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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Luis JACOBO,

Plaintiff,

v.

Rogelio HERNANDEZ, et al.,

Defendants.

Case No: 3:21-cv-01113-JLS-AGS

**ORDER GRANTING JOINT
MOTION AND PROTECTIVE
ORDER**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for public safety and privacy reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

In addition, discovery in this case involves subpoenas for the production of documents by third parties. The materials to be produced throughout the course of the litigation by the parties and third-party subpoena recipients (“Producing Parties”) may contain sensitive information from prison records that affect safety and privacy interests, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(D). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

1 DEFINITIONS

2 1. The term "confidential information" will mean and include information
3 contained or disclosed in any materials, including documents, portions of documents,
4 answers to interrogatories, responses to requests for admissions, responses to subpoenas,
5 trial testimony, deposition testimony, and transcripts of trial testimony and depositions,
6 including data, summaries, and compilations derived therefrom that is deemed to be
7 confidential information by any Producing Party to which it belongs.

8 2. The term "materials" will include, but is not be limited to: documents;
9 correspondence; memoranda; bulletins; blueprints; specifications; minutes; telegrams;
10 letters;; contracts; drafts;; worksheets; notes of conversations; desk diaries; appointment
11 books; expense accounts; recordings; photographs; video material; compilations from
12 which information can be obtained and translated into reasonably usable form through
13 detection devices; sketches; drawings; notes (including laboratory notebooks and records);
14 reports; instructions; disclosures; other writings; models and prototypes and other physical
15 objects.

16 3. The term "counsel" will mean outside counsel of record, and other attorneys,
17 paralegals, secretaries, and other support staff employed in the law firms identified below:
18

19 JONATHAN PAUL

20 DALBIR CHOPRA

21 Rivera Hewitt Paul LLP

22 11341 Gold Express Drive Suite 160

23 Gold River, CA 95670

24 Telephone: 916-922-1200

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17 Sacramento, CA 95822
18 Telephone:916-761-8293
19 E-mail:Tac@creggerlaw.com

20

21 GENERAL RULES

22 4. Each Producing Party that produces or discloses any materials, documents,
23 answers to interrogatories, responses to requests for admission, trial testimony, deposition
24 testimony, and transcripts of trial testimony and depositions, or information that the
25 producing party believes should be subject to this Protective Order may designate the same
26 as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

27 a. Designation as "CONFIDENTIAL": Any Producing Party may designate
28 information as "CONFIDENTIAL" only if, in the good faith belief of such Producing Party

1 and its counsel, the unrestricted disclosure of such information could be potentially
2 prejudicial to the safety or privacy interests of such party, its employees, or third-party
3 individuals.

4 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any
5 Producing Party may designate information as "CONFIDENTIAL - FOR COUNSEL
6 ONLY" only if, in the good faith belief of such party and its counsel, the information is
7 among that considered to be most sensitive by the party, including but not limited to
8 information that would otherwise present a substantial safety risk or substantial intrusion
9 into an individual's right to privacy.

10 5. In the event the producing party elects to produce materials for inspection, no
11 marking need be made by the producing party in advance of the initial inspection. For
12 purposes of the initial inspection, all materials produced will be considered as
13 "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as such pursuant to the
14 terms of this Order. Thereafter, upon selection of specified materials for copying by the
15 inspecting party, the producing party must, within a reasonable time prior to producing
16 those materials to the inspecting party, mark the copies of those materials that contain
17 confidential information with the appropriate confidentiality marking.

18 6. Whenever a deposition taken on behalf of any party involves a disclosure of
19 confidential information of any Producing Party:

20 a. the deposition or portions of the deposition must be designated as
21 containing confidential information subject to the provisions of this
22 Order; such designation must be made on the record whenever possible,
23 but a party may designate portions of depositions as containing
24 confidential information after transcription of the proceedings; [A]
25 party will have until fourteen (14) days after receipt of the deposition
26 transcript to inform the other party or Producing Parties to the action of
27 the portions of the transcript to be designated "CONFIDENTIAL" or
28 "CONFIDENTIAL - FOR COUNSEL ONLY."

1 b. the disclosing party will have the right to exclude from attendance at
2 the deposition, during such time as the confidential information is to be
3 disclosed, any person other than the deponent, counsel (including their
4 staff and associates), the court reporter, and the person(s) agreed upon
5 pursuant to paragraph 8 below; and

6 c. the originals of the deposition transcripts and all copies of the
7 deposition must bear the legend "CONFIDENTIAL" or
8 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the
9 original or any copy ultimately presented to a court for filing must not
10 be filed unless it can be accomplished under seal, identified as being
11 subject to this Order, and protected from being opened except by order
12 of this Court.

13 7. All confidential information designated as "CONFIDENTIAL" or
14 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving party
15 to anyone other than those persons designated within this order and must be handled in the
16 manner set forth below and, in any event, must not be used for any purpose other than in
17 connection with this litigation, unless and until such designation is removed either by
18 agreement of the parties, or by order of the Court. If such designation is to be removed for
19 any reason, reasonable advance notice must be given to the Producing Party, along with an
20 opportunity to object.

21 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must
22 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
23 retained expert witnesses, provided they sign this agreement (Exhibit A) and consent to be
24 bound by it, in advance of being provided any confidential information.

25 9. Information designated "confidential" must be viewed only by counsel (as
26 defined in paragraph 3) of the receiving party, by expert witnesses (pursuant to the terms
27 of paragraph 8), by court personnel, and by the additional individuals listed below,
28 provided each such individual has read this Order in advance of disclosure and has agreed

1 in writing to be bound by its terms:

- 2 a) Technical personnel of the parties with whom Counsel for the parties
3 find it necessary to consult, in the discretion of such counsel, in
4 preparation for trial of this action; and
5 b) Stenographic and clerical employees associated with the individuals
6 identified above.

7 10. With respect to material designated "CONFIDENTIAL" or
8 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of the
9 document to be its originator, author or a recipient of a copy of the document, may be
10 shown the same.

11 11. All information which has been designated as "CONFIDENTIAL" or
12 "CONFIDENTIAL - FOR COUNSEL ONLY" by the producing or disclosing party, and
13 any and all reproductions of that information, must be retained in the custody of the counsel
14 for the receiving party identified in paragraph 3, except that experts authorized to view
15 such information under the terms of this Order may retain custody of copies such as are
16 necessary for their participation in this litigation.

17 12. Before any materials produced in discovery (including those produced in
18 response to subpoena), answers to interrogatories, responses to requests for admissions,
19 deposition transcripts, or other documents which are designated as confidential information
20 are filed with the Court for any purpose, the party seeking to file such material must seek
21 permission of the Court to file the material under seal.

22 13. At any stage of these proceedings, any party may object to a designation of
23 the materials as confidential information. The party objecting to confidentiality must
24 notify, in writing, counsel for the Producing Party of the objected-to materials and the
25 grounds for the objection. If the dispute is not resolved consensually between the parties
26 within seven (7) days of receipt of such a notice of objections, the objecting party may
27 move the Court for a ruling on the objection. The materials at issue must be treated as
28 confidential information, as designated by the Producing Party, until the Court has ruled

1 on the objection or the matter has been otherwise resolved.

2 14. All confidential information must be held in confidence by those inspecting
3 or receiving it, and must be used only for purposes of this action. Counsel for each party,
4 and each person receiving confidential information must take reasonable precautions to
5 prevent the unauthorized or inadvertent disclosure of such information. If confidential
6 information is disclosed to any person other than a person authorized by this Order, the
7 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
8 relating to the unauthorized disclosure to the attention of the other parties and, without
9 prejudice to any rights and remedies of the other parties, make every effort to prevent
10 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

11 15. No party will be responsible to another party for disclosure of confidential
12 information under this Order if the information in question is not labeled or otherwise
13 identified as such in accordance with this Order.

14 16. If a Producing Party, through inadvertence, produces any confidential
15 information without labeling or marking or otherwise designating it as such in accordance
16 with this Order, the Producing Party may give written notice to the receiving party that the
17 document or thing produced is deemed confidential information, and that the document or
18 thing produced should be treated as such in accordance with that designation under this
19 Order. The receiving party must treat the materials as confidential, once the Producing
20 Party so notifies the receiving party. If the receiving party has disclosed the materials
21 before receiving the designation, the receiving party must notify the Producing Party in
22 writing of each such disclosure. Counsel for the parties will agree on a mutually acceptable
23 manner of labeling or marking the inadvertently produced materials as "CONFIDENTIAL"
24 or "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE
25 ORDER.

26 17. Nothing within this order will prejudice the right of any party or Producing
27 Party to object to the production of any discovery material on the grounds that the material
28 is protected as privileged or as attorney work product.

1 18. Nothing in this Order will bar counsel from rendering advice to their clients
2 with respect to this litigation and, in the course thereof, relying upon any information
3 designated as confidential information, provided that the contents of the information and
4 the underlying documents must not be disclosed.

5 19. This Order will be without prejudice to the right of any party or Producing
6 Party to oppose production of any information for lack of relevance or any other ground
7 other than the mere presence of confidential information. The existence of this Order must
8 not be used by either party as a basis for discovery that is otherwise improper under the
9 Federal Rules of Civil Procedure.

10 20. Nothing within this order will be construed to prevent disclosure of
11 confidential information if such disclosure is required by law or by order of the Court. If
12 a party is called upon to disclose confidential information in this manner, the disclosing
13 party shall provide reasonable advance notice to the Producing Party.

14 21. Upon final termination of this action, including any and all appeals, counsel
15 for each party must destroy all confidential information produced under this Protective
16 Order, including any copies, excerpts, and summaries of that information, and must purge
17 all such information from all machine-readable media on which it resides. Notwithstanding
18 the foregoing, counsel for each party may retain all pleadings, briefs, memoranda, motions,
19 and other documents filed with the Court that refer to or incorporate confidential
20 information, and will continue to be bound by this Order with respect to all such retained
21 information. Further, attorney work product materials that contain confidential information
22 need not be destroyed, but, if they are not destroyed, the person in possession of the
23 attorney work product will continue to be bound by this Order with respect to all such
24 retained information.

25 22. The restrictions and obligations set forth within this order will not apply to
26 any information that: (a) the parties (and relevant Producing Party, if applicable) agree
27 should not be designated confidential information; (b) the parties (and relevant Producing
28 Party, if applicable) agree, or the Court rules, is already public knowledge; (c) the parties

1 (and relevant Producing Party, if applicable) agree, or the Court rules, has become public
2 knowledge other than as a result of disclosure by the receiving party, its employees, or its
3 agents in violation of this Order; or (d) has come or will come into the receiving party's
4 legitimate knowledge independently of the production by the designating party. Prior
5 knowledge must be established by pre-production documentation.

6 23. The restrictions and obligations within this order will not be deemed to
7 prohibit discussions of any confidential information with anyone if that person already has
8 or obtains legitimate possession of that information.

9 24. Transmission by email or some other currently utilized method of
10 transmission is acceptable for all notification purposes within this Order.

11 25. This Order may be modified by agreement of the parties, subject to approval
12 by the Court.

13 26. The Court may modify the terms and conditions of this Order for good cause,
14 or in the interest of justice, or on its own order at any time in these proceedings. The parties
15 prefer that the Court provide them with notice of the Court's intent to modify the Order and
16 the content of those modifications, prior to entry of such an order.

17 27. A copy of this Protective Order shall be served on any recipient of a third-
18 party subpoena.

19 28. No document may be filed under seal, except pursuant to a court order that
20 authorizes the sealing of the particular document, or portion of the document. A sealing
21 order may issue only upon a showing that the information is privileged or protectable under
22 the law. The request must be narrowly tailored to seek sealing only of the confidential or
23 privileged material.

24 29. To file a document under seal, the parties must comply with the procedures
25 explained in Section 2.j of the Electronic Case Filing Administrative Policies and
26 Procedures Manual for the United States District Court for the Southern District of
27 California and Civil Local Rule 79.2. In addition, a party must file a redacted version of
28 any document that it seeks to file under seal. The document must be titled to show that it

1 corresponds to an item filed under seal, e.g., "Redacted Copy of Sealed Declaration of John
2 Smith in Support of Motion for Summary Judgment." The party should file the redacted
3 document(s) simultaneously with a joint motion or ex parte application requesting that the
4 confidential portions of the document(s) be filed under seal and setting forth good cause
5 for the request.

6 30. Without a separate court order, the Protective Order and the parties' stipulation
7 does not change, amend, or circumvent any court rule or local rule.

8 Dated: December 21, 2021

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11 Hon. Andrew G. Schopler
12 United States Magistrate Judge
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Exhibit A

Non-Disclosure Agreement

Jacobo v. Hernandez, et. al., 21cv1113-JLS-AGS (S.D. Cal.)

I, the undersigned, hereby declare that I have read the attached Stipulated Protective Order (“Order”) entered in the above-captioned case. I understand the terms of the Order. I also understand that my execution of this Non-Disclosure Agreement, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY" pursuant to the Order.

I will comply with, and agree to be bound by, all of the provisions of the Order. I agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Southern District of California, for the purposes of any proceedings relating to the enforcement of the Order and this Non-Disclosure Agreement.

DATED: _____

Signature

Print Name