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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

HARVEY HERRING, III,

1:05-cv-00079-LJO-SMS PC

Plaintiff,

PROTECTIVE ORDER

v.

(Doc. 87)

MIKE CLARK, et al.,

Defendants,

\_\_\_\_\_ /

Based on protective order requested by non-party California Department of Corrections and Rehabilitation (“CDCR”) in the Motion to Quash Subpoena Duces Tecum (Doc. 87), the Court hereby ORDERS as follows.

1. This Order (the “Protective Order”) shall govern the designation and handling, by any person, of the information contained in the confidential documents (“Confidential Information”) produced to Plaintiff, Harvey Herring, III, (“Plaintiff”) pursuant to the “Subpoena in a Civil Case,” issued October 14, 2008, as modified by the Court’s order issued concurrently herewith, on non-party CDCR’s motion to quash (Doc. 87) and Defendants’ objections (Doc. 88).

2. The word “document” as used herein shall be construed to mean any document, tangible thing, or writing as defined by Federal Rule of Civil Procedure 34(a) and Federal Rule of Evidence 1001(1).

3. The word “person” as used herein shall include any individual, entity, natural person, or any business, legal, or governmental entity or association. “Producing Person” refers to any

1 person who produces Confidential Information. "Receiving Person" refers to any person who  
2 receives Confidential Information subject to this Protective Order.

3 4. Confidential Information shall be subject to the following restrictions:

4 (a) Confidential Information shall be used solely for the purpose of preparing for,  
5 and conducting, the prosecution or defense of this action, including any appeals,  
6 and shall not be used by the parties or any other person for any other purpose;

7 (b) Confidential Information shall not be given, shown, made available or  
8 communicated in any way to anyone except those persons specified in  
9 subparagraph (c) below to whom it is necessary that such Confidential  
10 Information be given or shown for the purposes permitted under subparagraph (a)  
11 above; and

12 (c) Confidential Information may be disclosed, for the purposes set forth in  
13 subparagraph (a) above only to a "Qualified Person" defined as:

- 14 i. counsel of record for the parties, and attorneys, paralegal, clerical and  
15 other staff employed by such counsel who are assisting in the conduct of  
16 this action;
- 17 ii. parties to this action;
- 18 iii. witnesses at any deposition, or hearing in this action;
- 19 iv. such consultants, experts, and investigators (including their  
20 professional staff) retained by the parties, or their respective counsel, as  
21 they in good faith deem necessary to provide assistance in connection with  
22 the conduct of this action;
- 23 v. the Court, court personnel, jurors, potential jurors, and/or alternate  
24 jurors;
- 25 vi. court reporters and videographers used in connection with the conduct  
26 of this action;
- 27 vii. outside photocopying, graphic production services, litigation support  
28 services, and document hosting vendors retained by the parties, or their

1                   respective counsel, as they in good faith deem necessary to provide  
2                   assistance in connection with the conduct of this action;

3                   viii. persons who are or were authors or recipients of the Confidential  
4                   Information; and

5                   ix. any person carrying on an insurance business that may be liable to  
6                   satisfy part or all of any judgment which may be entered in this action or to  
7                   indemnify or reimburse for payments made to satisfy a judgment.

8                   5. Each person described in subparagraph 8(c) to whom Confidential Information is  
9                   disclosed shall first be advised that such Confidential Information is being disclosed pursuant  
10                  and subject to the terms of this Protective Order and that Confidential Information may not be  
11                  disclosed other than pursuant to the terms hereof.

12                  6. If any Receiving Person inadvertently discloses Confidential Information to persons  
13                  who are not Qualified Persons, such disclosure shall be reported in writing to the Producing  
14                  Person who produced such inadvertently disclosed Confidential Information. In that event,  
15                  counsel for the Receiving Person shall make all reasonable efforts to retrieve the Confidential  
16                  Information and obtain the agreement of persons to whom inadvertent disclosure was made to  
17                  treat the Confidential Information in accordance with the terms of this Protective Order.

18                  Plaintiff, being a pro se inmate, shall assure that no Confidential Information shall be distributed,  
19                  or conveyed by any means to any other inmate(s). If any confidential Information is distributed  
20                  and/or conveyed to any other inmate(s), Plaintiff will be subject to sanctions as further discussed  
21                  is paragraph 13 herein below.

22                  7. In the event that any person discloses Confidential Information in any pleading, court  
23                  filing, attachment or exhibit thereto, or other papers filed with the Court pre-trial, the disclosing  
24                  person shall conditionally file the confidential information under seal with the Clerk of this Court  
25                  pursuant to Local Rule 141; provided, however, that the paper shall be furnished to the Court and  
26                  the attorneys for the parties and a duplicate copy with the confidential information deleted will be  
27                  placed in the public record insofar as possible. This Protective Order shall constitute prior  
28                  approval by the Court of all such filings made under seal. The parties understand that any

1 submission of documents under seal should seek to file only those portions of the documents that  
2 contain Confidential Information and should be made to the judicial officer presiding over the  
3 proceedings in question.

4 8. The approval of this Protective Order shall not prejudice the right of a party, at any  
5 time, to seek a determination by the Court of whether any particular document or information  
6 should be subject to the terms of this Protective Order.

7 9. Absent consent from a Producing Person, no Confidential Information produced by  
8 such Producing Person may be used in connection with any other litigation, matter, or proceeding  
9 except for Harvey Herring, III v. Mike Clark, et. al., United State District Court, Eastern District  
10 of California, Case No.1:05-cv-00079-LJO-SMS.

11 10. This Protective Order shall be without prejudice to the rights of a Producing Person  
12 to seek further limits on disclosure or protections for the confidentiality and/or privilege of any  
13 discovery material (whether or not Confidential Information) in addition to the limits and  
14 protection provided herein, to contest such application.

15 11. Other parties to this Action, including any additional parties that join or are joined in  
16 this Action, may have access to Confidential Information only by additional order of the Court,  
17 or by the party's executing and filing with the Court a statement agreeing to be fully bound by  
18 this Protective Order.

19 12. Within thirty (30) days after the final termination of this Action, whether through  
20 settlement, trial, appeal, collateral review, or other final dispositions, all Confidential  
21 Information, and any copies thereof, shall be returned to Defendants' counsel.

22 13. Any violation of this Protective Order may be punishable as Contempt of Court.  
23 Additionally, if Plaintiff violates this Protective Order, sanctions may be imposed including, but  
24 not limited to, monetary sanctions and/or dismissal of the action.

25 14. Nothing in this Protective Order is intended to prevent officials or employees of  
26 CDCR from access to and use of materials to in the normal course of their official duties.

27 15. In addition to the restrictions outlined above, no materials containing the name,  
28 address, or other identifying information (such as identification portrait photographs, dates of

1 birth, Social Security Numbers, and the like) about any person, including without limitation any  
2 CDCR employee, shall be shown to or provided to Plaintiff or any other inmate, without further  
3 order of the Court.

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8 IT IS SO ORDERED.

9 **Dated: June 8, 2011**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE