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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

**HWA SUNG SIM,**  
  
**v.**  
  
**MONICA DURAN, et al.,**

Plaintiff,  
  
  
  
  
  
Defendants.

Case No. 1:16-cv-01051 SAB (PC)  
**STIPULATED PROTECTIVE ORDER**

**I. CONFIDENTIAL MATERIAL SUBJECT TO THIS PROTECTIVE ORDER**

Plaintiff Hwa Sung Sim alleges that Defendant Duran used excessive force against him, in violation of the Eighth Amendment, on August 31, 2014, at Wasco State Prison. Sim also alleges that Defendant Johal acted with deliberate indifference to his serious medical needs, in violation of the Eighth Amendment, following the incident on August 31, 2014. These claims were investigated by California Department of Corrections and Rehabilitation (CDCR) personnel who prepared confidential reports documenting the results of the investigation.

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1 In the course of investigating and responding to Sim’s discovery responses, Defendants’  
2 counsel came into possession of the following responsive records:

- 3 • First Level Review package for incident WSP-FAY-14-08-0423;
- 4 • Second Level Review package for incident WSP-FAY-14-08-0423;
- 5 • Incident Closure package for incident WSP-FAY-14-08-0423;
- 6 • Director’s Executive Review Committee package for incident WSP-FAY-14-08-  
7 0423; and
- 8 • Confidential staff investigation portion of grievance number WSP-A-14-03653.

9 **II. NEED FOR A COURT ORDER**

10 Defendants, CDCR, and California Correctional Health Care Services (CCHCS) contend  
11 that the investigative reports are protected by qualified privilege as official information under  
12 federal common law, and, in California, the material is confidential under state statutes and  
13 regulations. Defendants, CDCR, and CCHCS also contend that the unprotected disclosure of  
14 these documents could cause individuals to be less willing to cooperate in confidential  
15 investigations, jeopardize the safety and security of inmates and staff, and decrease the efficacy of  
16 such investigations. Sim demands production of these documents over Defendants’ objections.

17 Counsel for both Sim and Defendants met and conferred regarding the dispute. Since  
18 CDCR and CCHCS are not parties to this litigation, a private agreement among the parties is not  
19 sufficient to protect the interests of CDCR or CCHCS in maintaining the confidentiality of these  
20 investigative documents. Nonetheless, because of the potential relevance of the documents to this  
21 action, the parties now stipulate that the production of the confidential documents is appropriate  
22 but subject to a protective order under the following conditions:

23 **III. CONDITIONS FOR RELEASE OF CONFIDENTIAL MATERIAL**

24 The Court orders the following to protect the confidentiality of the documents described  
25 above:

- 26 1. The provisions of this Protective Order apply to the confidential records and  
27 information (“confidential material”) designated by Defendants and/or CDCR as “Confidential,”

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1 listed above. This Protective Order arises from an agreement between the parties to resolve the  
2 issues relating to the disclosure of the documents listed above under the following terms.

3 2. The confidential material may be disclosed only to the following persons:

4 (a) Plaintiff Sim's retained attorney(s) of record;

5 (b) Paralegal, clerical, and secretarial personnel regularly employed by counsel for  
6 Sim, Defendants, CDCR, and CCHCS, who are necessary to aid Sim, Defendants, CDCR, and  
7 CCHCS in the litigation of this matter;

8 (c) Court personnel and stenographic reporters necessarily involved in these  
9 proceedings;

10 (d) Any outside expert or consultant retained by counsel for Sim, Defendants,  
11 CDCR, and CCHCS for purposes of this litigation; and

12 (e) Non-inmate witnesses to whom the confidential material may be disclosed  
13 during or in preparation for a deposition taken in this matter or otherwise during the preparation  
14 for trial and trial, provided that the witness may not leave any deposition or preparation with  
15 copies of any of the confidential material, and shall be informed of and agree to be bound by the  
16 terms of this order.

17 3. None of the confidential material or information contained within the confidential  
18 material shall be shown to Sim, or shown to, discussed with, or disclosed in any other manner to  
19 any other inmate or former inmate, any parolee or former parolee, or any other person not  
20 indicated in paragraph 2, unless a written waiver expressly authorizing such disclosure has been  
21 obtained from counsel for Defendants, CDCR, and CCHCS, who maintain possession and control  
22 over the original confidential material.

23 4. No person who has access to the confidential material, as set forth in paragraph 2,  
24 shall copy any portion of the confidential material, except as necessary to provide a copy of the  
25 confidential material to any other authorized individual listed in paragraph 2, or to submit copies  
26 to the Court under seal in connection with this matter. Any copies made for such purpose will be  
27 subject to this order. A copy of this order must be provided to any individual authorized to access  
28 the confidential material before providing that individual with access to the confidential material,

1 and that individual must agree in writing to comply with this order. Plaintiff's counsel shall  
2 maintain a record of all persons to whom access to the confidential material has been  
3 provided. The Court and counsel for Defendants, CCHCS and CDCR may request a copy of  
4 such record at any time to determine compliance with the Court's order.

5 5. Any exhibits or documents filed with the Court that reveal confidential material, or  
6 the contents of any confidential material, shall be submitted on purple or pink paper, filed under  
7 seal, labeled with a cover sheet bearing the case name and number and the statement: "This  
8 document is subject to a Protective Order issued by the Court and may not be copied or examined  
9 except in compliance with that Order." Documents so labeled shall be kept by the Clerk of this  
10 Court under seal and shall be made available only to the Court or counsel of record for the  
11 parties. If any party fails to file confidential material in accordance with this paragraph, any party  
12 may request that the Court place the filing under seal.

13 6. Within sixty days after the conclusion of the proceedings in this case, including any  
14 period for appeal or collateral review, or upon other termination of this litigation, counsel for Sim  
15 shall destroy all confidential materials and all copies of such material in counsel's possession, or  
16 return such materials to counsel for Defendants.

17 7. When counsel for Sim returns or destroys the confidential material, they shall provide  
18 Defendants' counsel with a declaration stating that all confidential material has been returned or  
19 destroyed.

20 8. All confidential material in this matter shall be used solely in connection with the  
21 litigation of this matter, or any related appellate proceeding and collateral review, and not for any  
22 other purpose, including any other litigation or proceeding.

23 9. Nothing in this Protective Order is intended to prevent officials or employees of the  
24 State of California, or other authorized government officials, from having access to confidential  
25 material to which they would have access to in the normal course of their official duties.

26 10. 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           3.       The party making a request to file documents under seal shall be required to  
2 show good cause for documents attached to a nondispositive motion or compelling reasons  
3 for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d  
4 665, 677-78 (9th Cir. 2009).

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6 IT IS SO ORDERED.

7 Dated: December 4, 2017

  
UNITED STATES MAGISTRATE JUDGE

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