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13 UNITED STATES DISTRICT COURT  
 14 EASTERN DISTRICT OF CALIFORNIA

16 ROBERT MITCHELL, et al.,  
 17 Plaintiffs,  
 18 v.  
 19 MATTHEW CATE, et al.,  
 20 Defendants.

Case No. 2:08-CV-01196 JAM EFB

**STIPULATION AND [PROPOSED]  
 PROTECTIVE ORDER**

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1                   **IT IS STIPULATED BY THE PARTIES, BY AND THROUGH THEIR**  
2                   **RESPECTIVE COUNSEL, AND ORDERED BY THE COURT AS FOLLOWS:**

3                   **A.       CONFIDENTIAL MATERIAL AND INFORMATION SUBJECT TO THIS**  
4                   **PROTECTIVE ORDER**

5                   The parties shall be entitled to designate in good faith which discovery responses are  
6                   confidential. The criteria for such a designation shall be whether a party believes in good faith  
7                   that the information is entitled to protection from disclosure under California state law, including  
8                   but not limited to the names and numbers of prisoners, confidential employment records for  
9                   CDCR Employees, and information that might compromise the safety or security of a prison or  
10                  prisoner.

11                  **B.       CONDITIONS FOR RELEASE OF CONFIDENTIAL DOCUMENTS**

12                  1.       Any party may designate discovery responses, documents produced in  
13                  discovery, or deposition transcripts as confidential by producing such documents on pink or  
14                  lilac-colored paper, by stamping them as “confidential” on their face, by watermarking them, or  
15                  by other mutually agreeable means. If a party does not indicate that a particular Document is  
16                  confidential at the time it is produced, it will be presumed not confidential, without prejudice to  
17                  the party’s right to assert confidentiality at a later time.

18                  2.       Plaintiffs’ counsel is prohibited from disclosing any confidential  
19                  documents or information to Plaintiffs, any other inmate presently or previously in the custody  
20                  of CDCR, any relatives or associates of an inmate presently or previously in the custody of the  
21                  CDCR, or any other member of the public, except as described in Paragraph 3 below.

22                  3.       Unless the Court Orders otherwise, confidential documents and the  
23                  information contained therein may be disclosed only to the following persons:

- 24                  a.       Counsel of record;
- 25                  b.       Paralegal, attorney, stenographic, clerical, and secretarial personnel  
26                  employed by counsel of record;
- 27                  c.       Court personnel, stenographic reporters, and videographers engaged in  
28                  such proceedings that are incidental to preparation for the trial in this action;

1           d. Any outside expert or consultant retained by the parties for purposes of  
2 this litigation; and

3           e. Non-inmate witnesses to whom the documents and the information  
4 contained in the documents may be disclosed during, or in preparation for, a deposition taken in  
5 this matter, or otherwise during the preparation for trial and during trial, provided that the  
6 witness may not leave any deposition with copies of any of the confidential documents, and shall  
7 be informed of and shall agree to be bound by the terms of this order.

8           **4.** Each person to whom the parties' counsel disclose confidential  
9 information shall, prior to the time of disclosure, be provided with a written notice. The notice  
10 shall specify that the documents and information shall not be disclosed except as provided  
11 herein, that the documents and information are subject to this protective order in the United  
12 States District Court for the Eastern District of California, and that a violation of the  
13 confidentiality provisions may lead to enforcement action, including, but not limited to, any  
14 proceeding for civil or criminal contempt.

15           **5.** Plaintiffs' and Defendants' counsel, including paralegal, stenographic,  
16 clerical, and secretarial personnel employed by counsel of record shall not make copies of the  
17 confidential documents, or provide originals to anybody, except as necessary for purposes of this  
18 litigation, *Mitchell v. Cate, et al.*, USDC, Eastern District of California, Case No. 2:08-CV-  
19 01196 JAM EFB, including appeals. Plaintiffs' and Defendants' counsel are responsible to ensure  
20 that these individuals comply with this protective order.

21           **6.** At the conclusion of this litigation, including appeals, all confidential  
22 documents, including copies, shall be destroyed or returned to the producing party.

23           **7.** All confidential documents and the information contained therein shall be  
24 used solely in connection with this litigation, including appeals, and not for any other purpose,  
25 including other litigation.

26           **8.** All confidential documents that are filed with the Court shall be filed **with**  
27 **a request to seal documents in accordance with Eastern District of California Local Rule 141.**  
28

1 ~~under seal, labeled with a cover sheet bearing the case name along with the following statement:~~  
2 ~~“This document is subject to a protective order issued by the Court and shall not be examined or~~  
3 ~~copied except in compliance with that order.”~~ Upon failure of the filing party to file confidential  
4 documents ~~under seal~~ **in accordance with Local Rule 141**, any party may request that the Court  
5 place the document under seal.

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

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

12 a. To apply to the Court for a further protective order relating to any  
13 confidential documents or material, or relating to discovery in this litigation;

14 b. To apply to the Court for an order removing the confidential material  
15 designation from any documents; or

16 c. To object to a discovery request.

17 **11.** This Protective Order shall be binding on the parties as of the date it is  
18 signed by the parties. The provisions of this order shall remain in full force and effect until  
19 further order of this Court.

20 **C. HANDLING OF CONFIDENTIAL DOCUMENTS AT TRIAL**

21 To the extent any party seeks to use documents designated as  
22 “confidential” as exhibits at trial, the parties shall meet and confer in an attempt to obtain  
23 agreement regarding the handling of such materials during trial, and either party may petition the  
24 court for a resolution of this matter, **as provided in Local Rule 141.1(b)(2)**.

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1 **IT IS SO STIPULATED.**

2  
3 September 13, 2012

\_\_\_\_\_/s/  
DAMON MCCLAIN  
Attorneys for Defendants

4  
5 September 13, 2012

\_\_\_\_\_/s/  
REBEKAH EVENSON  
Attorneys for Plaintiffs

6  
7 **IT IS SO ORDERED.**

8  
9 Dated: September 17, 2012.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE