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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION

12
 13 **LEVON GRAHAM,**

14 Plaintiff,

15 v.

16 **D. L. RUNNELS, ET AL.,**

17 Defendants.
 18

2:07-cv-2291 LKK GGH P

STIPULATION AND PROTECTIVE ORDER

19 **The Parties Stipulate as Follows:**

20 **A. Confidential material subject to this Protective Order.**

21 In response to Plaintiff’s document requests 5, 8, 21, 24, 25, and 23, Defendants produced a
 22 document titled “High Desert State Prison Institutional Head Use of Force Critique and
 23 Qualitative Evaluation Analysis Final Review” (“the Confidential Material”). The California
 24 Department of Corrections and Rehabilitation (“CDCR”) deems this document confidential and
 25 does not permit individuals who are incarcerated, as the Plaintiff, to retain a copy of the
 26 Confidential Material based on institutional safety and security grounds. Thus, it was produced
 27 for his inspection only. Plaintiff has since obtained counsel. The Parties stipulate that the
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1 Confidential Material shall be disclosed to Plaintiff’s counsel, subject to the following protective
2 order.

3 Defendants represent that:

4 1. The Confidential Material was prepared on the basis of, among other things,
5 statements correctional officers made with the understanding that the information would remain
6 confidential;

7 2. The disclosure of the document without a protective order would undermine
8 CDCR’s ability to assure its employees and inmate that their statements will be maintained in
9 confidence;

10 3. The likely result of unprotected disclosure would be that CDCR employees and
11 inmates, whether subjects of investigations or witnesses to incidents being investigated, will be
12 unwilling or less willing to cooperate with investigators; and

13 4. The Confidential Material is protected by the Deliberative Process Privilege as it
14 contains pre-decisional, deliberative information prepared to assist the agency decision-maker in
15 evaluating the force used.

16 Accordingly, Defendants believe a protective order is warranted. Based upon these
17 representations, but in no way admitting their truth, Plaintiff Graham is willing to stipulate to a
18 protective order.

19 **B. Conditions for release of confidential material.**

20 Because of its relevance to this action, counsel for Defendants will produce the Confidential
21 Material, subject to this protective order, on the following conditions:

22 1. Before producing the Confidential Material to Plaintiff, Defendants shall
23 conspicuously mark the Confidential Material: “CONFIDENTIAL –
24 SUBJECT TO PROTECTIVE ORDER.”

25 2. The Confidential Material may be disclosed only to the following persons:

26 a. Plaintiff Levon Graham, provided that Plaintiff may not retain
27 possession of any of the Confidential Material, and shall be informed
28 and agree to be bound by the terms of this order;

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- b. Plaintiff's attorneys;
 - c. Experts engaged in connection with this litigation;
 - d. Defendants Martin and Kopec, and their attorneys; and
 - e. Court personnel and stenographic reporters engaged in proceedings incidental to the preparation for the trial in this action;
3. The Confidential Material shall not be disclosed to any incarcerated individual, other than Plaintiff Graham, whether or not a witness in this action, for any reason.
 4. The Confidential Material shall not be disclosed except as is necessary in connection with this litigation, including appeals, and not for any other purpose, including any other litigation.
 5. To the extent the Confidential Material is filed with the Court, it will be filed and maintained under seal.
 6. Upon request from Defendants, Plaintiff and his counsel shall destroy all copies of the Confidential Material—or return them to the attorney for Defendants Martin and Kopec within 5 days of the time it is no longer needed for purposes of this litigation.

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 the Confidential Material in the normal course of their official duties.

The provisions of this protective order are without prejudice to the right of any party: (1) to apply to the Court for a further protective order relating to the Confidential Material or any other confidential material relating to discovery in this litigation; (2) to apply to the Court for an

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1 order removing the Confidential Material designation as “CONFIDENTIAL – SUBJECT TO
2 PROTECTIVE ORDER”; (3) to object to a discovery request.

3 The provisions of this order shall remain in full force and effect until further order of this
4 Court.

5 So stipulated.

6
7 /s/ Brian Berry
8 Brian Berry, Counsel for Plaintiff

9
10 /s/ Jaime Ganson
11 Jaime Ganson, Counsel for Defendants
12 Martin and Kopec

13 The confidential material will not be automatically filed under seal, notwithstanding the
14 previous stipulation herein to do so. Filings under seal may only be done pursuant to the Local
15 Rules and pursuant to the applicable substantive standards for filing under seal..

16 So Ordered.

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18 Dated: May 9, 2011

/s/ Gregory G. Hollows

19 The Honorable Gregory G. Hollows

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