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 11
 12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 WESLEY WEIDNER,

15 Plaintiff,

16 v.

17 STATE OF NEVADA; DIRECTOR GREG
 COX, individually; WARDEN DWIGHT
 18 NEVEN, individually; ASSISTANT
 WARDEN TIMOTHY FILSON,
 19 individually; CORRECTIONS OFFICER
 FRANCO, individually; ASSOCIATE
 20 WARDEN JENNIFER NASH,
 individually; CASEWORKER STACY
 21 BARRETT, individually; INSPECTOR
 GENERAL DAVID MOLNAR,
 22 individually; INSPECTOR BRIAN
 SHIELDS, individually; INSPECTOR
 23 VICTOR DANIELS, individually;
 INSPECTOR STEVE LEMAIRE,
 24 individually; SENIOR C.O. NORMAN,
 individually; DOE LICENSED
 25 PRACTICAL NURSE; DOE
 CORRECTION OFFICERS I-V; DOES I-X,
 26 inclusive; and ROES I-X, inclusive,

27 Defendants.

CASE NO. 2:16-cv-02301-KJD-NJK

**STIPULATION AND PROTECTIVE
 ORDER GOVERNING SENSITIVE
 AND CONFIDENTIAL MATERIAL**

1 Plaintiff Wesley Weidner, by and through counsel, Marc A. Saggese, Esq., and
2 Defendants State of Nevada, Greg Cox, Dwight Neven, Timothy Filson, Joseph Franco,
3 Jennifer Nash, Stacy Barrett, David Molnar, Bryan Shields, Victor Daniel, Steven
4 LeMaire, and Antoine Norman, by and through counsel, Adam Paul Laxalt, Nevada
5 Attorney General, Jared M. Frost, Senior Deputy Attorney General, and Matthew Feeley,
6 Deputy Attorney General, hereby agree and stipulate to the following.

7 1. Due to the unique safety and security issues presented by the prison
8 environment and for the purposes of facilitating discovery and protecting the interests of
9 the parties and third parties against improper use and disclosure of sensitive or
10 confidential information submitted or produced in connection with this Action, the parties
11 agree that this Stipulation and Protective Order Governing Sensitive and Confidential
12 Material shall govern the handling of all Discovery Material, as hereafter defined.

13 **TERMS USED IN THIS ORDER**

14 2. When used in this Order, the term:

15 a. "Prison-Sensitive Documents" shall mean all documents or records of
16 any kind created or maintained by the Nevada Department of Corrections ("NDOC") that
17 inmates are generally prohibited from possessing on their person or in their cells, or that
18 the NDOC deems sensitive in the prison environment. Prison-Sensitive Documents include
19 the following document, file, or record categories, and shall be so designated by the
20 Disclosing Party in the Disclosing Party's Production(s) of Documents:

- 21 (1) Inmate institutional files;
22 (2) Inmate medical files;
23 (3) Employee personnel files;
24 (4) Investigative records and reports;
25 (5) Prison records related to inmates other than the Plaintiff in this
26 Action;
27 (6) Reports generated through the Nevada Offender Tracking
28 Information System ("NOTIS");

1 (7) Confidential Administrative Regulations and Operational
2 Procedures; and

3 (8) other sensitive documents as designated by the Disclosing Party.

4 b. “Highly Confidential Information” shall mean:

5 (1) Personal contact information of current or former NDOC
6 employees or contractors;

7 (2) Inmate mental health information; and

8 (3) Information, the disclosure of which may jeopardize prison
9 operations or create a substantial risk of safety, security, or operational injury. Highly
10 Confidential Information must not be publicly known and must not be ascertainable from
11 an inspection of publicly available documents, materials, or devices.

12 c. “Disclosing Party” shall refer to any party to this Action and any non-
13 party disclosing or producing Prison-Sensitive Documents or Highly Confidential
14 Information in connection with this Action.

15 d. “Discovery Material” shall refer to all items or information that are
16 produced or generated in disclosures or responses to discovery in this Action, regardless of
17 the medium or manner in which it was stored, generated, or maintained.

18 e. “Document” shall have the same meaning as provided in Rule 34 of the
19 Federal Rules of Civil Procedure and shall include, without limitation, all original, written,
20 recorded, electronic, or graphic materials, and all copies, duplicates, or abstracts thereof.

21 f. “Receiving Party” shall refer to any party to this Action and his or her
22 counsel, and any non-party that receives Prison-Sensitive Documents or Highly
23 Confidential Information in connection with this action.

24 **DESIGNATION OF HIGHLY CONFIDENTIAL INFORMATION**

25 3. Designation of documents or other material as Highly Confidential as set forth
26 in Paragraph 2 of this Stipulation and Order may be made at or prior to the time of
27 production of documents by stamping or otherwise affixing the legend “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each page deemed Highly Confidential

1 in a manner that does not interfere with the legibility of the document. The Disclosing
2 Party must limit designations of Highly Confidential Information to only those parts of
3 documents, testimony, or material that are clearly identified as containing Highly
4 Confidential Information. If only part of a document is designated Highly Confidential,
5 then, in addition to providing the Receiving Party's attorney with an unredacted copy of
6 the document marked "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," the
7 Disclosing party must also provide a redacted copy of the document that omits the Highly
8 Confidential Information.

9 4. A Disclosing Party's designation of Discovery Material as Highly Confidential
10 constitutes a representation that such Discovery Material has been reviewed by counsel
11 and that there is a good faith basis for such designation.

12 **DISCLOSURE AND USE OF PRISON-SENSITIVE DOCUMENTS**

13 5. The Disclosing Party, in complying with informal discovery requests,
14 disclosure requirements, or discovery demands in this proceeding, shall provide Prison-
15 Sensitive Documents to Plaintiff's counsel and not directly to Plaintiff.

16 6. Plaintiff's counsel shall not provide copies of Prison Sensitive Documents to
17 Plaintiff or any person in the custody of the NDOC, and shall take reasonable steps to
18 ensure that any third parties do not provide Prison-Sensitive Documents to Plaintiff or to
19 any NDOC inmate. The parties agree and acknowledge that this limitation shall not
20 prohibit Plaintiff's counsel from using Prison Sensitive Documents for legitimate litigation
21 purposes, including the discussion of the documents and information contained therein
22 with Plaintiff by phone or through written correspondence, in any in-person meetings to
23 review the documents with Plaintiff during legal visits at the prison, and as exhibits to
24 court filings.

25 **DISCLOSURE AND USE OF HIGHLY CONFIDENTIAL INFORMATION**

26 7. The Disclosing Party, in complying with informal discovery requests,
27 disclosure requirements, or discovery demands in this proceeding, shall provide Highly
28 Confidential Information to Plaintiff's counsel and not directly to Plaintiff.

1 8. Unless otherwise ordered by the Court or permitted in writing by the
2 Disclosing Party, a Receiving Party, including Plaintiff's counsel, shall not disclose Highly
3 Confidential Information to Plaintiff and shall disclose such information only to the
4 following persons:

5 a. counsel of record in this Action, as well as counsel's employees to whom
6 it is reasonably necessary to disclose the information in connection with this Action;

7 b. experts, consultants, or investigators including their staff who have
8 signed the Acknowledgment attached hereto as Exhibit A;

9 c. outside photocopying, microfilming, or database service providers, trial
10 support firms, graphic production services, litigation support services, and translators
11 engaged by the parties during this Action to whom disclosure is reasonably necessary for
12 this Action;

13 d. the court, any court to which a party petitions for discovery of a non-
14 party, any appellate court, necessary court personnel, and jurors;

15 e. court reporters and their staff, stenographers or video operators,
16 professional jury or trial consultants, mock jurors, and professional vendors to whom
17 disclosure is reasonably necessary for this Action;

18 f. during their depositions and deposition preparation, witnesses in the
19 Action to whom disclosure is reasonably necessary and who have signed the
20 Acknowledgment attached hereto as Exhibit A (although such individuals shall not be
21 permitted to retain any copies);

22 g. any mediator or arbitrator engaged by the named parties in connection
23 with this Action;

24 h. the author or recipient of a document containing the Confidential
25 Information or a custodian or other person who otherwise possessed or knew the
26 information; and

27 i. other persons only after notice to all parties and upon order of the
28 Court, or upon written consent of the Disclosing Party.

1 9. Disclosure of Highly Confidential Information to any person described in
2 Paragraph 8 of this Stipulation and Order shall be only for the purposes of the preparation
3 and hearing of this proceeding, or any appeal therefrom, and for no other purposes
4 whatsoever absent order of the Court.

5 ~~10. In the event that any Highly Confidential Information is contained in any
6 motion, exhibit, or other paper filed or to be filed with the Court, the filing party
7 concurrently herewith shall remain under seal. Highly Confidential Information contained in the papers
8 shall remain under seal until further order of the Court. Upon or after filing any paper
9 containing Highly Confidential Information, the filing party shall file on the public record
10 a duplicate copy of the paper that does not reveal the Highly Confidential Information.~~

11 11. Any party shall have the right to use Highly Confidential Information during
12 depositions, provided that all persons who are present during such portions of depositions
13 have executed the written acknowledgment attached hereto as Exhibit A and agree to abide
14 by this order. During a deposition, if the contents of a document marked “ATTORNEYS’
15 EYES ONLY” is inquired into, or if counsel for a party believes that the response to a
16 question may result in the disclosure of Highly Confidential Information, or whenever
17 counsel for a party deems that the response to any question *has* resulted in the disclosure
18 of Highly Confidential Information, the deposition (or portions thereof) may be designated
19 by the affected party as containing Highly Confidential Information subjects to the
20 provision of this Stipulation and Order. When such designation has been made, the
21 testimony, or the transcript of such testimony, shall be disclosed only to those parties
22 described in paragraph 8, and the information contained therein shall be used only as
23 specified in this Stipulation and Order.

