services
15 and/or their contents may be disclosed only to:

16 (a) Any attorney licensed by the State of California who represents Plaintiff
17 Cavanaugh or the County Defendants or the State Defendants in this action, including the
18 agents and employees of such attorney whom it is reasonably necessary to disclose the
19 information for this litigation and who have signed the "Acknowledgment and Agreement to
20 Be Bound" that is attached hereto as Exhibit A.

21 (b) Any expert (defined as a person with specialized knowledge or experience in a
22 matter pertinent to the litigation who has been retained by counsel for Plaintiff Cavanaugh, or
23 the County Defendants or the State Defendants in this action to serve as an expert witness or
24 as a consultant in this action) to whom disclosure is reasonably necessary for this litigation
25 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

26 (c)(1) During their depositions, witnesses in the action who are not employed by the
27 Kern Behavioral Health and Recovery Services and to whom disclosure is reasonably
28 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" that is

1 attached hereto as Exhibit A, unless otherwise agreed by the parties' counsel or ordered by
2 the court.

3 (c)(2) Pages of transcribed deposition testimony or exhibits to depositions that discuss,
4 identify or reveal the contents of Kern Behavioral Health and Recovery Services must be
5 separately bound by the court reporter and may not be disclosed to anyone except as
6 permitted under this Stipulated Protective Order.

7 (d) The Court, its personnel, and court reporters, in the course of any oral hearing,
8 with any copy of the Kern Behavioral Health and Recovery Services records, in total or in
9 excerpted pages, to be filed under seal.

10 2. Without written permission from the Plaintiff Cavanaugh's counsel or a court
11 order secured after appropriate notice to all interested persons, Defendants may not file any
12 portion or all of Kern Behavioral Health and Recovery Services records in the public record
13 of this action, whether separately or as part of any motion, opposition, or other brief.

14 **C. Marking of Kern Behavioral Health and Recovery Services Records**

15 1. Should the Kern Behavioral Health and Recovery Services records, in total or in
16 excerpted pages, be produced to any of the persons listed in paragraph B1, the Plaintiff and
17 the Defendants shall write in bold or otherwise affix the legend "CONFIDENTIAL:
18 SUBJECT TO PROTECTIVE ORDER IN CASE NUMBER 1:17-cv-00832" in a noticeable
19 place on each page of the document.

20 2. Should Kern Behavioral Health and Recovery Services records, in total or in
21 excerpted pages, or their contents be addressed, discussed or identified in deposition or in a
22 court hearing, Plaintiff may identify on the record, before the close of the deposition, hearing,
23 or other proceeding, all information subject to this Protective Order.

24 **D. Unauthorized Disclosure/Release of Protected Material**

25 If any Defendant or their counsel learns that, by inadvertence or otherwise, they have
26 disclosed and/or released the Kern Behavioral Health and Recovery Services records, in total
27 or in excerpted pages, to any person or in any circumstance not authorized under this
28 Stipulated Protective Order, then they must immediately:

1 (1) notify Plaintiff's counsel in writing and, if possible, by telephone call, of the
2 unauthorized disclosure and/or release;

3 (2) use their best efforts to retrieve any and all released copies of the Kern Behavioral
4 Health and Recovery Services records;

5 (3) inform the person or persons to whom the Kern Behavioral Health and Recovery
6 Services records were disclosed and/or released of all the terms of this Protective Order; and

7 (4) request such person or persons execute the "Acknowledgment and Agreement to Be
8 Bound" that is attached hereto as Exhibit A.

9 **E. Reservation of Rights and Objections**

10 1. Right to Further Relief. Nothing in this Order abridges the right of any person to
11 seek its modification by the court in the future.

12 2. Right to Assert Other Objections. This Protective Order does not constitute a
13 waiver or denial of any Party's right it otherwise would have to object to disclosing or
14 producing any information or item on any ground not addressed in this Stipulated Protective
15 Order. Similarly, this Order does not constitute a waiver or denial of any Party's right to
16 object on any ground to use in evidence of any of the material covered by this Protective
17 Order.

18 **F. Duration**

19 Even after final disposition of this litigation, the confidentiality obligations imposed by
20 this Order shall remain in effect until Defendants' attorney agrees otherwise in writing or a
21 court order otherwise directs. Final disposition shall be deemed to be the later of: (1)
22 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
23 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,

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1 trials, or reviews of this action, including the time limits for filing any motions or applications
2 for extension of time pursuant to applicable law.

3 So Stipulated.

4
5 Dated: July 25, 2018

/s/Ken Karan

6 Ken I. Karan, Esq.

Attorney for Plaintiff Patrick J. Cavanaugh

7
8 Dated: July 25, 2018

/s/Lisa Tillman

9 Lisa Tillman, Esq.

Attorney for State Defendants

10 Dated: July 25, 2018

/s/Marshall S. Fontes

11 Marshall S. Fontes, Esq.

Attorney for County Defendants

12
13 ORDER

14 The Court has reviewed the foregoing stipulated protective order. Pursuant to Federal
15 Rules of Civil Procedure Rule 26(c), and finding good cause hereon, the Court adopts the
16 parties' stipulation as the Court's order.

17
18 IT IS SO ORDERED.

19 Dated: July 28, 2018

/s/ Jennifer L. Thurston

20 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Protective Order
that was issued by the United States District Court for the Eastern District of California on
_____ (date) in the case of Patrick J. Cavanaugh v. Donny Youngblood, et al., Case
No. 1:17-cv-00832-DAD-JLT. I agree to comply with and to be bound by all the terms of this
Protective Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Protective Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print 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 Protective Order.

Executed this _____ day of _____, 201__ in
_____(City and State where sworn and signed.)

Printed Name: _____

Signature: _____