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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

ANTHONY PENTON,

Plaintiff,

v.

L. JOHNSON, J. WALKER, T. VIRGA, B.
DONAHOO, J. NUNEZ-RAMIREZ, J.
BRADFORD, K. POOL, R. MORROW, R.
GADDI, L. QUINN, J. LYNCH, G.
SALAS, R. BESENAIZ, AND DOES 1
THROUGH 13,

Defendants.

Case No. 2:11-cv-00518-TLN-KJN P

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

The parties to this action and California State Prison, Sacramento (CSP-SAC), through their undersigned counsel and subject to the approval of the Court, stipulate to the following Protective Order as set forth below:

Disclosure and discovery activity in this action may involve the production of confidential information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This case arises under 42 U.S.C. § 1983 and concerns Plaintiff's claims of civil rights violations that he suffered while he was incarcerated

1 at the California State Prison-Sacramento, including allegations of denial of mail, denial of law
2 library access, denial of access to the courts, and retaliatory actions for filing inmate appeals.
3 Due to the nature of the evidence related to these claims, the information and materials to be
4 exchanged throughout the course of the litigation between the parties may contain confidential
5 information that may relate to safety and security at the prison and the privacy rights of non-
6 parties to this action. A protective order is needed to ensure the confidentiality of these
7 documents.

8 The parties acknowledge that this Stipulated Protective Order does not confer blanket
9 protections on all disclosures or responses to discovery and that the protection it affords from
10 public disclosure and use extends only to the limited information or items that are entitled to
11 confidential treatment under the applicable legal principles. The parties further acknowledge that
12 this Stipulated Protective Order does not entitle them to file confidential information under seal;
13 Local Rule 141 sets forth the procedures that must be followed and the standards that will be
14 applied when a party seeks permission from the court to file material under seal.

15 CSP-SAC agrees to produce the following documents pursuant to this Stipulated
16 Protective Order: investigation documents identified in CSP-SAC's June 6, 2019 amended
17 privilege log as items 11 through 11-12, 11-14, 11-21 through 11-25, 11-29 through 11-31, part of
18 11-32, 11-33, and the spreadsheet of 11-39, all of which are "Highly Confidential – Attorneys
19 Eyes Only."

20 Portions of the investigation and supporting or related documents that CSP-SAC does not
21 agree to produce are as follows: documents identified in CSP-SAC's June 6, 2019 amended
22 privilege log as items 11-13, 11-15 through 11-20, 11-26 through 11-28, part of 11-32, and 11-34
23 through 11-43. Plaintiff in no way waives any ability to challenge the bases on which CSP-SAC
24 purportedly relies on to withhold these documents from production, and reserves all of his rights,
25 including Plaintiff's ability to move to compel CSP-SAC to produce such documents.

26 Documents produced pursuant to this Stipulated Protective Order are referred to as
27 Confidential Information and are subject to the provisions set forth below.

1 **I. Definitions**

2 **A. Challenging Party:** a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 **B. “Highly Confidential—Attorneys’ Eyes Only” Information or Items:**
5 information (regardless of how it is generated, stored or maintained) or tangible things that
6 qualify for protection under Federal Rule of Civil Procedure 26(c).

7 **C. Counsel:** attorneys who are retained to represent or advise a Party to this action
8 and have appeared in this action on behalf of that Party or are affiliated with a law firm which has
9 appeared on behalf of that Party.

10 **D. Designating Party:** a Party or Non-Party that designates information or items that
11 it produces in disclosures or in responses to discovery as “Highly Confidential—Attorneys’ Eyes
12 Only.”

13 **E. Disclosure or Discovery Material:** all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among other things,
15 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 **F. Expert:** a person with specialized knowledge or experience in a matter pertinent to
18 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a
19 consultant in this action.

20 **G. Non-Party:** any natural person, partnership, corporation, association, or other
21 legal entity not named as a Party to this action.

22 **H. Party:** any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Counsel and their support staffs.

24 **I. Producing Party:** a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.

26 **J. Professional Vendors:** persons or entities that provide litigation support services
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
28 organizing, storing, or retrieving data in any form or medium) and their employees and

1 subcontractors.

2 **K. Protected Material:** any Disclosure or Discovery Material that is designated as
3 “Highly Confidential—Attorneys’ Eyes Only.”

4 **L. Receiving Counsel:** Counsel designated to receive protected information by this
5 stipulation.

6
7 **II. Scope**

8 **A. Covered Categories**

9 The protections conferred by this Stipulated Protective Order cover the following
10 categories of material:

11 1. Documents relating to internal California Department of Corrections and
12 Rehabilitation investigations

13 2. Documents relating to prison employee information and personnel files.

14 3. The protections conferred by this Stipulated Protective Order cover not
15 only the documents produced, but also (1) any information copied or extracted from the Protected
16 Material; (2) all copies, excerpts, summaries, or compilations of the Protected Material; and (3)
17 any testimony, conversations, or presentations by Parties or their Counsel that might reveal the
18 Protected Material.

19 **B. Information Not Included**

20 The protections conferred by this Stipulated Protective Order do not cover the following
21 information:

22 1. Any information that is in the public domain at the time of disclosure to
23 Receiving Counsel or becomes part of the public domain after its disclosure to Receiving Counsel
24 as a result of publication not involving a violation of this Order, including becoming part of the
25 public record through trial or otherwise;

26 2. Any information known to Receiving Counsel prior to the disclosure or
27 obtained by Receiving Counsel after the disclosure from a source who obtained the information
28 lawfully and under no obligation of confidentiality to the Designating Party.

1 **III. Duration**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
7 including the time limits for filing any motions or applications for extension of time pursuant to
8 applicable law.

9 **IV. Designating Protected Material**

10 The parties and CSP-SAC shall designate in good faith any information believed to be
11 Confidential Information. The criteria for such a designation shall be whether Defendants/CSP-
12 SAC believe in good faith that the information is entitled to protection from disclosure under
13 Federal or California state law, including but not limited to confidential employment records of
14 CDCR employees. An inadvertent failure to designate any document as Confidential Information
15 does not, standing alone, waive the protection of such document under this Stipulated Protective
16 Order. If CSP-SAC informs Plaintiff that Plaintiff has received documents from CSP-SAC that
17 should have been designated as Confidential Information but were inadvertently disclosed,
18 Plaintiff shall allow Defendants to designate them as such. The Parties must make reasonable
19 efforts to ensure that Confidential Information is treated in accordance with this Stipulated
20 Protective Order, whether or not designated as such.

21 If, in CSP-SAC or Defendants' opinion, there are portions of documents that contain
22 information that should not be disclosed under this protective order because to do so may
23 endanger the safety and security of an institution or person (including any present or former
24 inmate or staff member) because the portions of the documents contain confidential non-
25 defendant personal or personnel information, such as non-defendant personnel training history, or
26 any individual home addresses, phone numbers, social security numbers, date of birth, and similar
27 personal identifying information, CSP-SAC or Defendants may redact such sensitive information
28 before providing copies of the documents to Plaintiffs' Counsel and shall notify Plaintiffs'

1 Counsel of the nature of the redacted information. CSP-SAC or Defendants may also redact
2 certain personally identifiable information regarding other inmates, including names.

3 Notwithstanding the foregoing, Plaintiff hereby expressly reserves all rights to challenge the
4 propriety and/or sufficiency of such redactions at any time. If any questions arise regarding CSP-
5 SAC's or Defendants' redaction of documents pursuant to this paragraph, the parties shall, as a
6 first means of reaching a resolution, meet and confer to address such questions.

7 **A. Exercise of Restraint and Care in Designating Material for Protection**

8 Each Party or Non-Party that designates information or items for protection under this
9 Order must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards. The Designating Party must designate for protection only those parts of
11 material, documents, items, or oral or written communications that qualify – so that other portions
12 of the material, documents, items, or communications for which protection is not warranted are
13 not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. The parties shall not
15 make clearly unjustified designations or those made for an improper purpose.

16 The Parties agree to utilize Judge Newman's "Order re Informal Telephonic Conferences
17 re Discovery Disputes," posted on the Court's website as a first means to resolve disputes arising
18 from this Stipulated Protective Order. Nothing herein shall prevent a Party's ability to move to
19 compel for the production of documents or further discovery responses in the event that no
20 resolution of such discovery disputes is reached via the Court's informal discovery dispute
21 conference procedure.

22 If it comes to a Designating Party's attention that information or items that it designated
23 for protection do not qualify for protection, that Designating Party must promptly notify all other
24 Parties that it is withdrawing the mistaken designation.

25 **B. Manner and Timing of Designations**

26 For information in documentary form (e.g., paper or electronic documents, but excluding
27 transcripts of depositions or other pretrial or trial proceedings), the Producing Party must affix the
28 legend "Highly Confidential—Attorneys' Eyes Only" to each page that contains protected

1 material. If only a portion or portions of the material on a page qualifies for protection, the
2 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins).

4 For testimony given in deposition or in other pretrial or trial proceedings, the Designating
5 Party must identify on the record, before the close of the deposition, hearing, or other proceeding,
6 all protected testimony. Alternatively, within fifteen (15) days of receipt of the final certified
7 transcript of any deposition, any Party or Non-Party may request that the original and all copies of
8 the deposition transcript, in whole or in part, be marked “Highly Confidential—Attorneys’ Eyes
9 Only.” Until fifteen (15) days after the final certified transcript of any deposition, the transcript
10 of that deposition will be subject to the protections granted to “Highly Confidential—Attorneys’
11 Eyes Only” material. In the event a deposition is videotaped, the original and all copies of the
12 videotape shall be marked “Highly Confidential-Attorneys’ Eyes Only” by the video technician.

