

1 documents responsive to Plaintiff's request. However, Defendants maintained that the
2 material was subject to qualified privilege as official information under Federal common
3 law, and, in California, was confidential under state laws and regulations. Defendants
4 also claimed that the unprotected disclosure of these materials could negatively impact
5 institutional security. Over Defendants' objections, Plaintiff demanded the production of
6 summaries of witness statements and any transcript and audio or video recording of said
7 statements, to the extent such material existed.

8 After several meet-and-confers, the parties stipulated that the production of
9 certain confidential documents would be appropriate subject to a protective order limiting
10 their use to "Attorneys' Eyes Only" information to maintain the safety and security of
11 CDCR institutions, staff, and inmates. Defendants agreed to produce the summaries of
12 witness statements made as part of the use of force review of Incident Log No. COR-
13 04A-15-05-0329, as well as any transcript and audio or video recording of these
14 statements, if they exist.

15 The Court has reviewed the proposed protective order, and finds it is acceptable
16 save for one clause: proposed paragraph 7 stipulates that "[a]ny confidential material
17 filed with the Court by either party shall be filed and maintained under seal." Courts
18 generally do not approve stipulations to seal documents produced in the course of
19 litigation unless and until the parties have made the requisite showing of good cause.
20 See Oliner v. Kontrabecki, 745 F.3d 1024, 1025 (9th Cir. 2014); see also Nixon v.
21 Warner Commc'ns, Inc., 435 U.S. 589, 597 (courts have "recognize[d] a general right to
22 inspect and copy public records and documents, including judicial records and
23 documents.") (footnotes omitted). As no such good cause showing has yet been made
24 here, the Court declines to approve the parties' stipulation to seal any confidential
25 material at this time. Should the need arise, the parties are free to seek leave to seal
26 confidential documents in the future.

27 Accordingly, the following protective order shall issue:
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- 5. When Plaintiff's counsel returns or destroys the confidential material, he shall provide Defendants' counsel with a declaration stating that all confidential material has been returned or destroyed.
- 6. All confidential material obtained by Plaintiff's counsel shall not be disclosed except as is necessary in connection with this or related litigation, including appeals, and not for any other purpose, including any other litigation.
- 7. Nothing in this protective order is intended to prevent officials or employees of the State of California, or other authorized government officials, from having access to confidential material to which they would have access in the normal course of their official duties.
- 8. The provisions of this protective order are without prejudice to the right of any party:
 - (a) To apply to the Court for a further protective order relating to any confidential material or relating to discovery in this litigation;
 - (b) To apply to the Court for an order removing the confidential material designation from any documents;
 - (c) To object to a discovery request.
- 9. The provisions of this order shall remain in full force and effect until further order of this Court.

IT IS SO ORDERED.

Dated: June 27, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE