

1 ROBERT NAVARRO  
 2 Attorney at Law  
 3 State Bar No. 128461  
 4 1295 North Wishon Avenue  
 5 Suite 3  
 6 Fresno, California 93728  
 7 TEL: 559.497.5341 FAX: 559.497.5471  
 8 robrojo@att.net  
 9 Attorney for Andrew Rick Lopez

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

13  
 14 ANDREW RICK LOPEZ,  
 15  
 16 Plaintiff,  
 17  
 18 v.  
 19 ARNOLD SCHWARZENEGGER,  
 20 et al.,  
 21 Defendants.

No. 2:09-cv-01760 MCE AC P

**STIPULATION AND ORDER  
 REGARDING PROTOCOL  
 FOR CONTACTING SOURCES  
 AND WITNESSES IDENTIFIED  
 IN CONFIDENTIAL  
 MEMORANDA**

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 24 Plaintiff, through his counsel, Robert Navarro, and each of the defendants  
 25 through their counsel, Matthew Ross Wilson, hereby stipulate to the following  
 26 protocol for contacting of inmate sources and witnesses identified in the production  
 27 of the confidential portion of plaintiff Andrew Lopez's C-file.  
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Stipulation re Protocol for Contacting Witnesses Identified in Confidential Memoranda;  
 Lopez v. Schwarzenegger, 2:09-cv-01760 MCE GGH P

1 In this 42 U.S.C. § 1982 action based on claims of multiple violations of due  
2 process and on the merits, Plaintiff Andrew Lopez challenges his gang validation  
3 determinations and the resulting 12 year placement in the segregated housing unit  
4 at Corcoran State Prison. Defendants have denied each of the claims.  
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6 Previously, the parties met and conferred on matters of discovery and sub-  
7 sequently on October 26, 2012, the parties appeared before Magistrate Judge  
8 Gregory G. Hollows on a stipulated statement regarding discovery disputes. (See  
9 Doc. # 159.) Defendants did not dispute the production of the confidential portion  
10 of plaintiff's C-file as it related to his gang validation determinations from 2000 to  
11 2009, however, production was conditioned on an "eyes only" protective order over  
12 the material produced. Additionally, at the hearing Judge Hollows, on his own  
13 motion, found that a protocol should be established before plaintiffs' counsel or his  
14 agents contact any in-custody inmates revealed by the confidential documents.  
15 Judge Hollows stated that inmates might have concerns for their safety if it became  
16 known that they had provided confidential information or were named as witnesses  
17 in confidential memoranda on the issue of another inmate's alleged gang asso-  
18 ciation.  
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22 The parties agreed on a protective order which was submitted to Magistrate  
23 Judge Hollows and approved by him on November 19, 2012. (Doc. # 164.) On the  
24 same day, the case was transferred to Magistrate Judge Allison Claire. (Doc. #  
25 165.) Thereafter, defense counsel produced the confidential documents on Novem-  
26 ber 21, 2012.  
27  
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1 Defense counsel has identified several inmates that should be interviewed  
2 related to the gang allegations prior the preparation of any dispositive motions in this  
3 case. In other prison civil rights litigation, plaintiff's counsel has participated in a  
4 protocol for the contacting of potential inmate witnesses regarding medical and staff  
5 conduct issues. In that case, plaintiffs' counsel provided the Magistrate Judge with  
6 the names and contact information of the inmates they wished to interview. The  
7 Court corresponded with the inmates and relayed the request and instructed the  
8 inmates to reply and inform the court whether they approved or declined the  
9 plaintiffs' counsels' request. Once the return information was received by the court,  
10 plaintiffs' counsel was informed of the witnesses' decisions.

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14 The parties herein, including consultation with the California Department of  
15 Corrections and Rehabilitation, agree that a similar procedure should be used here.

16 The proposed protocol requires that plaintiff's counsel provide this Court with  
17 the names and contact information of the inmates identified for interviews. Plaintiffs'  
18 counsel would provide the Court with suggested language for the contact letter  
19 which would inform the inmate of the nature of, and the parties involved in, the  
20 instant litigation. Further, the potential witness would be informed that counsel for  
21 Mr. Lopez was requesting permission for a meeting and interview, and that the  
22 witness' name was included in documents produced under a court approved  
23 protective order which prohibited any disclosure of the contents of the confidential  
24 memoranda to Mr. Lopez or any other inmate at any time. The letter would provide  
25 a return letter and envelope allowing the inmate to indicate whether he approved or  
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1 declined being contacted by plaintiff's counsel or his agent.

2 The parties having stipulated to use of the above procedure, respectfully  
3 request this Court's approval of the protocol and/or a hearing in which the court and  
4 the parties could establish a mutually acceptable procedure.  
5

6 Dated: December 18, 2012

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8  
9 */s/ Robert Navarro*  
10 ROBERT NAVARRO  
11 Attorney for Plaintiff

12 Dated: December 18, 2012

13 */s/ Matthew Ross Wilson*  
14 MATTHEW ROSS WILSON  
15 Attorney for Defendants

16 **[PROPOSED] ORDER**

17 Based on the foregoing and good cause appearing, the Court approves the  
18 protocol set forth in the parties' stipulation.

19 Dated: December 20, 2012.

20  
21 *Allison Claire*  
22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
24

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