

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

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10 Attorneys for Defendants COUNTY OF SACRAMENTO, JOHN McGINNESS, SANTOS RAMOS,  
11 BRAD ROSE, RANDY MOYA, JACQUELINE KLOSS, KEVIN STEED, STEVE WHARTON,  
12 TIMOTHY RUIZ, THOMAS LYNN, and CRAIG HARMON13 ***Public entity exempt from filing fee pursuant to Gov't Code Section 6103***14 **UNITED STATES DISTRICT COURT**15 **EASTERN DISTRICT OF CALIFORNIA**16 JOHN PRUITT; JOHN PRUITT, JR., a minor,  
17 by and through his Guardian Ad Litem, his  
18 custodial parent John Pruitt; PHILLIP  
19 PRUITT, a minor, by and through his Guardian  
20 Ad Litem, his custodial parent John Pruitt;  
21 MICHAEL PRUITT, a minor, by and through  
22 his Guardian Ad Litem, his custodial parent  
23 John Pruitt; ISAIAH PRUITT, a minor, by and  
24 through his Guardian Ad Litem, his custodial  
25 parent John Pruitt; DARRYL BERG; and  
26 DEBRA BERG,  
27

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

29 **STIPULATED PROTECTIVE ORDER**

30 Complaint filed: 2/18/10

31 First Amended: 5/12/10

32 Second Amended: 10/4/10

33 Plaintiffs,

34 v.

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

45 Defendants.

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

These confidential documents include, but are not limited to:

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

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

<sup>1</sup> Except as otherwise noted, all future references to “Defendants” includes all Defendants named 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 McGinniss, 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

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

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

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

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

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

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

13 (g) Witnesses during their depositions in this action.

14 4. Prior to the disclosure of any Confidential information to any person identified in  
15 paragraph 3 and its subparts, each such recipient of Confidential information shall be provided with  
16 a copy of this Stipulated Protective Order, which he or she shall read. Upon reading this Stipulated  
17 Protective Order, such person shall acknowledge that he or she has read this Stipulated Protective  
18 Order and agrees to abide by its terms. Such person also must consent to be subject to the  
19 jurisdiction of the United States District Court for the Eastern District of California, including  
20 without limitation any proceeding for contempt. Provisions of this Stipulated Protective Order,  
21 insofar as they restrict disclosure and use of the material, shall be in effect until further order of this  
22 Court. The attorneys designated in subparts (a) and (b) of Paragraph 3 above shall be responsible  
23 for internally tracking the identities of those individuals to whom copies of documents marked  
24 Confidential are given. The Defendants may request the identities of said individual(s) upon the  
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27  
28

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

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

25 (a) Counsel for parties other than the Defendants shall receive one copy of the  
26 Confidential documents at no charge.  
27

28 (b) Counsel for parties other than the Defendants shall not copy, duplicate,  
furnish, disclose, or otherwise divulge any information contained in the confidential documents to  
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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  
8 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.

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

25 10. Should any information designated confidential be disclosed, through inadvertence  
26

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

14           Dated: February 14, 2011

15           PORTER SCOTT  
16           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

29           LONGYEAR, O'DEA AND LAVRA, LLP

30           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  
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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

## 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)<sup>2</sup> and the “finder of fact” identified in paragraph 3(f) of the Stipulated Protective Order shall not be subject to paragraphs 4, 10, and 15<sup>3</sup> of the Stipulated Protective Order.

IT IS SO ORDERED.

DATED: March 8, 2011

Kendall J. Newman  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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

<sup>3</sup> Paragraph 15 is ambiguous in regards to the term “affected persons.”