

P O R T E R | S C O T T

A PROFESSIONAL CORPORATION

Terence J. Cassidy, SBN 99180

Stephen E. Horan, SBN 125241

Kevin M. Kreutz, SBN 264654

350 University Ave., Suite 200

Sacramento, California 95825

TEL: 916.929.1481

FAX: 916.927.3706

Attorneys for Defendants COUNTY OF SACRAMENTO, JOHN McGINNESS, SANTOS RAMOS,
BRAD ROSE, RANDY MOYA, JACQUELINE KLOSS, KEVIN STEED, STEVE WHARTON,
TIMOTHY RUIZ, THOMAS LYNN, and CRAIG HARMON

Public entity exempt from filing fee pursuant to Gov't Code Section 6103

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

JOHN PRUITT; JOHN PRUITT, JR., a minor,
by and through his Guardian Ad Litem, his
custodial parent John Pruitt; PHILLIP
PRUITT, a minor, by and through his Guardian
Ad Litem, his custodial parent John Pruitt;
MICHAEL PRUITT, a minor, by and through
his Guardian Ad Litem, his custodial parent
John Pruitt; ISAIAH PRUITT, a minor, by and
through his Guardian Ad Litem, his custodial
parent John Pruitt; DARRYL BERG; and
DEBRA BERG,

Plaintiffs,

v.

COUNTY OF SACRAMENTO; Sacramento
County Sheriff's Department Sheriff JOHN
McGINNESS; Sergeant SANTOS RAMOS;
Detective SEAN BERRY; Detective BRAD
ROSE; Detective RANDY MOYA; Detective
JACQUELINE KLOSS; Detective KEVIN
STEED; Detective STEVE WHARTON;
Probation Officer TIMOTHY RUIZ; Deputy
THOMAS LYNN; Deputy CRAIG HARMON;
and DOES 1-100, inclusive,

Defendants.

Case No.: 2:10-cv-00416-WBS-KJN

STIPULATED PROTECTIVE ORDER

Complaint filed: 2/18/10

First Amended: 5/12/10

Second Amended: 10/4/10

1 Defendants COUNTY OF SACRAMENTO, JOHN MCGINNESS, SANTOS RAMOS,
2 SEAN BERRY, BRAD ROSE, RANDY MOYA, JACQUELINE KLOSS, KEVIN STEED, STEVE
3 WHARTON, TIMOTHY RUIZ, THOMAS LYNN, and CRAIG HARMON (collectively hereafter
4 “Defendants”)¹ in good faith believe that certain documents relevant to the above-captioned case
5 contain information that is (a) confidential, sensitive, or potentially invasive of an individual’s
6 privacy interests; (b) not generally known; and, (c) not normally revealed to the public or third
7 parties or, if disclosed to third parties, would require such third parties to maintain the information
8 in confidence.
9

10 These confidential documents include, but are not limited to:

- 11 1. Personnel records of Sacramento County Sheriff’s Office deputies involved in the
12 subject incident at issue, including but not limited to training records;
- 13 2. The internal affairs investigation pertaining to the subject incident.
14

15 Defendants also recognize that in prior circumstances, District Courts within the Ninth
16 Circuit have ordered disclosure of peace officer personnel records and internal investigative reports
17 subject to a protective order signed by the Court. (*See, e.g., Deocampo v. City of Vallejo*, 2007 U.S.
18 Dist. LEXIS 43744 (E.D. Cal. June 2007)). In light of the customary treatment given peace officer
19 personnel records and internal investigative reports in this Circuit, the sensitive nature of the
20 documents to be disclosed and the strong presumption against disclosure of such information in
21 response to a public records request or in response to discovery in a similar civil action in state court
22 absent a court order, Defendants hereby request disclosure be governed by a court-ordered protective
23 order. Defendants believe a court order, not a private agreement, properly facilitates the limited
24 order. Defendants believe a court order, not a private agreement, properly facilitates the limited
25 order. Defendants believe a court order, not a private agreement, properly facilitates the limited
26 order.

