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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRY SIMMONS, KELLY LANEY,

CASE NO. 2:11-CV-00468-GEB-KJN

Plaintiffs,

**STIPULATION REGARDING PROTECTIVE
ORDER AND ~~PROPOSED~~ ORDER**

v.

COUNTY OF EL DORADO; RANDY
PESHON; and DOES 1 through 50,
inclusive.

Complaint filed: 2/19/11

First Amended Complaint filed: 7/8/11

Defendants.

1 Defendant COUNTY OF EL DORADO believes in good faith that certain potentially
2 discoverable documents and deposition testimony in the above-captioned case contain information
3 that is (a) confidential, sensitive, or potentially invasive of an individual's privacy interests; (b) not
4 generally known; and (c) not normally revealed to the public or third parties or, if disclosed to third
5 parties, would require such third parties to maintain the information in confidence.

6 Potentially discoverable documents include, but are not limited to:

- 7 1. El Dorado County Sheriff's Department employee personnel files, background files and
8 workers' compensation files;
- 9 2. El Dorado County Sheriff's Department employee performance evaluations, letters of
10 counseling, disciplinary proceedings, and related supporting documents;
- 11 3. El Dorado County Sheriff's Department Internal Affairs investigation documents;
- 12 4. COUNTY Human Resources investigation documents;
- 13 5. Plaintiffs' medical records and psychiatric records; and
- 14 6. Citizen complaints against peace officers or other employees of law enforcement agencies.

15 All parties acknowledge that there are likely to be substantial numbers of documents and other
16 material in existence which touch upon a number of sensitive matters and which may invade the right
17 of privacy not only of the parties, but of a number of non-parties employed in the law enforcement
18 community, private citizens, minors and victims of crime. Without a protective order in place, if such
19 information is required to be produced in discovery, it may run afoul of privacy rights guaranteed
20 under the United States Constitution, the California Evidence Code, and Article I, Section 1 of the
21 California Constitution, and/or the California Police Officers' Bill of Rights.

22 Defendant also recognizes that in prior circumstances, District Courts within the Ninth Circuit
23 have ordered disclosure of peace officer personnel records subject to a protective order signed by the
24 Court. (*See, e.g., Deocampo v. City of Vallejo*, 2007 U.S. Dist. LEXIS 43744 (E.D. Cal. 2007).) In
25 light of the customary treatment given peace officer personnel records in this Circuit, the sensitive
26 nature of the documents to be disclosed and the strong presumption against disclosure of such
27 information in response to a public records request or in response to discovery in a similar civil action

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1 in state Court absent a Court order, the COUNTY hereby request disclosure be governed by a Court-
2 ordered protective order.

3 Subject to and without waiving any statutory or Constitutional privileges or objections to the
4 admissibility or discoverability of any testimony, information or documents produced in connection
5 with this Order, the parties stipulate that access to and use of such testimony, documents and
6 information shall be governed by the provisions of this Stipulated Protective Order and that the terms
7 set forth herein may be entered by the Court, pursuant to Federal Rule of Civil Procedure 26(c). This
8 Stipulated Protective Order shall also apply to all copies, extracts, and summaries of designated
9 documents.

10 **I.**

11 **DESIGNATION OF CONFIDENTIAL DOCUMENTS**

12 A. "Confidential" materials shall be all documents that are handwritten, typewritten,
13 printed, photostated, photographed, photocopied, transmitted by electronic mail or facsimile, and
14 recorded by every means upon any tangible thing, any form of communication or representation,
15 including letters, words, pictures, sounds or symbols, or combinations thereof, and any records
16 thereby created regardless of the manner in which the record has been stored, which contain
17 confidential and private information pertaining to Plaintiffs TERRY SIMMONS and KELLY LANEY,
18 and any current or former COUNTY OF EL DORADO employees, and/or third persons who are not
19 parties to this suit.

20 B. The scope of this Stipulated Protective Order is limited to the following categories of
21 documents, which may or may not be subject to discovery:

- 22 1. El Dorado County Sheriff's Department Internal Affairs investigation
23 documents;
- 24 2. El Dorado County Sheriff's Department Human Resources investigation
25 documents;
- 26 3. El Dorado County Sheriff's Department memoranda and related supporting
27 documents;

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- 1 4. El Dorado County Sheriff's Department employee personnel files, background
2 files and workers' compensation files;
- 3 5. El Dorado County Sheriff's Department employee performance evaluations,
4 letters of counseling, disciplinary proceedings, and related supporting
5 documents;
- 6 6. Plaintiffs TERRY SIMMONS and KELLY LANEY's medical and psychiatric
7 records; and
- 8 7. Citizen complaints against peace officers or other employees of law
9 enforcement agencies.

10 C. Any document may be designated as "Confidential" upon a good faith determination
11 by a party that the document contains private personnel information, and by stamping or affixing the
12 words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" on the face of the document.
13 Tangible things other than documents (e.g., audio tapes, products, computer disks, etc.) may be
14 designated by stamping or affixing the designation to the item or its container, as appropriate.

15 D. A party producing a "Confidential" document may redact any private personnel
16 information which may be affected by dissemination of the "Confidential" document. Redactions
17 shall be made by such method that the masking of any text is readily apparent to persons reviewing
18 the "Confidential" document, and the document shall also be marked "Redacted."

19 E. Any party may designate material as "Confidential" after production, only under the
20 following conditions:

- 21 1. The party to whom such documents have been produced must be advised in
22 writing of the new designation;
- 23 2. The new designation applies only as of the date and time of receipt of notice by
24 the party notified;
- 25 3. The party to whom such documents have been produced must return the
26 documents to the producing party, and in return must be provided with another copy of the documents
27 that bears the new and correct designation;

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1 any party that its presentation at trial of evidence relevant to its claims or defenses should be restricted
2 in any manner.

3 F. This Order shall be without prejudice to present a stipulation or motion to the Court
4 under Federal Rule of Civil Procedure 26(c) for a separate Protective Order as to any particular
5 document or information, including restrictions different from those as specified herein. This shall
6 not be deemed to prejudice the parties in any way in any future application for modification of this
7 Stipulation and Order.

8 **IV.**

9 **TERMINATION OF THE LITIGATION**

10 A. Within twenty days after a final unopposed judgment or demand after settlement, all
11 original "Confidential" materials and all copies or portions thereof containing or reflecting
12 information from "Confidential" documents shall be returned to counsel for the producing party.

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

19 **IT IS SO STIPULATED.**

20 Dated: October 20, 2011

WATTS LAW OFFICES

21 By /s/ Douglas E. Watts (as authorized on 10/20/11)
22 Douglas E. Watts
23 Attorneys for Plaintiffs
TERRY SIMMONS and KELLY LANEY

24 Dated: October 20, 2011

LAW OFFICES OF STEPHEN M. MURPHY

25 By /s/ Stephen M. Murphy (as authorized on 10/20/11)
26 Stephen M. Murphy
27 Attorneys for Plaintiffs
28 TERRY SIMMONS and KELLY LANEY

1 Dated: October 21, 2011

**PORTER SCOTT
A PROFESSIONAL CORPORATION**

2 By /s/ Beatriz Berumen

3 Nancy J. Sheehan

4 Beatriz Berumen

5 Attorneys for Defendant

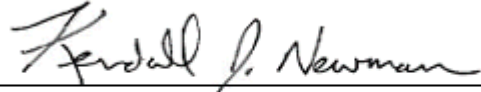
COUNTY OF EL DORADO

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8 **ORDER**

9 Having reviewed the above Stipulation, and good cause appearing,

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11 **IT IS SO ORDERED.**

12 DATED: October 25, 2011

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14 **KENDALL J. NEWMAN**

15 **UNITED STATES MAGISTRATE JUDGE**

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ATTACHMENT A
NONDISCLOSURE AGREEMENT

I, _____, hereby swear that I am fully familiar with the terms and conditions of the Stipulated Protective Order entered in _____ in United States District Court for the Eastern District of California, Case No. 2:11-CV-00468-GEB-KJN, and hereby agree to comply with and be bound by the terms and conditions of said Order, unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

Dated: _____

