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11 **IN THE UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**

11 ANDREW LOPEZ,

12 Plaintiff,

13 vs.

14 ARNOLD SCHWARZENEGGER, et al.,

15 Defendants.

CASE NO: 2:09-cv-01760 MCE GGH P

**STIPULATION AND PROTECTIVE
 ORDER REGARDING DISCOVERY
 DOCUMENTS**

17 This Protective Order is entered into by and between the plaintiff and the
 18 defendants in this matter, by and through their respective counsel of record. The parties
 19 hereby agree, and the Court hereby orders, that:

20 1. Plaintiff has made discovery requests for documents regarding the
 21 plaintiff's validation as a prison gang member. Those requests seek documents that
 22 address investigations into prison gang activity and identify the sources of that
 23 information. Such documents are maintained as confidential by the California
 24 Department of Corrections and Rehabilitation (CDCR) and are not made available to
 25 inmates due to the serious threat to the safety of inmates and staff that disclosure of
 26 the information would present. The plaintiff has also requested documents pertaining to
 27 the training of the defendants in the investigation of inmate involvement in gang activity

1 as well as the post orders regarding the defendants' work assignments that involve the
2 investigation of gang activity. Such documents are maintained as confidential by the
3 CDCR, and are not made available to inmates, because they contain information that
4 would be invaluable to inmates seeking to engage in gang activity without being
5 detected. Lastly, the plaintiff has requested production of inmate appeal records
6 regarding the defendants and their involvement in the investigation and validation of
7 inmates as gang members. These inmate appeal records, involving inmates who are
8 not parties to this lawsuit, implicate both the privacy concerns of those inmates and
9 potentially endanger their safety as they could make reference to confidential
10 information or identify those inmates as gang members. Due to these concerns, the
11 parties have agreed to this protective order.

12 2. Subject to, and without waiving any objections any party may have as to
13 the discoverability or admissibility of any of these documents, the defendants
14 will produce the following documents subject to the remainder of this stipulation:

- 15 a. Notice of Critical Information Confidential Enemies form regarding
16 Lopez.
- 17 b. Memorandum dated June 8, 2006, to Captain Field from CO
18 Garcia, regarding safety concerns of an inmate.
- 19 c. Memorandum dated December 28, 1999, to Captain Peterson from
20 Institutional Gang Investigator Johnson, regarding debriefing of
21 inmate.
- 22 d. Memorandum dated June 8, 2000, to Chief Deputy Warden
23 Runnels from Institutional Gang Investigator Johnson, regarding
24 debriefing of inmate.
- 25 e. Memorandum dated July 22, 1997, to Captain Smith from CO King,
26 regarding debriefing of inmate.
- 27 f. Documents regarding training of defendants in the investigation,

1 identification, validation, monitoring and/or tracking of a prisoner as
2 an active or inactive gang member.

3 g. Staff complaints filed against the defendants regarding their
4 involvement in the investigation, identification, validation,
5 monitoring and/or tracking of a prisoner as an active or inactive
6 gang member.

7 h. CDCR Special Services Unit file regarding Lopez, containing the
8 gang validation packets concerning Lopez.

9 i. Post Order acknowledgments signed by the defendants which
10 relate to their involvement in the investigation, identification,
11 validation, monitoring and/or tracking of a prisoner as an active or
12 inactive gang member.

13 3. The documents and contents of the documents described above shall be
14 used only in connection with this action, shall not be disclosed to any person other than
15 the individuals set forth below and may be disclosed only as necessary in connection
16 with this action:

17 a. Plaintiff's counsel and employees, and anyone retained to assist
18 the plaintiffs in the preparation for trial of this action.

19 b. The defendants, defendants' counsel and employees, and anyone
20 retained to assist the defendants in the preparation for trial of this
21 action.

22 c. Experts or consultants retained by a party solely to assist in
23 preparation for trial of this action.

24 d. The Court.

25 4. The above documents will not be disclosed to the plaintiff LOPEZ.

26 5. Each document produced pursuant to this stipulation will be stamped
27 "confidential".

1 6. No copies, extracts, or summaries of any of the above documents shall be
2 made except by or on behalf of counsel of record. Such copies, extracts, or summaries
3 shall also be maintained as described herein.

4 7. During depositions, counsel of record may question any witness about the
5 above documents. Any of the above documents so referred to may be marked as an
6 exhibit, but none of the above documents, or any portion thereof, shall be attached to
7 any publicly-available deposition or other transcript. Portions of deposition transcripts in
8 which the above documents are discussed, and any exhibits consisting of the above
9 documents, shall be bound under seal separately from the remaining portions of the
10 transcript.

11 8. The parties acknowledge that this stipulated protective order does not
12 entitle them to file these confidential documents under seal. Local Rules 141 and 141.1
13 set forth the procedures that must be followed and the standards that will be applied
14 when a party seeks permission from the court to file material under seal. A party
15 seeking to file any of the above documents with the court, or any document disclosing
16 the substance of the above documents, must first file with the court a motion to seal the
17 documents. The documents will not be filed with the court until the court has ruled on
18 the motion to seal the documents.

19 9. This protective order is not intended to govern at trial. The parties will
20 cooperate in establishing procedures acceptable to the Court with respect to the
21 protection of the above documents at any trial and upon any appeal of this case.

22 10. Within ninety (90) days after receiving notice of the entry of an order,
23 judgment or decree terminating this action, and after the conclusion of any appeals, all
24 persons having received the documentation described above shall either destroy that
25 documentation or return such material and all copies of it to counsel for the party who
26 produced it. Counsel for each party shall also destroy all extracts or summaries of the
27 above documents or destroy the documents containing the extracts or summaries.

1 11. The Clerk of the Court shall, upon request of a party that produced any of
2 the above documents, return to such party all documents and things containing or
3 referring to the above documents that were filed under seal pursuant to this protective
4 order. As to those documents or things containing such information which cannot be
5 returned, they shall continue to be kept under seal and shall not be examined by any
6 person without prior Court order issued after notice to all parties, or a written stipulation
7 of counsel for all parties.

8 12. Nothing contained in the protective order shall preclude any party from
9 seeking or obtaining, upon an appropriate showing, additional protection with respect to
10 any document, information or other discovery material or trade secrets. Nothing
11 contained herein relieves any party of its obligation to respond to discovery properly
12 initiated pursuant to the Federal Rules of Civil Procedure.

13 13. The Court may modify this protective order at any time or consider any
14 dispute which may arise hereunder upon motion of any party.

15 14. This protective order shall remain in effect for the duration of this action
16 unless terminated by stipulation or by Court order. Insofar as they restrict the

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1 disclosure, treatment, or use of information subject to this protective order, the
2 provisions of this protective order shall continue to be binding after the termination of
3 this action, unless the Court orders otherwise.

4 Dated: November 19, 2012

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6 /s/ Gregory G. Hollows

7 UNITED STATES MAGISTRATE JUDGE

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9 lope1760.po

10 Proposed By:

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12 Dated: October 29, 2012

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14 By: /s/Robert Navarro

15 ROBERT NAVARRO

16 Attorney for Plaintiff Lopez

17
18 Dated: October 29, 2012

19 WILLIAMS & ASSOCIATES

20
21 By: /s/Matthew Ross Wilson

22 MATTHEW ROSS WILSON, CSB #236309

23 Attorneys for defendants CATE, WILLIAMS,

24 PARK, GARCIA, BERNA, CRONJEAGER,

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