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8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11
12 RENO FUENTES RIOS,

13 Plaintiff,

14 v.

15 J.E. TILTON, et al.,

16 Defendants.

CASE NO. 2:07-cv-00790 KJN P

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

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18 Subject to the approval of the Court, and pursuant to the Court's September 3, 2014
19 Pretrial Order providing that the parties submit a stipulated protective order to provide for the
20 submission of certain confidential source information to the Court *in camera* and to Plaintiff's
21 counsel, the undersigned parties through their counsel of record stipulate that the provisions of
22 this Protective Order shall apply to the confidential materials described below.

23 1. This Order covers the following materials:

24 (a) The five confidential source items and all supporting confidential
25 information upon which CDCR employees relied in validating Plaintiff as a prison gang
26 associate, which have been ordered to be submitted to the Court *in camera*, and which have not
27 been previously produced to Plaintiff;

1 (b) All declaration(s) that might be submitted by Defendants in connection
2 with the *in camera* review specified in item (a);

3 (c) All deposition testimony or oral argument regarding items (a) or (b);

4 (d) All motions, exhibits and attachments thereto, and hearings regarding items
5 (a) or (b), including, but not limited to, any *in camera* review of items (a) or (b) and any briefing
6 submitted by either party in connection with any *in camera* review of items (a) or (b); and

7 (e) All court testimony regarding items (a) or (b).

8 Defendants assert that these materials have been deemed confidential by the California
9 Department of Corrections (“CDCR”) for safety and security reasons and have been restricted
10 from general distribution, including, but not limited to, inmates, parolees, and the public.

11 2. All documents and information falling within one or more of the categories
12 enumerated in Paragraph 1 shall be designated as “Confidential -- Attorneys Eyes Only” and
13 subject to this Protective Order. Such material is referred to herein as “Confidential Material.”
14 All documents containing Confidential Material shall be marked “Confidential – Attorneys’ Eyes
15 Only” on each page, and marked in such a fashion so as not to obscure any of the underlying
16 content of the document(s). Any failure to mark appropriate documents containing Confidential
17 Material as “Confidential – Attorneys’ Eyes Only” shall not operate as a waiver of the protections
18 provided under this Protective Order. In such event, after the failure is discovered, the party
19 discovering the failure shall promptly notify the other party of such failure, and the producing
20 party shall take all necessary steps to ensure that the Confidential Material is correctly marked as
21 “Confidential – Attorneys’ Eyes Only.”

22 3. Confidential Material may be disclosed only to the following persons:

23 (a) The Court, and court personnel and court reporters employed by the Court
24 who are involved in proceedings in this action;

25 (b) Counsel for Plaintiff;

26 (c) Paralegal, clerical, and secretarial personnel regularly employed by counsel
27 for Plaintiff and designated by counsel for Plaintiff to review or handle such materials; and
28

1 (d) Any other person as to whom Plaintiff's counsel and Defendants in writing
2 agree.

3 4. This Stipulated Protective Order is intended to, and does preclude, counsel for
4 Plaintiff and the individuals mentioned in Paragraph 3, subsections (a)-(d) from disclosing
5 Confidential Material to Plaintiff, members of Plaintiff's family, friends or associates of Plaintiff,
6 any inmate or parolee, or to the public.

7 5. Each person listed in Paragraph 3 subsections (c) and (d) to whom disclosure of
8 Confidential Material is made shall, prior to the time of disclosure, be provided with a copy of the
9 Stipulated Protective Order and execute a non-disclosure agreement. (See attached Non-
10 Disclosure Agreement ("NDA")). As provided in the NDA, such persons must consent to be
11 subject to the jurisdiction of the United States District Court for the Eastern District of California
12 with respect to any proceeding relating to the enforcement of this Stipulated Protective Order.
13 They must additionally agree to maintain Confidential Material, including copies, notes, or other
14 transcriptions made from the Confidential Material, in a secure manner to prevent unauthorized
15 access. Finally, they must agree to return the Confidential Material, including copies, notes, or
16 other transcriptions made from the materials, to counsel for Plaintiff within thirty days after
17 conclusion of this action. Executed non-disclosure agreements shall be retained by counsel for
18 Plaintiff and made available for inspection by Defendants' counsel upon order of the Court.

19 6. If counsel for Plaintiff wishes to disclose Confidential Material to any person not
20 enumerated above in Paragraph 3, subsections (a)-(d), including, but not limited to Plaintiff,
21 counsel for Plaintiff must first submit a separate application for limited disclosure to the Court
22 under seal, and serve same to Defendants' counsel. The disclosure of Confidential Material to
23 any person not enumerated in Paragraph 3 subsections (a)-(d), shall be withheld unless and until
24 ordered by the Court upon a finding of good cause.

