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17
18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE EASTERN DISTRICT OF CALIFORNIA
20 FRESNO DIVISION

21
22 **JOSEPH BECKER,**

23 Plaintiff,

24 v.

25 **WARDEN SHERMAN, et al.,**

26 Defendants.

1:16-cv-0828-AWI-JDP (PC)

STIPULATED PROTECTIVE ORDER

Date:

Time:

Courtroom:

Judge: The Honorable Jeremy D.
Peterson

Trial Date:

Action Filed: June 15, 2016

1 **IT IS STIPULATED BY THE PARTIES AND ORDERED BY THE COURT AS**
2 **FOLLOWS:**

3 In the course of this litigation, Plaintiff has propounded requests for the production of
4 documents from Defendants and subpoenaed documents from non-party California Department of
5 Corrections and Rehabilitation (CDCR) in discovery, which Defendants and CDCR contend
6 contain confidential information which, if shared or disclosed, could jeopardize the safety and
7 security of institution(s) operated by CDCR, its employees, inmates, informants and their
8 families, the Defendants or other individuals. The documents demanded include the private,
9 personal information of Defendants and third party individuals (“personal information”) and
10 documents that would threaten prison safety and security if disclosed (“security information”)
11 without protective conditions.

12 **CONDITIONS FOR RELEASE OF CONFIDENTIAL MATERIAL**

13 1. The provisions of this Protective Order apply to the personal information and security
14 information (hereafter “confidential material”) designated by Defendants and/or CDCR as
15 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. The Court-issued
16 Protective Order applies because those documents contain confidential information, which if
17 shared, could jeopardize the safety and security of CDCR institutions, its employees, inmates,
18 informants and their families, the Defendants, or other individuals.

19 a. The designation of “CONFIDENTIAL” is intended to encompass documents or
20 materials of any kind of nature that Defendants and nonparty CDCR, in good faith believes to be
21 comprised of information that would not ordinarily be disclosed to other persons or entities
22 because Defendants and CDCR believe that the information, document, or material is confidential
23 under state or federal law or protected by privilege.

24 b. Any party or non party may also designate their discovery materials and
25 information provided in this litigation as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
26 when Defendants and CDCR have a good faith belief that such materials and information are
27 particularly sensitive and therefore require the utmost level of protection. This designation will
28 only be used when the material, if shared, could jeopardize the safety and security of CDCR

1 institutions, its employees, inmates, informants and their families, the Defendants, or other
2 individuals.

3 2. The designation of information or materials for purposes of this Protective Order shall
4 be made in the following manner by the party or nonparty seeking protection:

5 a. In the case of documents, exhibits, or briefs filed with the court or other
6 materials, excluding depositions or other pretrial and trial testimony, the designating party shall
7 clearly designate the document as either “CONFIDENTIAL” or “CONFIDENTIAL —
8 ATTORNEYS EYES ONLY” to the first page and each page containing any confidential
9 information or material. If the document in question was produced in native format, the
10 designating party shall designate the Confidential document by physically labeling the outside of
11 any media storing the electronic documents.

12 b. In the case of depositions or other pretrial testimony: by a statement on the
13 record, by counsel, during such deposition or other pretrial proceeding that the entire transcript or
14 a portion thereof shall be designated hereunder. The parties may modify this procedure for any
15 particular deposition or proceeding through agreement on the record at such deposition or
16 proceeding or otherwise by written stipulation.

17 c. The designation shall be made (i) at the time such materials are disclosed; or
18 (ii) as soon thereafter as Defendants or CDCR becomes aware of the inadvertent production
19 without a “Confidential” designation.

20 3. Information or materials designated as “Confidential” or “Confidential – Attorneys’
21 Eyes Only” under this Protective Order, or copies or extracts and compilations from, may be
22 disclosed, described, characterized, or communicated in any way only to the following persons:

- 23 a. Counsel for record for Plaintiffs in this action;
24 b. The attorney(s) of record for Defendants and CDCR;
25 c. Paralegal, stenographic, clerical and secretarial personnel regularly employed
26 by counsel for Plaintiff, Defendants, and CDCR, who are necessary to aid counsel for Plaintiff,
27 Defendants, and CDCR in the litigation of this matter;
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1 d. Court personnel and stenographic reporters engaged in such proceedings are
2 incidental to the preparation for the trial in this action; and

3 e. Experts retained by counsel.

