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

**SHERI GRAVES, an Individual;
A.C.H. a minor, by and through his
guardian ad litem,**

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et. al.,**

Defendants.

5:17-cv-01086-JGB-SP

**PLAINTIFFS AND DEFENDANTS
CDCR, HUGHES, WHITMORE,
AND BROWN'S ~~[PROPOSED]~~
STIPULATED PROTECTIVE
ORDER**

Judge: The Honorable Sheri Pym
Trial Date: None Assigned
Action Filed: 5/31/2017

I. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private 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

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth
5 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
6 file confidential information under seal; Civil Local Rule 79-5 sets forth procedures
7 that must be followed and the standards that will be applied when a party seeks
8 permission from the court to file material under seal.

9 **B. Good Cause Statement**

10 This action is likely to involve production of confidential, proprietary, or
11 private information for which special protection from public disclosure and from
12 use for any purpose other than the defense or prosecution of this action is
13 warranted. Such confidential and proprietary materials and information consist of:

14 (1) California Department of Corrections and Rehabilitation (“CDCR”)
15 records regarding the internal investigation into the death of Shaylene Graves which
16 may have the affect of causing harm to the safety and security of prison officials,
17 the public, or Defendants. All birthdates, social security numbers, home and work
18 addresses, drivers’ license numbers, home and work telephone numbers, and
19 identifying information of confidential informants and CDCR employees will be
20 redacted;

21 (2) records regarding processes, operations, investigations or other
22 information relating to CDCR, disclosure of which may have the affect of causing
23 harm to the safety and security of prison officials, the public, or Defendants. This
24 includes, but is not limited to, institutional records, maps and diagrams,
25 photographs, audio or video recordings, witness statements, SMS or text messages,
26 and emails and other written correspondence. Confidential information is also
27 personal information of Defendants, including but not limited to home address,
28 social security number, telephone number, email address, names or identifying

1 information of family members, the disclosure of which places the safety of
2 Defendants, who are current and former peace officers, and their family members at
3 risk. Confidential information also includes all personal identifying information of
4 any current or former CDCR employee, and any third party entitled to confidential
5 protection of personal identifying information under California and/or applicable
6 federal law. All birthdates, social security numbers, home and work telephone
7 numbers, information about family members, and material identifying a
8 confidential informant will be redacted.

9 (3) Confidential information is also personal information of Plaintiffs
10 generally, including but not limited to home address, social security numbers, home
11 and work telephone number, email addresses, birthdates, and social security
12 numbers, all of which will be redacted. Furthermore, any pictures or documents
13 portraying minor A.C.H., will be redacted.

14 (4) portions of Shaylene Graves' prison records that includes confidential
15 information related to third parties that is subject to privacy rights, such as other
16 inmates' names or identifying information;

17 (5) any material that would reveal the identity of a confidential informant;

18 (6) information not generally made available to the public, or which may be
19 privileged or otherwise protected from disclosure under state or federal statutes,
20 court rules, case decisions, or common law.

21 Accordingly, to expedite the flow of information, to facilitate the prompt
22 resolution of disputes over confidentiality or discovery materials, to adequately
23 protect information the parties are entitled to keep confidential, to ensure that the
24 parties are permitted reasonable necessary uses of such material in preparation for
25 and in the conduct of trial, to address their handling at the end of the litigation, and
26 serve the ends of justice, a protective order for such information is justified in this
27 matter. It is the intent of the parties that information will not be designated as
28 confidential for tactical reasons and that nothing be so designated without a good

1 faith belief that it has been maintained in a confidential, non-public manner, and
2 there is good cause why it should not be part of the public record in this case.

3 **II. DEFINITIONS**

4 2.1 Action: this pending federal suit, Graves v. CDCR, Case No. 5:17-cv-
5 01086-JGB-SP.

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26 (c), and as specified above in
11 the Good Cause Statement.

12 2.4. Counsel: Counsel of record and House Counsel (as well as their support
13 staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in response to discovery as
16 “CONFIDENTIAL.”

17 2.6. Disclosure or Discovery Material: all items or information, regardless of
18 the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced
20 or generated in informal discovery, disclosures or responses to discovery in this
21 matter.

22 2.7. Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 2.8 House Counsel: attorneys who are employees of a party to this
26 Action. House Counsel does not include Outside Counsel of Record or any other
27 outside counsel.
28

1 2.9. Non-Party: any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a
4 party to this Action but are retained to represent or advise a party to this Action and
5 have appeared in this Action on behalf of that party or are affiliated with a law firm
6 which has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosures or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation
13 support services (e.g. photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 **III. SCOPE**

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conservations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by orders of the trial
27 judge. This Order does not govern the use of Protected Material at trial.

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1 **IV. DURATION**

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

10 **V. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection
13 under this Order must take care to limit any such designation to specific material
14 that qualifies under the appropriate standards. The Designating Party must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber the case development process or to
22 impose unnecessary expenses and burdens on other parties) may expose the
23 Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that
25 were designated for protection do not qualify for protection, that Designating Party
26 must promptly notify all other Parties that it is withdrawing the inapplicable
27 designation.

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1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g. second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings on the margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine
20 which documents, or portions thereof, qualify for protection under this Order.
21 Then, before producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing
24 Party must also clearly identify the protected portions(s) (e.g., by making
25 appropriate markings on the margins).

26 (b) for testimony given in depositions that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony.

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information is stored the
4 legend “CONFIDENTIAL.” If only a portion or portions of the information
5 warrants protection, the Producing Party, to the extent practicable, shall identify the
6 protected portion(s).

7 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for such
10 material. Upon timely correction of a designation, the Receiving Party must make
11 reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 **VI. CHALLENGING CONFIDENTIAL DESIGNATIONS**

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37.1 et seq.

19 6.3. The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation until the Court rules on the
26 challenge.

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1 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1. Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action is terminated, a Receiving
7 Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose this information for this Action;

19 (b) the officers, directors, and employees (including House Counsel) of
20 the Receiving Party to whom disclosure is reasonably necessary for this Action;

21 (c) Experts (as defined by this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reports and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional
27 Vendors to whom disclosure is reasonably necessary for this Action and who have
28 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

1 (g) the author or recipient of a document containing the information or
2 a custodian or other person who otherwise possessed or knew the information;

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

10 (i) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the parties engaged in settlement discussions.

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

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

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

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

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

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

1 permission. The Designating Party shall bear the burden and expense of seeking
2 protection in that court of its confidential material and nothing in these provisions
3 should be construed as authorizing or encouraging a Receiving Party in this Action
4 to disobey a lawful directive from another court.

5 **IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
6 **THIS LITIGATION**

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

12 (b) In the event that a Party is required, by a valid discovery request, to
13 produce a Non-Party's confidential information in its possession, and the Party is
14 subject to an agreement with the Non-Party not to produce the Non-Party's
15 confidential information, then the Party shall:

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

19 (2) promptly notify the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the
23 Non-Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court within 14
25 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party's confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
28 not produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and
3 expense of seeking protection in this court of its Protected Material.

4 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

14 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in Federal
19 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order that provides for
21 production without prior privilege review. Pursuant to Federal Rule of Evidence
22 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
23 of a communication or information covered by the attorney-client privilege or work
24 product protection, the parties may incorporate their agreement in the stipulated
25 protective order submitted to the court.

26 **XII. MISCELLANEOUS**

27 12.1 Right to Further Relief: Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7 12.3 Filing Protective Material. A Party that seeks to file under seal any
8 Protected Material must comply with Civil Local Rule 79-5. Protected Material
9 may only be filed under seal pursuant to a court order authorizing the sealing of the
10 specific Protected Material at issue. If a Party's request to file Protected Material
11 under seal is denied by the court, then the Receiving Party may file the information
12 in the public record unless otherwise instructed by the court.

13 **XIII. FINAL DISPOSITION**

14 After the final disposition of this Action, as defined in paragraph 4, within 60
15 days of a written request by the Designating Party, each Receiving Party must
16 return all Protected Material to the Producing Party or destroy such material. As
17 used in this subdivision, "all Protected Material" includes all copies, abstracts,
18 compilations, summaries, and any other format reproducing or capturing any of the
19 Protected Material. Whether the Protected Material is returned or destroyed, the
20 Receiving Party must submit a written certification to the Producing Party (and, if
21 not the same person or entity, to the Designating Party) by the 60 day deadline that
22 (1) identifies (by category, where appropriate) all the Protected Material that was
23 returned or destroyed and (2) affirms that the Receiving Party has not retained any
24 copies, abstracts, compilations, summaries or any other format reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel
26 are entitled to retain an archival copy of all pleadings, motion papers, trial,
27 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
28 and trial exhibits, expert reports, attorney work product, and consultant and expert

1 work product, even if such materials contained Protected Material. Any such
2 archival copies that contain or constitute Protected Material remain subject to this
3 Protective Order as set forth in Section IV (DURATION).

4 **XIV.** Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and /or monetary
6 sanctions.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 Respectfully submitted,

9
10 DATED: February 8, 2019

XAVIER BECERRA
Attorney General of California
GIAM NGUYEN
Supervising Deputy Attorney General

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13 By:

/s/ Deborah B. Wadleigh
DEBORAH B. WADLEIGH
Deputy Attorney General
Attorneys for Defendants
Hughes, Whitmore, Brown, and
California Department of
Corrections and Rehabilitation

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16
17 DATED: February 7, 2019

BOHM LAW GROUP, INC.
V. JAMES DESIMONE LAW

18
19 By:

/s/Nazanin Farahdel
Lawrance Bohm
James DeSimone
Nazanin Farahdel
Attorneys for Plaintiffs

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23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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25 DATED: February 12, 2019

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27 _____
28 Honorable Sheri Pym
United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of

4 _____ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on [date] in the case of *Sheri Graves, et. al. v.*
8 *California Department of Corrections and Rehabilitation, et. al.*, Case No. 5:17-cv-
9 01086-JGB-SP. I agree to comply with and to be bound by all the terms in this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California
16 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
17 such enforcement proceedings occur after termination of this action. I hereby
18 appoint _____
19 [print or type full address and telephone number] as my California agent for service
20 of process in connection with this action or any proceedings related to enforcement
21 of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

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