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20 THE COUNTY OF PLUMAS

21 UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

22 MICHAEL G. SCOTT,

Case No. 2:17-cv-00217-KJM-CMK

23 Plaintiff,

STIPULATED PROTECTIVE ORDER

24 vs.

25 THE COUNTY OF PLUMAS and
26 DOES 1-25 Inclusive,

Complaint Filed: January 30, 2017

27 Defendants.
28 _____/

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information, including **personnel** and **medical** information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rules 140, 141 and 141.1 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action. House
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
7 entity not named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
9 but are retained to represent or advise a party to this action and have appeared in this action on
10 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

11 2.10 Party: any party to this action, including all of its officers, directors, employees,
12 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
14 Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support services
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
17 storing, or retrieving data in any form or medium) and their employees and subcontractors.

18 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
21 Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
25 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
26 conversations, or presentations by Parties, Parties’ Counsel, or third party witnesses that might
27 reveal Protected Material. However, the protections conferred by this Stipulation and Order do not
28 cover the following information: (a) any information that is in the public domain at the time of

1 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
2 Receiving Party as a result of publication not involving a violation of this Order, including
3 becoming part of the public record through trial or otherwise; and (b) any information known to
4 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
5 from a source who obtained the information lawfully and under no obligation of confidentiality to
6 the Designating Party. Any use of Protected Material at trial shall be governed by a separate
7 agreement or order.

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations imposed by this
10 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
11 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
12 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
13 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
14 including the time limits for filing any motions or applications for extension of time pursuant to
15 applicable law.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
18 or Non-Party that designates information or items for protection under this Order must take care to
19 limit any such designation to specific material that qualifies under the appropriate standards. The
20 Designating Party must designate for protection only those parts of material, documents, items, or
21 oral or written communications that qualify – so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept unjustifiably within
23 the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or retard the case development process or to impose unnecessary
27 expenses and burdens on other parties) expose the Designating Party to sanctions. Sanctions are
28

1 not appropriate if there is a good faith dispute regarding the confidentiality of certain documents
2 or information.

3 If it comes to a Designating Party's attention that information or items that it designated
4 for protection do not qualify for protection, that Designating Party must promptly notify all other
5 Parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
9 designated before the material is disclosed or produced. However, failure to designate material
10 before it is disclosed or produced does not result in any waiver of confidentiality or any other
11 applicable protection, unless the failure to designate is cured within a reasonable time. If the
12 Parties do not agree that the late designation is appropriate the Parties should resolve the conflict
13 according to section 6 below.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents,
16 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
17 Party affix the legend "CONFIDENTIAL" to each page that contains Protected Material. If only a
18 portion or portions of the material on a page qualifies for protection, the Producing Party also must
19 clearly identify the protected portion(s) on a privilege log. A Party or Non-Party that makes
20 original documents or materials available for inspection need not designate them for protection
21 until after the inspecting Party has indicated which material it would like copied and produced.
22 During the inspection and before the designation, all of the material made available for inspection
23 shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it
24 wants copied and produced, the Producing Party must determine which documents, or portions
25 thereof, qualify for protection under this Order. Then, before producing the specified documents,
26 the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains
27 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
28

1 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings,
4 that the Designating Party identify on the record, before the close of the deposition, hearing, or
5 other proceeding, all Protected Material. However, for depositions, the Designating Party may
6 notify the other Party within two (2) days of receiving the transcript that information and/or
7 documents (i.e., exhibits) disclosed during the deposition are covered by the Protective Order. The
8 Designating Party must identify the page and line numbers in the transcript.

9 (c) for information produced in some form other than documentary and for any
10 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
11 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
12 If only a portion or portions of the information or item warrant protection, the Producing Party, to
13 the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
15 information or items does not, standing alone, waive the Designating Party’s right to secure
16 protection under this Order for such material. Upon notice of correction of a non-designation, the
17 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
18 with the provisions of this Order. Challenges to designations after an inadvertent failure to
19 designate are governed by Section 6.