4 4. None of the material designated as “Confidential – Attorneys’ Eyes Only”, or
5 information contained in documents labeled “Confidential – Attorneys’ Eyes Only”, shall be
6 shown to, discussed with, or disclosed in any other manner to Plaintiff, any other inmate or
7 former inmate, any parolee or former parolee, or any other person who is not a current or former
8 CDCR employee, including any percipient witness, unless a written waiver expressly authorizing
9 such disclosure has been obtained from counsel for Defendants and/or CDCR, who maintain
10 possession and control over the original confidential material.

11 5. No person who has access to any confidential material as set forth above shall copy
12 any portion of the confidential material, except as necessary to provide a copy of the confidential
13 material to any other authorized individual listed in paragraph 3, or to submit copies to the Court
14 under seal in connection with this matter. Any copies made for such purpose will be subject to
15 this order. A copy of this order must be provided to any individual authorized to access the
16 confidential material before providing that individual with access to the confidential material,
17 including experts or consultants retained by counsel. Counsel for the parties shall maintain a
18 record of all persons to whom access to the confidential material has been provided. The Court
19 and counsel for Defendants and CDCR may request a copy of such record at any time to
20 determine compliance with the Court’s order.

21 6. Any argument, discussion, or examination of any witness privy to the confidential
22 material shall be done *in camera* and any record of such argument, discussion, or examination
23 shall be kept under seal, subject to the Court’s order to the contrary. Counsel for each party shall
24 only discuss in open court the summaries of confidential information as worded by Defendants
25 and CDCR contained in any non-confidential record (i.e., the summaries of confidential
26 information as written in the CDCR 1030 Confidential Information Disclosure Forms,
27 informational chronologies, or other non-confidential records).

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1 7. At the conclusion of the proceedings in this case, including any period for appeal or
2 collateral review, or upon other termination of this litigation, counsel for Plaintiffs shall destroy
3 all confidential materials and all copies of such material in counsel's possession or return such
4 materials to counsel for Defendants. When Plaintiff's counsel returns or destroys the confidential
5 material, they shall provide Defendants' counsel with a declaration stating that all confidential
6 material has been returned or destroyed

7 8. Nothing in this protective order is intended to prevent officials or employees of the State
8 of California, or other authorized government officials, from having access to confidential
9 material to which they would have access in the normal course of their official duties.

10 9. If a party believes that a producing party's designation of information as
11 "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY" is not warranted,
12 the party shall first make a good faith effort to resolve such a dispute with opposing party. In the
13 event that the parties cannot resolve such a dispute, either party may challenge that designation by
14 making an application to the Court in accordance with the Magistrate Judge's Standing Orders,
15 the Local Rules of the United States District Court for the Eastern District of California, and the
16 Federal Rules of Civil Procedure.

17 10. The provisions of this protective order are without prejudice to the right of any party:

18 (a) To apply to the Court for a further protective order relating to any confidential
19 material or relating to discovery in this litigation;

20 (b) To apply to the Court for an order removing the confidential material
21 designation from any documents; or

22 (c) To object to a discovery request.

23 11. All confidential material in this matter shall be used solely in connection with the
24 litigation of this matter, or any related appellate proceeding and collateral review, and not for any
25 other purpose, including any other litigation or proceeding.

26 12. Any violation of this order may result in sanctions by this Court, including contempt,
27 and may be punishable by state or federal law.

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1 13. The provisions of this order shall remain in effect until further order of this Court.
2 The Court will provide counsel for Defendants and/or CDCR an opportunity to be heard should
3 the Court find modification of this order necessary.

4 **IT IS SO STIPULATED.**

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6 Dated: January ____, 2019

/s/ *Michelle L. Angus*
Michelle L. Angus
Supervising Deputy Attorney General
Robert M. Perkins, III
Deputy Attorney General
Attorneys for Defendants

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10 Dated: January 28, 2019

/s/ *Christopher J. Bower (as approved on 1/28/19)*
Christopher J. Bower
Katherine Larkin-Wong
David I. Derrick
Cameron J. Clark
Latham & Watkins LLP
Attorneys for Plaintiff

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16 **IT IS SO ORDERED.**

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18 Dated: January 31, 2019


UNITED STATES MAGISTRATE JUDGE