24 Counsel for the party whose Highly Confidential Information is involved may also
25 request that all persons not qualified under paragraph 8 of this Stipulation and Order to
26 have access to the Highly Confidential Information leave the deposition room during the
27 confidential portion(s) of the deposition. Failure of such other persons to comply with a
28 request to leave the deposition shall constitute substantial justification for counsel to

1 advise the witness that the witness need not answer the questions seeking the disclosure
2 of Highly Confidential Information.

3 12. Inadvertent failure to designate materials as Highly Confidential at the time
4 of production may be remedied by supplemental written notice by the Disclosing Party. The
5 Disclosing Party must notify the Receiving Party within fourteen (14) calendar days after
6 discovering that it inadvertently failed to designate the information as confidential. If such
7 notice is given, all documents, materials, or testimony so designated shall be subject to this
8 Order as if they had been initially designated as Confidential to the extent that such
9 documents, materials, or testimony fall within the definition of Highly Confidential
10 Information. Therefore, the Receiving Party should notify any non-party to whom
11 disclosure was made about the confidentiality designation.

12 **APPLICATION TO NON-PARTIES**

13 13. Each expert, advisor, consultant, fact witness, or potential fact witness who
14 receives Highly Confidential Information shall be shown a copy of this Order and be advised
15 of its contents. Each such individual shall execute the written acknowledgement attached
16 hereto as Exhibit A.

17 14. Any person or entity in possession of Highly Confidential Information shall
18 maintain that information in a reasonably secure manner, and shall not reveal or discuss
19 such information to or with any person not entitled to receive it, so that the Highly
20 Confidential Information is not further disclosed or used in any manner inconsistent with
21 this Order. At the time that any consultant or other person retained to assist counsel in
22 the preparation of this Action concludes participation in the Action, such person shall
23 return to counsel all copies of documents or portions thereof containing Highly Confidential
24 Information that are in the possession of such person, together with all notes, memoranda
25 or other papers containing such information.

26 15. The parties, in conducting discovery from third parties, shall provide to each
27 third party a copy of this Order so as to inform each such third party of his, her, or its rights
28 herein.

1 **KNOWLEDGE OF UNAUTHORIZED USE OR POSSESSION**

2 16. The Receiving Party shall immediately notify the Disclosing Party in writing
3 if the Receiving Party learns of any unauthorized possession, knowledge, use or disclosure
4 of any Highly Confidential Information provided by that Disclosing Party. The Receiving
5 Party shall promptly furnish the Disclosing Party full details of such possession,
6 knowledge, use, or disclosure. With respect to such unauthorized possession, knowledge,
7 use, or disclosure, the Receiving Party shall assist the Disclosing Party in preventing its
8 recurrence and shall cooperate reasonably with the Disclosing Party in any efforts to
9 prevent the unauthorized use or further dissemination of the Highly Confidential
10 Information, including contacting any individuals or entities that have unauthorized
11 possession to request that the individuals or entities return all copies in their possession,
12 and cooperating with any motions or litigation filed by the Disclosing Party against the
13 individuals or entities in unauthorized possession who refuse to voluntarily return the
14 documents.

15 **MISCELLANEOUS PROVISIONS**

16 17. Nothing in this Order shall be construed as limiting a Disclosing Party’s use
17 of its own Highly Confidential Information. In addition, nothing in this Order shall prevent
18 or in any way limit disclosure, use or dissemination of any Confidential Highly Confidential
19 Information that:

- 20 a. is or became public knowledge, not in breach of this Order;
- 21 b. was acquired by a party from a non-party having the right to disclose
22 such information; or
- 23 c. was learned by a party as a result of that party’s own independent
24 efforts, investigation, or inquiry.

25 If a dispute arises as to disclosure limitations for any specific Highly Confidential
26 Information, the burden shall be on the party seeking unlimited disclosure to prove that
27 such Confidential Information was lawfully obtained through the above means or sources.

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1 18. No party shall be obligated to challenge the propriety of a designation of
2 Highly Confidential Information when initially received, and a failure to do so shall not
3 preclude a subsequent challenge thereto. If, at any time, a party objects to a designation of
4 Highly Confidential Information under this Order, the objecting party shall notify the
5 Disclosing Party in writing. Within twenty-one (21) calendar days of receipt of such
6 notification, counsel for the disclosing party and the objecting party shall meet and confer
7 in a good faith effort to resolve any disagreement regarding the Disclosing Party's
8 designation of the Highly Confidential Information. If the dispute is not resolved by
9 agreement, the designating party shall move to enforce the confidential designation within
10 fourteen (14) calendar days thereafter. The designating party shall bear the burden of
11 establishing that the materials are properly designated as confidential. Pending such
12 determination by the Court (or the expiration of the period in which any party may make
13 a challenge to an adverse ruling, if later), the records and/or things shall be maintained as
14 confidential material.

15 19. This Order shall not prejudice in any way the rights of any party to introduce
16 as evidence at trial any document, testimony, or other evidence subject to this Order that
17 is otherwise admissible, or prejudice in any way the rights of any party to object to the
18 authenticity or admissibility into evidence of any document, testimony, or other evidence
19 subject to this Order. A party that intends to present or that anticipates that another party
20 may present Highly Confidential Information at a hearing or trial shall bring that issue to
21 the Court's and parties' attention by motion or in a pretrial memorandum without
22 disclosing the Highly Confidential Information. The Court may thereafter make such
23 orders as are necessary to govern the use of such documents or information at trial. In the
24 event that Highly Confidential Information is used in open court during any court
25 proceeding or filed as a trial exhibit, the material shall lose its confidential status and
26 become part of the public record, unless the Disclosing Party applies for and obtains an
27 order from the court specifically maintaining the confidential status of particular material.
28 Before any court proceeding in which Highly Confidential Information is to be used, counsel

1 will confer in good faith on such procedures that may be necessary or advisable to protect
2 the confidentiality of any such Highly Confidential Information.

3 20. Nothing in this Order or any designation of confidentiality hereunder, or any
4 failure to make such designation, shall be used or characterized by any party as an
5 admission by a party or a party opponent.

6 21. The parties agree that a designation of information as Highly Confidential is
7 not intended to be and shall not be construed as an admission that the Highly Confidential
8 Information is relevant to a party's claims or defenses, nor subject to an applicable privilege
9 or protection.

10 22. Nothing in this Order shall be deemed an admission that any particular
11 Highly Confidential Information is entitled to protection under this Order, Fed. R. Civ. P.
12 26(c), or any other law.

13 23. The treatment accorded under this Order shall survive the termination of this
14 Action.

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1 24. This Order shall not prevent any party from applying to the Court for further
2 or additional protective orders, for the modification of this Order, or from agreeing with the
3 other parties to modify this Order, subject to the Court's approval.

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5 DATED this 8th day of June, 2018.

DATED this 8th day of June, 2018.

6 SAGGESE & ASSOCIATES, LTD.

ADAM PAUL LAXALT
Attorney General

7
8 By: /s/ Marc A. Saggese
9 MARC A. SAGGESE, ESQ.
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By: /s/ Jared M. Frost
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Attorneys for Defendants

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14 **ORDER**

15 For good cause appearing, the Stipulation and Protective Order Governing Sensitive
16 and Confidential Material as set forth above is **SO ORDERED**.

17 June 11
18 Dated _____, 2018.

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21 _____
22 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

Acknowledgement

EXHIBIT A

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT**

3 I, _____, declare that:

4 • I have received a copy of the Stipulation and Protective Order Governing
5 Sensitive and Confidential Material (“Confidentiality Agreement”) in this Action.

6 • I have carefully read and understand the provisions of this Confidentiality
7 Agreement and I agree to abide by its terms.

8 • I will not provide copies of Prison Sensitive Documents to the Plaintiff or to
9 any other incarcerated person.

10 • I will hold in confidence, will not disclose to anyone other than those persons
11 specifically authorized by the Confidentiality Agreement, and will not copy or use for
12 purposes other than for this Action any information designated “Highly Confidential”
13 that I receive in this Action, except to the extent that such information designated
14 “Highly Confidential” is or becomes public domain information or otherwise is not
15 deemed “Highly Confidential” in accordance with the Confidentiality Agreement.

16 • I agree that at the conclusion of the litigation, I will return all Highly
17 Confidential Information to the party or attorney from whom I received it.

18 • I agree to subject myself personally to the jurisdiction of this Court for the
19 purpose of proceedings relating to my performance under, compliance with, or violation of
20 the Confidentiality Agreement.

21 • I understand that disclosure of information designated "Highly Confidential"
22 in violation of the Confidentiality Agreement may constitute contempt of court.

23 I declare under penalty of perjury that the foregoing is true and correct.

24
25 _____
26 Date

Signature