20 6. CHALLENGING “CONFIDENTIAL” DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
22 “CONFIDENTIAL” at any time. Unless a prompt challenge to a Designating Party’s designation
23 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
24 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
25 confidentiality designation by electing not to mount a challenge promptly after the original
26 designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
28 process by providing written notice of each designation it is challenging and describing the basis

1 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
2 notice must recite that the challenge is being made in accordance with this specific paragraph of
3 the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must
4 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
5 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
6 Party must explain the basis for its belief that the confidentiality designation was not proper and
7 must give the Designating Party an opportunity to review the designated material, to reconsider
8 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
9 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
10 has engaged in this meet and confer process first or establishes that the Designating Party is
11 unwilling to participate in the meet and confer process in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
14 Civil Local Rule 141.1 (d) (and in compliance with Civil Local Rules 230, and 251, if applicable)
15 within 21 days of the Parties' agreement that the meet and confer process will not work. Each such
16 motion must be accompanied by a competent declaration affirming that the movant has complied
17 with the meet and confer requirements imposed in the preceding paragraph. Failure by the
18 Designating Party to make such a motion including the required declaration within 21 days of the
19 Parties' agreement that the meet and confer process will not resolve the dispute shall automatically
20 waive the confidentiality designation for each challenged designation. In addition, the Challenging
21 Party may file a motion challenging a confidentiality designation at any time if there is good cause
22 for doing so, including a challenge to the designation of a deposition transcript or any portions
23 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
24 declaration affirming that the movant has complied with the meet and confer requirements
25 imposed by the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the Designating
27 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
28 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.

1 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
2 retain confidentiality as described above, all parties shall continue to afford the material in question
3 the level of protection to which it is entitled under the Producing Party’s designation until the court
4 rules on the challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
9 the categories of persons and under the conditions described in this Order. When the litigation has
10 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION).

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
19 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
20 Bound” that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
23 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

24 (c) Experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
26 and Agreement to Be Bound” (Exhibit A);

27 (d) the court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, mock
2 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
6 (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by the court.** Pages
7 of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must
8 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this Stipulated Protective Order.

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL”, that Party
16 must:

17 (a) promptly notify in writing the Designating Party. Such notification shall
18 include a copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective
22 Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by
24 the Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the subpoena
26 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
27 before a determination by the court from which the subpoena or order issued, unless the Party has
28 obtained the Designating Party’s permission. The Designating Party shall bear the burden and

1 expense of seeking protection in that court of its Protected Material – and nothing in these
2 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
3 disobey a lawful directive from another court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
5 LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-
7 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
8 Parties in connection with this litigation is protected by the remedies and relief provided by this
9 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
10 additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce
12 a Non-Party’s Protected Material in its possession, and the Party is subject to an agreement with
13 the Non-Party not to produce the Non-Party’s Protected Information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-Party
15 that some or all of the information requested is subject to a confidentiality agreement with a Non-
16 Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 (3) make the information requested available for inspection by the Non-
21 Party.

22 (c) If the Non-Party fails to object or seek a protective order from this court
23 within 14 days of receiving the notice and accompanying information, the Receiving Party may
24 produce the Non-Party’s Protected Material responsive to the discovery request. If the Non-Party
25 timely seeks a protective order, the Receiving Party shall not produce any Protected Material in its
26 possession or control that is subject to the confidentiality agreement with the Non-Party before a
27 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
28 burden and expense of seeking protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
6 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery order
15 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
16 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work product protection,
18 the parties may incorporate their agreement in the stipulated protective order submitted to the
19 court.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
26 Party waives any right to object on any ground to use in evidence of any of the material covered
27 by this Protective Order.
28

1 12.3 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rules 140, 141 and 141.1. If a Receiving Party's
5 request to file Protected Material under seal pursuant to Civil Local Rules 140, 141, and 141.1 is
6 denied by the court, then the Receiving Party may file the information, subject to redaction, in the
7 public record unless otherwise instructed by the court.

8 13. FINAL DISPOSITION

9 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
10 Receiving Party, other than Counsel, must return all Protected Material to the Producing Party or
11 destroy such material. As used in this subdivision, "all Protected Material" includes all copies,
12 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
13 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 must submit a written certification to the Producing Party (and, if not the same person or entity, to
15 the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
16 all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
17 has not retained any copies, abstracts, compilations, summaries or any other format reproducing or
18 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
19 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
20 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
21 product, and consultant and expert work product, even if such materials contain Protected
22 Material. Any such archival copies that contain or constitute Protected Material remain subject to
23 this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: January 24, 2018

/s/ Vicki E. Cody (as authorized on 1/24/18)
Vicki E. Cody
Law Office of Vicki E. Cody
Attorney for Plaintiff

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6 DATED: January 25, 2018

/s/ Nancy J. Sheehan
Nancy J. Sheehan
Erin J. Price
Porter Scott, A Professional Corporation
Attorneys for Defendant

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11 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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13 Dated: January 26, 2018


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

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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 Stipulated Protective Order that was issued by the
United States District Court for the Eastern District of California in the case of *Scott v. The County
of Plumas*, Case No. 2:17-cv-00217-KJM-CMK. I agree to comply with and to be bound by all
the terms of this Stipulated 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
Stipulated 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 Stipulated
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 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]