25 7. No person who has been afforded access to Confidential Material under this
26 Protective Order shall disclose or discuss the Confidential Material except as is necessary for the
27 prosecution, defense, or settlement of this litigation, and then only in accordance with Paragraph
28 3 of this Order.

1 8. If counsel for Plaintiff seeks to depose, interview, or otherwise contact any
2 confidential informant or other inmate or parolee whose name appears on any Confidential
3 Material, and whom Plaintiff's counsel first discovered through such Confidential Material, then
4 Plaintiff's counsel must secure the written agreement of Defendants' counsel or further order
5 from the Court.

6 9. Counsel for Plaintiff and persons listed in Paragraph 3, subsection (c), shall not
7 make copies of the Confidential Material obtained by them, except as is necessary for the purpose
8 of this litigation. Counsel for Plaintiff will maintain control over all Confidential Material and
9 copies obtained by them.

10 10. Unless counsel otherwise agreed in writing, when Confidential Material is
11 included in any papers to be filed in Court, the party seeking to file such papers shall file a
12 Motion to File Under Seal in accordance with and to the extent allowable by the Eastern District
13 of California Local Rules, and lodge such papers with the Clerk as required under the Eastern
14 District of California Local Rules.

15 11. All Confidential Material obtained by counsel for Plaintiff shall be used solely in
16 connection with this litigation and not for any other purpose.

17 12. No later than thirty days after the conclusion of the trial and any appeal, or upon
18 other termination of this litigation, all originals of items (a) and (b) of Paragraph 1 obtained by
19 counsel for Plaintiff shall be either destroyed or returned to counsel for Defendants, at the
20 direction of Defendants' counsel. All other Confidential Materials in the possession of counsel
21 for Plaintiff shall be destroyed.

22 13. The limitations on access to Confidential Material contained in the foregoing
23 provisions of this order do not apply to Defendants, their counsel, employees, or representatives.
24 Nothing in the protective order is intended to prevent officials or employees of the State of
25 California or authorized governmental officials from having ordinary and usual access to
26 Confidential Material to which they could have access in the normal course of their official
27 duties. Neither the filing with the Court of motions, exhibits, or attachments containing personal
28 or otherwise confidential information about any individual Defendant nor the service on

1 Defendants' counsel of such motions, exhibits, or attachments, shall be deemed to constitute
2 disclosing Confidential Material to any individual Defendant in violation of the terms of this
3 stipulated protective order.

4 14. The provisions of this protective order are without prejudice to the right of any
5 party to apply to the Court for a further protective order relating to any Confidential Material in
6 the litigation, or to apply to the Court for a modification of this order or for any order permitting
7 disclosure of Confidential Material beyond the terms of this order.

8 15. The provisions of this order shall remain in force and effect until further order of
9 this Court.

10 16. Should Plaintiff's counsel, or any individual mentioned in Paragraph 3 of this
11 Order, fail to comply with any provisions of this Protective Order, the Court may, in its
12 discretion, impose sanctions on the appropriate party including, but not limited to, those
13 applicable as listed in Federal Rule of Civil Procedure 37(b)(2).

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15 **SO STIPULATED.**

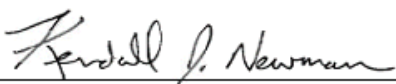
16 Dated: September 10, 2014 DLA PIPER LLP (US)

17
18 By: /s/ John S. Whittaker
19 JOHN S. WHITTAKER
20 Attorneys for Plaintiff

21 Dated: September 10, 2014 By: /s/ David A. Carrasco (authorized on 9/10/14)
22 DAVID A. CARRASCO
23 Deputy Attorney General
24 Office of the California Attorney General
25 Attorney for Defendants

26 **APPROVED AND SO ORDERED.**

27 Dated: September 15, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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NON – DISCLOSURE AGREEMENT

Rios v. Tilton, et al., Case No. 2:07-cv-00790

I, _____, hereby certify my understanding that
(print name)

Confidential Material is being provided to me pursuant to the terms and restrictions of the Protective Order dated _____, *Rios v. Tilton, et al.*, case number 2:07-cv-00790. I have been given a copy of the Protective Order and have read it. I agree to be bound by the Protective Order and will not reveal the Confidential Material to anyone, except as allowed by the Order. I will maintain all such Confidential Material that is provided to me, including copies, notes, or other transcriptions made from the materials, in a secure manner to prevent unauthorized access to it. No later than thirty days after the conclusion of this action, I will return the Confidential Material, including copies, notes, or other transcriptions made from the materials, to counsel for Plaintiff. I hereby consent to the jurisdiction of the United States District Court of the Eastern District of California for the purpose of enforcing the Protecting Order.

DATED: _____
Signature _____