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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RYAN COUCH, et al.,)	1:08cv1621 LJO DLB
)	
Plaintiffs,)	ORDER REGARDING MOTION FOR ENTRY
)	OF PROTECTIVE ORDER
v.)	(Document 161)
)	
TOMMY WAN, KIMBERLI BONCORE,)	
and RALPH DIAZ)	
)	
Defendants.)	

On August 26, 2011, Plaintiffs Ryan Couch and Kenneth Jimenez (“Plaintiffs”) filed the instant motion to modify the protective order. The motion was heard before the Honorable Dennis L. Beck, United States Magistrate Judge, on September 23, 2011. Daniel Zlatnik and Edward Caden appeared on behalf of Plaintiffs. Mary Horst, Deputy Attorney General, appeared on behalf non-party California Department of Corrections and Rehabilitation (“CDCR”) and on behalf of Defendants Tommy Wan, Kimberli Boncore and Ralph Diaz.

BACKGROUND

Officers Couch and Jimenez allege violations of their free speech rights and violations of the Racketeer Influenced Corrupt Organizations Act ("RICO"), [18 U.S.C. § 1964](#), against Defendants Tommy Wan, Kimberli Boncore and Ralph Diaz in their individual and official capacities.

1 On June 24, 2011, the Court issued an order in connection with discovery of confidential
2 memoranda and debrief reports contained in inmate central files. Doc. 153. In the order, the
3 Court indicated that the existing protective order addressed concerns regarding the production of
4 confidential information and debriefing reports. However, the Court found that additional
5 measures were appropriate, including “modifying the protective order to allow . . . documents to
6 be produced as ‘Attorneys’ Eyes Only.’” Doc. 153, p. 5.

7 Following the Court’s order, Plaintiffs submitted an initial proposal for modification of
8 the protective order to Defendants and CDCR (who are represented by the same counsel) on July
9 18, 2011. Defendants and CDCR submitted a counterproposal on July 28, 2011. The same day,
10 Plaintiffs responded to the counterproposal explaining why the changes were unacceptable.
11 Plaintiffs believed the counterproposal was flawed because (1) it contained changes that had
12 nothing to do with the Court’s Order or the need to add an AEO designation and (2) it rejected all
13 of Plaintiffs’ proposed changes and prohibited Plaintiffs from showing AEO documents to
14 experts or using any AEO document in a deposition.

15 On August 9, 2011, the parties met and conferred regarding the need for a modified
16 protective order. Defendants and CDCR explained that they would respond to Plaintiffs’ July 28
17 letter. On August 19, 2011, Defendants and CDCR responded and provided another proposal for
18 a modified order. Under that proposal, Plaintiffs’ counsel would not be able to show any AEO
19 document to anyone—not even the authors of the documents or individuals to whom the
20 documents had already been disclosed. Defendants and CDCR also rejected any provision that
21 would allow Plaintiffs to use such documents in discovery proceedings with other witnesses.

22 Thereafter, on August 26, 2011, Plaintiffs filed the instant motion to modify the
23 protective order to add an AEO designation, with provisions allowing disclosure of such
24 documents to retained experts who sign the protective order certification, authors of the
25 documents, and individuals to whom the documents have previously been disclosed. Exhibit B
26 to Joint Statement.

27 The parties submitted a joint statement regarding the motion on September 16, 2011.
28

1 Based on the discussion at the hearing, the existing protective order will be modified to
2 include an “Attorneys’ Eyes Only” provision, which allows the designated documents to be
3 disclosed to the authors of the documents, expert witnesses and persons identified by the
4 documents as having previously seen the documents.

5 Given the parties’ agreement, the motion for entry of a protective order is RESOLVED
6 and therefore DENIED AS MOOT. The parties shall submit a proposed protective order to the
7 Court within fourteen (14) days of the date of this Order.

8 IT IS SO ORDERED.

9 **Dated: September 23, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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