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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOBBY DARRELL JOHNSON; SHARON KAY
JOHNSON; TANYA SUEANN JOHNSON; and
ANGELA JOHNSON, a minor, through her mother
and Next Friend, TANYA JOHNSON; individually,

Plaintiffs,

vs.

SHASTA COUNTY, a public entity; SHASTA
COUNTY SHERIFF DEPUTIES CARY
ERICKSON, TOM FLEMMING, RAY HUGHES,
DAVID RENFER, and KYLE WALLACE;
SHASTA COUNTY SHERIFF SERGEANT ERIC
MAGRINI, and SHASTA COUNTY SHERIFF
DETECTIVES GENE RANDAL, NICK
THOMPSON, and CRAIG TIPPINGS; SHASTA
COUNTY VOLUNTEER DR. JESSE WELLS,
M.D.; SUTTER COUNTY, a public entity; SUTTER
COUNTY SHERIFF DETECTIVE MATTHEW
MAPLES, SUTTER COUNTY SHERIFF
LIEUTENANT JAMES CASNER, and SUTTER
COUNTY SHERIFF OFFICER MICHAEL T.
GWINNUP, and DOES 1–10, Jointly and Severally,

Defendants.

No: 2:14-CV-01338-KJM-EFB

Hon. Kimberly J. Mueller

**STIPULATED PROTECTIVE
ORDER (~~DRAFT~~) RE:
CONFIDENTIAL
DOCUMENTS**

1 The parties, by and through their respective attorneys of record, hereby stipulate to the
2 following protective order being issued in this matter:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of
5 confidential or private information for which special protection from public disclosure and from
6 use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the
7 parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.
8 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
9 responses to discovery and that the protection it affords extends only to the limited information or
10 items that are entitled under the applicable legal principles to treatment as confidential. The
11 parties further acknowledge, as set forth in Section 11, below, that this Stipulated Protective Order
12 creates no entitlement to file confidential information under seal; Civil Local Rule 141 sets forth
13 the procedures that must be followed and reflects the standards that will be applied when a party
14 seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16
17 2.1 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and outside counsel (and their support staff).

19 2.2 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner generated, stored or maintained (including, among other things, testimony,
21 transcripts, or tangible things) that are produced or generated in disclosures or responses to
22 discovery by any Party in this matter.

23 2.3 "Confidential" Information or Items: information (regardless of how generated,
24 stored or maintained) or tangible things that qualify for protection under standards developed
25 under Federal Rule of Civil Procedure 26(c). This material includes, but is not limited to, medical
26 records of the parties, as well as officer personnel records marked "CONFIDENTIAL" and other
27

1 similar confidential records designated as such.

2 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
5 Material in this action.

6 2.6 Designating Party: a Party or non-party that designates information or items that it
7 produces in disclosures or in responses to discovery as “Confidential.”
8

9 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
10 “Confidential.”

11 2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained
12 to represent or advise a Party in this action.

13 2.9 Expert: a person with specialized knowledge or experience in a matter pertinent to
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
15 consultant in this action and who is not a past or a current employee of a Party or of a competitor
16 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
17 or a competitor of a Party’s.
18

19 2.10 Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
21 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
25 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
26 parties or counsel to or in court or in other settings that might reveal Protected Material.
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1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6
7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
8 or non-party that designates information or items for protection under this Order must take care to
9 limit any such designation to specific material that qualifies under the appropriate standards. A
10 Designating Party must take care to designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify – so that other portions of the
12 material, documents, items or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown
15 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
16 encumber or retard the case development process, or to impose unnecessary expenses and burdens
17 on other parties), expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items that it
19 designated for protection do not qualify for protection at all, that Party or non-party must promptly
20 notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
22 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced. Designation in conformity with this Order requires:

25
26 (a) for information in documentary form (apart from transcripts of depositions
27 or other pretrial or trial proceedings), that the Producing Party affix the legend or watermark

1 “CONFIDENTIAL” on each page that contains protected material. If only a portion or portions of
2 the material on a page qualifies for protection, the Producing Party also must clearly identify the
3 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
4 each portion that it is “CONFIDENTIAL.”

5 A Party or non-party that makes original documents or materials available for
6 inspection need not designate them for protection until after the inspecting Party has indicated
7 which material it would like copied and produced. After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which documents,
9 or portions thereof, qualify for protection under this Order, then, before producing the specified
10 documents, the Producing Party must affix the designation “CONFIDENTIAL” on each page that
11 contains Protected Material. If only a portion or portions of the material on a page qualifies for
12 protection, the Producing Party must clearly identify the protected portion(s) (e.g., by making
13 appropriate markings in the margins) and must specify that the material is “CONFIDENTIAL.”

14 (b) for testimony given in deposition or in other pretrial or trial proceedings,
15 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
16 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
17 any portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to
18 identify separately each portion of testimony that is entitled to protection, and when it appears that
19 substantial portions of the testimony may qualify for protection, the Party or non-party that
20 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
21 proceeding is concluded) a right to have up to twenty (20) days to identify the specific portions of
22 the testimony as “CONFIDENTIAL.” Only those portions of the testimony that are appropriately
23 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
24 Protective Order.

25
26 Transcript pages containing Protected Material must be separately bound by the
27 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” as

1 instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

2 (c) for information produced in some form other than documentary, and for any
3 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
4 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
5 If only portions of the information or item warrant protection, the Producing Party, to the extent
6 practicable, shall identify the protected portions, specifying the material as “CONFIDENTIAL.”

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for such material. If material is
10 appropriately designated as “CONFIDENTIAL” after the material was initially produced, the
11 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
12 that the material is treated in accordance with this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
15 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
16 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
17 waive its right to challenge a confidentiality designation by electing not to mount a challenge
18 promptly after the original designation is disclosed.

19 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
20 Party’s confidentiality designation must do so in good faith with counsel for the Designating Party
21 by way of a meet and confer process. Counsel agree to begin the meet and confer process directly
22 . In conferring, the challenging Party must explain the basis for its belief that the confidentiality
23 designation was not proper and must give the Designating Party an opportunity to review the
24 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
25 explain the basis for the chosen designation. A challenging Party may proceed to the next stage of
26
27

1 the challenge process only if it has engaged in this meet and confer process first.

2 6.3 Judicial Intervention. If after meet and confer, disagreements remain regarding a
3 designation, the parties may seek court intervention under the applicable Fed. Rules of Civil
4 Procedures and Local Rules and any Standing Orders of the Presiding Judge or Magistrate. The
5 burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until
6 the court rules on the challenge, all parties shall continue to treat the material in question as
7 “CONFIDENTIAL.”

8
9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a non-party in connection with this case only for prosecuting,
12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
13 the categories of persons and under the conditions described in this Order. When the litigation has
14 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
15 DISPOSITION).

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

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party’s counsel of record in this action, as well as employees
22 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

23 (b) the officers, directors, employees, of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation;

25 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
26 is reasonably necessary for this litigation;
27

1 (d) the Court and its personnel;

2 (e) court reporters, their staffs, and professional vendors to whom disclosure is
3 reasonably necessary for this litigation;

4 (f) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
6 reveal Protected Material must be separately bound by the court reporter and may not be disclosed
7 to anyone except as permitted under this Stipulated Protective Order.

8 (g) the author of the document or the original source of the information.
9

10 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
12 Material to any person or in any circumstance not authorized under this Stipulated Protective
13 Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the
14 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
15 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
16 Order, and (d) request such person or persons to be bound by the Stipulated Protective Order.

17 9. FILING PROTECTED MATERIAL
18

19 Without written permission from the Designating Party or a court order secured after
20 appropriate notice to all interested persons, a Party may not file in the public record in this action
21 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
22 with Civil Local Rule 141.

23 12. FINAL DISPOSITION

24 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
25 days after the final termination of this action, defined as the dismissal or entry of judgment by the
26 district court, or if an appeal is filed, the disposition of the appeal, each Receiving Party must
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1 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
2 Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing
3 or capturing any of the Protected Material. With permission in writing from the Designating
4 Party, the Receiving Party may destroy some or all of the Protected Material instead of returning
5 it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
6 written certification to the Producing Party (and, if not the same person or entity, to the
7 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the
8 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
9 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
10 any of the Protected material. Notwithstanding this provision, Counsel are entitled to retain an
11 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
12 attorney work product, even if such materials contain Protected Material. Any such archival
13 copies that contain or constitute Protected Material remain subject to this Protective Order as set
14 forth in Section 4 (DURATION), above.

15 13. MISCELLANEOUS

16 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
17 seek its modification by the Court in the future.

18 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
19 Order no Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
21 Party waives any right to object on any ground to use in evidence any of the material covered by
22 this Protective Order.

23
24 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

25 Dated: January 8, 2015

HADDAD & SHERWIN LLP

1 /s/ T. Kennedy Helm

2 T. KENNEDY HELM
3 Attorneys for Plaintiffs

4 Dated: January 8, 2015

BRICKWOOD LAW OFFICE

5 /s/ Gary Brickwood*

6 GARY BRICKWOOD

7 Attorneys for Defendants SHASTA COUNTY,
8 CARY ERICKSON, TOM FLEMMING, RAY
9 HUGES, DAVID RENFER, KYLE WALLACE,
10 ERIC MAGRINI, GENE RANDAL, NICK
11 THOMPSON, CRAIG TIPPINGS, and DR. JESSE
12 A. WELLS, M.D.

13 Dated: January 8, 2015

PORTER SCOTT

14 /s/ John R. Whitefleet*

15 JOHN R. WHITEFLEET

16 Attorneys for Defendants SUTTER COUNTY,
17 MATTHEW MAPLES, JAMES CASNER, and
18 MICHAEL T. GWINNUP

19 * Mr. Brickwood and Mr. Whitefleet provided their consent that this document be electronically
20 filed.

21 **ORDER**

22 Pursuant to stipulation and good cause appearing, IT IS SO ORDERED.

23 Dated: January 13, 2015.

24 
25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE