

1 HILARY POTASHNER (Bar No. 167060)
Federal Public Defender
2 MARK R. DROZDOWSKI (Bar No. 166669)
(E-Mail: Mark_Drozowski@fd.org)
3 MORIAH S. RADIN (Bar No. 260245)
(E-Mail: Moriah_Radin@fd.org)
4 Deputy Federal Public Defenders
321 East 2nd Street
5 Los Angeles, California 90012-4202
Telephone: (213) 894-2854
6 Facsimile: (213) 894-0081

7 Attorneys for Petitioner
CHRIS ANTHONY GEORGE

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **EASTERN DIVISION**

12 CHRIS ANTHONY GEORGE,

13 Petitioner,

14 v.

15 RAYMOND MADDEN,

16 Respondent.
17

Case No. EDCV 16-1016-RGK (AJW)

STIPULATION AND PROTECTIVE
ORDER

18
19 Pursuant to *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003) (en banc),
20 Petitioner and Respondent, through their respective counsel, hereby stipulate, agree and
21 request that this Court enter the following protective order regarding (1) documents
22 from trial counsel's files provided to Respondent during this habeas action; (2) related
23 testimony provided at the evidentiary hearing in this matter; and (3) any reference to
24 such documents or testimony in the parties' post-hearing briefs submitted to the Court:

25 1. Petitioner's trial attorney, Sean Davitt, provided a declaration to
26 Respondent that Respondent filed on March 23, 2017 with his objections to the Court's
27 report and recommendation. Docket no. 16. Mr. Davitt later provided a declaration to
28 Petitioner's counsel that Petitioner filed with other direct testimony declarations on July

1 Docket no. 31. Mr. Davitt testified at the evidentiary hearing held on July 18. Mr.
2 Davitt's declarations and hearing testimony discussed attorney-client communications
3 and his thoughts about Petitioner's case.

4 2. Before the evidentiary hearing, Mr. Davitt gave a copy of his files
5 pertaining to Petitioner's case to counsel for Petitioner and later to counsel for
6 Respondent. Davitt Direct Testimony Declaration signed June 29, 2017, ¶ 3.
7 Documents from those files were submitted as exhibits at the evidentiary hearing. *See*
8 Petitioner's Exhibits 3, 10-19, 21; Joint Proposed Exhibit List (docket no. 30). None of
9 those exhibits has been publicly filed in this case. At the end of the hearing, the parties
10 agreed to submit the entire case file produced by Mr. Davitt as Petitioner's Exhibit 23.
11 Petitioner is submitting those documents to the Court today. These files contain
12 attorney-client communications and counsel's thoughts and opinions about the case.

13 3. The parties agree that *Bittaker's* protections apply to Mr. Davitt's case
14 files and to portions of the hearing testimony of Messrs. Davitt and George. The
15 parties will designate the portions of the testimony they believe are subject to *Bittaker*
16 promptly upon receiving the hearing transcript. Documents from Mr. Davitt's case
17 files shall be subject to this Protective Order and shall remain confidential and sealed.
18 Similarly, privileged portions of testimony by Messrs. Davitt and George shall be
19 subject to this Protective Order and shall remain confidential and sealed. Petitioner
20 contends that the testimony provided by these witnesses is subject to claims of
21 attorney-client privilege and/or protected from disclosure by the attorney work product
22 doctrine.¹

23 4. All privileged documents and testimony produced to Respondent and/or
24 presented in this action may be used only for purposes of litigating this habeas corpus
25 proceeding by: (a) Petitioner and the members of his legal team (*i.e.*, lawyers
26

27 ¹Materials and testimony subject to a privilege and/or subject to the attorney
28 work product doctrine will be referred to collectively hereinafter as "privileged"
materials. Information obtained outside of this habeas proceeding or waived by some
conduct other than its revelation in this habeas proceeding may not be considered
protected material.

1
2 paralegals, investigators and support staff) assigned to *George v. Madden* by the office
3 of the Federal Public Defender, and persons retained by Petitioner's counsel to litigate
4 this matter, including but not limited to, outside investigators, consultants and expert
5 witnesses; and (b) Respondent and the members of his legal team (*i.e.*, lawyers,
6 paralegals, investigators, and support staff) assigned to *George v. Madden* by the
7 California Department of Justice, Attorney General's Office, and persons retained by
8 Respondent's counsel to litigate this matter, including, but not limited to, outside
9 investigators, consultants and expert witnesses. This Protective Order extends to
10 members of the legal teams and all persons retained by the parties to litigate this matter.
11 All such individuals shall be provided with a copy of this Protective Order.

12 5. Except for disclosure to the persons and agencies described in Paragraph
13 4, disclosure of the contents of the documents and testimony and the documents and
14 testimony themselves shall not be made to any other persons or agencies, including, but
15 not limited to, prosecutorial agencies and law enforcement personnel, without the
16 Court's order.

17 6. Privileged documents and testimony shall be clearly designated as such by
18 labeling the documents or testimony in a manner that does not prevent reading the text
19 of the document.

20 7. All privileged documents and testimony submitted to this Court shall be
21 submitted under seal in a manner reflecting their confidential nature and designed to
22 ensure that the privileged material will not become part of the public record. Privileged
23 testimony from the evidentiary hearing shall be clearly designated as such by marking
24 the transcripts of the proceeding. Any pleading or other papers served on opposing
25 counsel or filed or lodged with the Court that contains or reveals the substantive content
26 of the privileged matter shall be filed under seal, and shall include a separate caption
27 page that includes the following confidentiality notice or its equivalent:

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TO BE FILED UNDER SEAL

THIS PLEADING OR DOCUMENT CONTAINS CONFIDENTIAL
INFORMATION SUBJECT TO A PROTECTIVE ORDER AND IS NOT
TO BE OPENED NOR ITS CONTENTS DISPLAYED OR DISCLOSED

8. If privileged documents or documents containing privileged matters are filed with this Court, they shall be filed with the Clerk of this Court in sealed envelopes prominently marked with the caption of the case and the foregoing Confidentiality Notice. The Clerk of the Court is directed to maintain the confidentiality of any documents filed in accordance with the above. Insofar as reasonably feasible, only confidential portions of the filings shall be under seal and the parties shall tailor their documents to limit, as much as is practicable, the quantity of material that is to be filed under seal. When a pleading or document contains only a limited amount of privileged content, a party may file a complete copy under seal and at the same time file on the public record an additional, redacted version of the document, blocking out the limited matter comprising the confidential portions.

9. Petitioner's disclosure of documents from trial counsel's file in this action, and related testimony by Petitioner or members of Petitioner's trial team at the evidentiary hearing in this case, does not constitute a waiver of Petitioner's rights under the Fifth and Sixth Amendments to the United States Constitution in the event of any retrial.

///

1 10. This order shall continue in effect after the conclusion of this habeas
2 corpus action. Any modification or vacation of this order shall only be made after
3 notice to and an opportunity to be heard from both parties.

4 Respectfully submitted,

5 HILARY POTASHNER
6 Federal Public Defender

7
8 DATED: July 21, 2017

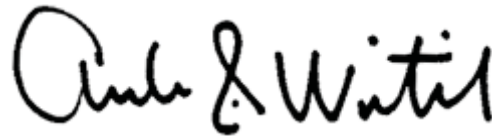
By /s/ Mark R. Drozdowski
9 MARK R. DROZDOWSKI
10 MORIAH S. RADIN
11 Deputy Federal Public Defenders
12 Attorneys for Petitioner
13 CHRIS GEORGE

14 KAMALA D. HARRIS
15 Attorney General of California

16
17 DATED: July 21, 2017

By /s/ Kevin Vienna
18 KEVIN VIENNA
19 Deputy Attorney General
20 Attorneys for Respondent
21 RAYMOND MADDEN

22 IT IS SO ORDERED:



23 Dated: July 24, 2017

24 HONORABLE ANDREW J. WISTRICH
25 United States Magistrate Judge

26 Presented by:

27 HILARY POTASHNER
28 Federal Public Defender

By: /s/ Mark R. Drozdowski
MARK R. DROZDOWSKI
MORIAH RADIN
Deputy Federal Public Defenders

Attorneys for Petitioner
CHRIS A. GEORGE