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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ERIK R. CARBAJAL,

Plaintiff,

v.

R. RABORN, et al.,

Defendants.

CV11-09134 ODW (DTBx)

**[PROPOSED] PROTECTIVE
ORDER**

**NOTE CHANGES MADE BY THE
COURT**

Judge: The Honorable David T.
Bristow

ORDER

Based on the stipulation of the parties filed concurrently herewith, and for good cause shown, the Court makes the following orders:

1. Plaintiff’s counsel shall maintain the confidentiality of the Confidential Reports produced in discovery by Defendants. Specifically, Plaintiff’s counsel shall take all reasonable steps to safeguard the Confidential Reports, and shall not disclose or disseminate the documents or their content except as provided herein.

2. Plaintiff’s counsel may disclose Confidential Reports to co-counsel, and employees who are assisting in the prosecution of this action, including settlement, trial, or any appeal relating thereto. Any co-counsel and employee, to whom

1 disclosure is made, shall be advised of, shall become subject to, and shall agree in
2 advance of disclosure, to the provisions of this Protective Order, requiring that the
3 material and information contained in therein be held in confidence. Additionally,
4 Plaintiff's counsel may share the Confidential Reports with experts and
5 investigators retained by the Plaintiff without obtaining further consent provided
6 that such individual(s) consent in writing to be bound by this stipulation and order
7 to the same extent as Plaintiff's counsel.

8 3. Plaintiff's counsel shall not show the Confidential Reports to Plaintiff
9 Erik Carbajal, or third parties, without first obtaining consent of Defendant's
10 counsel or a court order authorizing disclosure. Plaintiff's counsel is free to discuss
11 with Plaintiff the facts and circumstances contained within the Confidential
12 Reports, related to the subject incident, being mindful not to disclose information to
13 Plaintiff related to the identities of CDCR staff, inmates assisting CDCR or
14 Plaintiff's victim(s).

15 4. The Confidential Reports shall not be used or disclosed by any party or
16 their counsel, or any person acting on their behalf, for any purpose other than
17 prosecuting, defending and attempting to settle this matter.

18 5. Any copies made of the Confidential Reports shall be stamped
19 "CONFIDENTIAL."

20 6. DISPUTES:

21 6.1 Any party or non-party may challenge a designation of
22 confidentiality. If a party or non-party fails to challenge a confidentiality
23 designation within sixty (60) days of receiving the designated confidential
24 information, it waives its right to challenge the confidentiality designation.

25 6.2 The Challenging Party shall initiate the dispute resolution process
26 by providing written notice of each designation it is challenging and describing the
27 basis for each challenge. To avoid ambiguity as to whether a challenge has been
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1 made, the written notice must recite that the challenge to confidentiality is being
2 made in accordance with this specific paragraph of the Protective Order. The
3 parties shall attempt to resolve each challenge in good faith and must begin the
4 process by conferring directly (in voice-to-voice dialogue; other forms of
5 communication are not sufficient) within 14 days of the date of service of notice.
6 In conferring, the Challenging Party must explain the basis for its belief that the
7 confidentiality designation was not proper and must give the Designating Party an
8 opportunity to review the designated material, to reconsider the circumstances, and,
9 if no change in designation is offered, to explain the basis for the chosen
10 designation. A Challenging Party may proceed to the next stage of the challenge
11 process only if it has engaged in this meet and confer process first or establishes
12 that the Designating Party is unwilling to participate in the meet and confer process
13 in a timely manner.

14 6.3 If the parties cannot resolve a challenge without court
15 intervention, the Designating Party shall file and serve a motion to retain
16 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
17 79-5, if applicable) within 21 days of the initial notice of challenge, or within 14
18 days of the parties agreeing that the meet and confer process will not resolve their
19 dispute, whichever is earlier. Each such motion must be accompanied by a
20 competent declaration affirming that the movant has complied with the meet and
21 confer requirements imposed in the preceding paragraph. Failure by the
22 Designating Party to make such a motion including the required declaration within
23 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
24 designation for each challenged designation. Any motion brought pursuant to this
25 provision must be accompanied by a competent declaration affirming that the
26 movant has complied with the meet and confer requirements imposed by the
27 preceding paragraph.
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1 6.4 The burden of persuasion in any such challenge proceeding shall
2 be on the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived the confidentiality designation by failing to file a motion to retain
6 confidentiality as described above, all parties shall continue to afford the material in
7 question the level of protection to which it is entitled under the Producing Party’s
8 designation until the court rules on the challenge.

9 7. If, during any court proceeding, either pre-trial, post-trial or during
10 trial, Plaintiff intends to offer into evidence any documents, exhibits, or other
11 materials that reveal materials or information identified as Confidential Reports (or
12 part thereof) by Defendants, counsel for Plaintiff shall provide counsel for
13 Defendants reasonable advance notice of such intention. In accordance with Local
14 Rule 79-5.1, if papers to be filed with the Court contain material or information that
15 has been designated as “CONFIDENTIAL” the proposed filing shall be
16 accompanied by an application to file the papers or the portions thereof containing
17 the confidential material information (if such information is segregable) under seal;
18 and that the application shall be directed to the judge to whom discovery is
19 assigned. If, in connection with any deposition taken in this action, Plaintiff’s
20 attorneys question a witness regarding materials marked as “CONFIDENTIAL” by
21 Defendants as agreed, or uses confidential material as deposition exhibits, the
22 transcripts of such deposition testimony and exhibits shall be designated as
23 confidential material and shall be subject to the provisions of this Protective Order.

24 9. Failure to comply with the Protective Order could subject the non-
25 compliant individual(s) to sanctions and punishment in the nature of contempt.

26 10. Plaintiff’s counsel agrees to return the Confidential Reports, and any
27 and all copies, to Defendant’s counsel no later than sixty days following conclusion
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of the proceedings in this case, including any appeal or retrial.

11. This order, and the obligations of all persons thereunder, including those related to disclosure and use of the Confidential Reports, shall survive the final termination of this case, whether such termination is by settlement, judgment, dismissal, appeal, or otherwise, until further order of this Court.

IT IS SO ORDERED.

4/24/12



Honorable David T. Bristow
United States Magistrate Judge