27 ¹ Except as otherwise noted, all future references to “Defendants” includes all Defendants named
28 herein, regardless of whether the Defendants are represented by the same counsel or separate counsel.

1 disclosure of such documents while protecting them from general disclosure.

2 IT IS HEREBY STIPULATED by, among and between the parties through their counsels of
3 record that the documents described herein may be designated as “Confidential” by the COUNTY
4 and produced subject to the following Protective Order:

5 1. The disclosed documents shall be used solely in connection with the civil case *Pruitt*
6 *v. County of Sacramento, et al.*, Case No. 2:10-cv-00416-WBS-KJN (U.S. District Court, Eastern
7 District of California) and in the preparation and trial of the cases, or any related proceeding. The
8 Defendants do not waive any objections to the admissibility of the documents or portions thereof in
9 future proceedings in this case, including trial.

10 2. A party producing the documents and materials believed to be confidential as
11 described herein may designate those materials as confidential by affixing a mark labeling them
12 “Confidential”, provided that such marking does not obscure or obliterate the content of any record.
13 If any confidential materials cannot be labeled with this marking, those materials shall be placed in
14 a sealed envelope or other container that is in turn marked “Confidential” in a manner agree upon
15 by the disclosing and requesting parties.

16 3. Documents or materials designated under this Protective Order as “Confidential” may
17 only be disclosed to the following persons:

18 (a) Terence J. Cassidy, Stephen E. Horan and Kevin M. Kreutz, and associate
19 attorneys in their offices, as counsel for Defendants County of Sacramento, John Mcginness, Santos
20 Ramos, Brad Rose, Randy Moya, Jacqueline Kloss, Kevin Steed, Steve Wharton, Timothy Ruiz,
21 Thomas Lynn, and Craig Harmon in the case designated above;

22 (b) Sanford J. Rosen, Ernest Galvan, Lisa Ells, Leslie Mehta and Geri Green, and
23 associate attorneys in their offices, as counsel for Plaintiffs in the case designated above, and their
24 clients as designated below, provided that such review by Plaintiffs occurs in the presence of their
25

counsel of record and that Plaintiffs are not provided with or allowed to maintain a copy, electronic or otherwise, of any documents designated by the Defendants as subject to this protective order;

(c) John A. Lavra, Jeri L. Pappone and Amy B. Lindsey-Doyle, and associates in their offices, as counsel for Defendant Sean Berry in the case designated above;

(d) Paralegal, clerical and secretarial personnel regularly employed by counsel referred to in subparts (a), (b) and (c) immediately above, including stenographic deposition reporters or videographers retained in connection with this action;

(d) Court personnel, including stenographic reporters or videographers engaged in proceedings as are necessarily incidental to the preparation for the trial of the civil action;

(e) Any expert, consultant or investigator retained in connection with this action;

(f) The finder of fact at the time of trial, subject to the court's ruling on *in limine* motions and objections of counsel; and,

(g) Witnesses during their depositions in this action.

4. Prior to the disclosure of any Confidential information to any person identified in paragraph 3 and its subparts, each such recipient of Confidential information shall be provided with a copy of this Stipulated Protective Order, which he or she shall read. Upon reading this Stipulated Protective Order, such person shall acknowledge that he or she has read this Stipulated Protective Order and agrees to abide by its terms. Such person also must consent to be subject to the jurisdiction of the United States District Court for the Eastern District of California, including without limitation any proceeding for contempt. Provisions of this Stipulated Protective Order, insofar as they restrict disclosure and use of the material, shall be in effect until further order of this Court. The attorneys designated in subparts (a) and (b) of Paragraph 3 above shall be responsible for internally tracking the identities of those individuals to whom copies of documents marked Confidential are given. The Defendants may request the identities of said individual(s) upon the

1 final termination of the litigation or if it is able to demonstrate a good faith basis that any of the other
2 parties to this actions, or agents thereof, have breached the terms of the Stipulated Protective Order.

3 5. As to all documents or materials designated as “Confidential” pursuant to this
4 Stipulated Protective Order, the parties agree that they will seek permission from the Court to file
5 the Confidential information under seal according to Local Rule 141. If permission is granted, the
6 Confidential material will be filed and served in accordance with Local Rule 141.

7
8 6. The designation of documents or information as “Confidential” and the subsequent
9 production thereof is without prejudice to the right of any party to oppose the admissibility of the
10 designated document or information.

11 7. A party may apply to the Court for an order that information or materials labeled
12 “Confidential” are not, in fact, confidential. Prior to applying to the Court for such an order, the
13 party seeking to reclassify Confidential information shall meet and confer with the producing party.
14 Until the matter is resolved by the parties or the Court, the information in question shall continue to
15 be treated according to its designation under the terms of this Stipulated Protective Order. The
16 producing party shall have the burden of establishing the propriety of the “Confidential” designation.
17 A party shall not be obligated to challenge the propriety of a confidentiality designation at the time
18 made and a failure to do so shall not preclude a subsequent challenge thereto.
19
20

21 8. Copies of Confidential Documents

22 The following procedures shall be utilized by the parties in production of documents and
23 materials designated as “Confidential”:

24 (a) Counsel for parties other than the Defendants shall receive one copy of the
25 Confidential documents at no charge.
26

27 (b) Counsel for parties other than the Defendants shall not copy, duplicate,
28 furnish, disclose, or otherwise divulge any information contained in the confidential documents to

1 any source, except those persons identified in Paragraph 3 herein, without further order of the Court
2 or authorization from counsel for the Defendants.

3 (c) If the other parties in good faith require additional copies of documents
4 marked "Confidential" in preparation of their case, they shall make a further request to counsel for
5 the Defendants. Upon agreement with counsel for the Defendants, copies will be produced in a
6 timely manner to the requesting party, pursuant to the procedures of this Stipulated Protective Order.
7 Agreement shall not be unreasonably withheld by counsel for the Defendants.

9 (d) Any additional copying of the Confidential documents beyond the first copy
10 will be charged to the requesting party.

11 (e) The Defendants shall produce documents and material marked "Confidential"
12 to Plaintiffs.

13 (f) If any document or information designated as confidential pursuant to this
14 Stipulated Protective Order is used or disclosed during the course of a deposition, that portion of the
15 deposition record reflecting such material shall be stamped with the appropriate designation and
16 access shall be limited pursuant to the terms of this Stipulated Protective Order. The court reporter
17 for the deposition shall mark the deposition transcript cover page and all appropriate pages or
18 exhibits and each copy thereof, in accordance with paragraph 5 of this Stipulated Protective Order.
19 Only individuals who are authorized by this Protective Order to see or receive such material may be
20 present during the discussion or disclosure of such material.

23 9. Notwithstanding the provisions of Paragraph 3, confidential information produced
24 pursuant to this Protective Order may not be delivered, exhibited or otherwise disclosed to any
25 reporter, writer or employee of any trade publication, newspaper, magazine or other media
26 organization, including but not limited to radio and television media.

28 10. Should any information designated confidential be disclosed, through inadvertence

1 or otherwise, to any person not authorized to receive it under this Protective Order, the disclosing
2 person(s) shall promptly (a) inform counsel for the Defendants of the recipient(s) and the
3 circumstances of the unauthorized disclosure to the relevant producing person(s) and (b) use best
4 efforts to bind the recipient(s) to the terms of this Protective Order.

5 11. No information shall lose its confidential status because it was inadvertently or
6 unintentionally disclosed to a person not authorized to receive it under this Protective Order. In
7 addition, any information that is designated confidential and produced by the Defendants does not
8 lose its confidential status due to any inadvertent or unintentional disclosure. In the event that the
9 Defendants make any such inadvertent disclosure, the documents which are confidential will be
10 identified accordingly, marked in accordance with Paragraph 2 above, and a copy of the
11 Confidential-marked documents provided to the other parties to this action. Upon receipt of the
12 Confidential-marked documents, the receiving parties will return the unmarked version of the
13 documents to counsel for the Defendants within fourteen (14) days.

14 12. After the conclusion of this litigation, all documents and materials, in whatever form
15 stored or reproduced containing confidential information will remain confidential. All documents
16 and materials produced to counsel for the other parties pursuant to this Stipulated Protective Order
17 shall be returned to counsel for the Defendants in a manner in which counsel will be able to
18 reasonably verify that all documents were returned. All parties agree to ensure that all persons to
19 whom confidential documents or materials were disclosed shall be returned to counsel for
20 Defendants. "Conclusion" of this litigation means a termination of the case following a trial or
21 settlement.

22 13. No later than thirty (30) days after settlement or of receiving notice of the entry of an
23 order, judgment, or decree terminating this action, all persons having received the confidential
24 documents shall return said documents to counsel for the Defendants.

1 14. If any party appeals a jury verdict or order terminating the case, counsel for the
2 Defendants shall maintain control of all copies of confidential documents. If following an appeal
3 the district court reopens the case for further proceedings, the documents shall be returned to counsel
4 for the other parties.

5 15. This Stipulated Protective Order shall remain in full force and effect and shall
6 continue to be binding on all parties and affected persons until this litigation terminates, subject to
7 any subsequent modifications of this Stipulated Protective Order for good cause shown by this Court
8 or any Court having jurisdiction over an appeal of this action. Upon termination of this litigation,
9 the parties agree the Stipulated Protective Order shall continue in force as a private agreement
10 between the parties.
11

12 16. During the pendency of this lawsuit, the Court shall (a) make such amendments,
13 modifications and additions to this Protective Order as it may deem appropriate upon good cause
14 shown; and, (b) adjudicate any dispute arising under it.
15

16 Dated: February 14, 2011

PORTER SCOTT
A PROFESSIONAL CORPORATION

17 By /s/ Kevin M. Kreutz
18 Terence J. Cassidy
19 Stephen E. Horan
20 Kevin M. Kreutz
21 Attorneys for Defendants COUNTY OF
22 SACRAMENTO, JOHN MCGINNESS,
23 SANTOS RAMOS, BRAD ROSE, RANDY
24 MOYA, JACQUELINE KLOSS, KEVIN
25 STEED, STEVE WHARTON, TIMOTHY
26 RUIZ, THOMAS LYNN, and CRAIG
27 HARMON

28 Dated: February 14, 2011

LONGYEAR, O'DEA AND LAVRA, LLP

By /s/ Amy B. Lindsey-Doyle

John A. Lavra
Jeri L. Pappone
Amy B. Lindsey-Doyle
Attorneys for Defendant Sean Berry

Dated: February 14, 2011 _____ ROSEN, BIEN & GALVAN, LLP

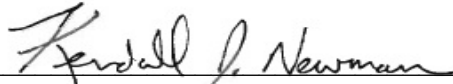
By /s/ Lisa Ells (*As authorized on 02/14/11)
Sanford Jay Rosen
Ernest Galvan
Lisa Ells
Leslie Mehta
Attorneys for Plaintiffs JOHN PRUITT;
JOHN PRUITT, JR., a minor, by and through
his Guardian Ad Litem, his custodial parent
John Pruitt; PHILLIP PRUITT, a minor, by
and through his Guardian Ad Litem, his
custodial parent John Pruitt; MICHAEL
PRUITT, a minor, by and through his
Guardian Ad Litem, his custodial parent John
Pruitt; ISAAH PRUITT, a minor, by and
through his Guardian Ad Litem, his custodial
parent John Pruitt; DARRYL BERG

ORDER

The revised Stipulated Protective Order filed by the parties (Dkt. No. 68) is HEREBY
APPROVED with the modification that the “Court personnel” identified in paragraph 3(d)² and the
“finder of fact” identified in paragraph 3(f) of the Stipulated Protective Order shall not be subject
to paragraphs 4, 10, and 15³ of the Stipulated Protective Order.

IT IS SO ORDERED.

DATED: March 8, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

² The Stipulated Protective Order contains two provision labeled “3(d).” This exception
pertains to the second paragraph labeled “3(d).”

³ Paragraph 15 is ambiguous in regards to the term “affected persons.”