13 For information produced in some form other than documentary and for any other tangible
14 items, the Producing Party must affix in a prominent place on the exterior of the container or
15 containers in which the information or item is stored the legend “Highly Confidential—
16 Attorneys’ Eyes Only.” If only a portion or portions of the information or item warrant
17 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

18 **C. Inadvertent Failures to Designate**

19 If timely corrected, an inadvertent failure to designate qualified information or items does
20 not, standing alone, waive the Designating Party’s right to secure protection under this Order for
21 such material. Upon timely correction of a designation, Receiving Counsel must make reasonable
22 efforts to assure that the material is treated in accordance with the provisions of this Order.

23 **V. Challenging Confidentiality Designations**

24 Any Party or Non-Party may challenge a designation of confidentiality at any time. The
25 Designating Party and the Challenging Party must meet and confer on the issue. In conferring,
26 the Challenging Party must explain the basis for its belief that the confidentiality designation was
27 not proper and must give the Designating Party an opportunity to review the designated material,
28 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis

1 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge
2 process only if it has engaged in this meet and confer process first or establishes that the
3 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

4 If the Parties cannot resolve a challenge without court intervention, the parties shall bring
5 the dispute to the court in compliance with Local Rule 251, including the filing of a Joint
6 Statement re: Discovery Disagreement.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating
8 Party. The Parties shall not make frivolous challenges, and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties). All parties shall
10 continue to afford the material in question the level of protection to which it is entitled under the
11 Producing Party's designation until the court rules on the challenge.

12 **VI. Access To and Use of Protected Material**

13 **A. Basic Principles**

14 Receiving Counsel may use Protected Material that is disclosed or produced by another
15 Party or by a Non-Party in connection with this case only for the litigation, preparation for, and
16 trial or settlement of this case. *Nothing herein shall be construed to restrict or limit any Party*
17 *in its presentation at trial of evidence relevant to its claims or defenses.*

18 Protected Material must be stored and maintained by Receiving Counsel at a location and in a
19 secure manner that ensures that access is limited to the persons authorized under this Order. Any
20 electronic Confidential Information must be stored in password-protected form.

21 Any Confidential Information filed with the Court shall be filed under seal, labeled with a
22 cover sheet bearing the case name and number along with the following statement: "This
23 document is subject to a protective order issued by the Court and shall not be copied or examined
24 except in compliance with that order." Documents so labeled shall be kept by the Clerk of the
25 Court under seal and shall be made available only to the Court or counsel. If the filing party fails
26 to file such information under seal, any party may request that the Court place the document
27 under seal. The procedures of Local Rule 141 shall be followed.

28 **B. Disclosure of "Highly Confidential—Attorneys' Eyes Only" Information or**

1 **Items**

2 Unless otherwise ordered by the court or permitted in writing by the Designating Party,
3 Receiving Counsel may disclose any information or item designated “Highly Confidential—
4 Attorneys’ Eyes Only” only to:

- 5 1. The Receiving Counsel’s staff to whom it is reasonably necessary to
6 disclose the information for this litigation;
- 7 2. Experts (as defined in this Order) retained by Receiving Counsel to whom
8 disclosure is reasonably necessary for this litigation;
- 9 3. The court and its personnel;
- 10 4. Court reporters and their staff, professional jury or trial consultants, mock
11 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;
- 12 5. During their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
14 reveal Protected Material must be separately bound by the court reporter and may not be
15 disclosed to anyone except as permitted under this Stipulated Protective Order;
- 16 6. The author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 Experts (as described in (VI)(B)(2) above) to whom “Highly Confidential—Attorneys’
19 Eyes Only” documents or information are to be disclosed shall be provided and required to read a
20 copy of this Stipulated Protective Order before disclosure of such information to that person. The
21 person must agree to abide by the terms of this Stipulated Protective Order by executing an
22 agreement in the form of Attachment A, that acknowledges that the person has reviewed the
23 Stipulated Protective Order, that the person understands the Stipulated Protective Order, and that
24 the person agrees to abide by the Stipulated Protective Order, and by providing the signed
25 agreement to Counsel who intends to make such disclosure.

26 No person who has been afforded access to Confidential Information shall disclose or
27 discuss the information, including the identification, location or disciplinary status and history of
28

1 any staff member, to or with any person, except in accordance with this Stipulated Protective
2 Order.

3 **VIII. Unauthorized Disclosure of Protected Material**

4 If Receiving Counsel learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, Receiving Counsel must immediately:

- 7 1. Notify in writing the Designating Party of the unauthorized disclosures;
- 8 2. Use its best efforts to retrieve all unauthorized copies of the Protected
9 Material;
- 10 3. Inform the person or persons to whom unauthorized disclosures were made
11 of all the terms of this Order; and
- 12 4. Request such person or persons to execute the agreement that is attached
13 hereto as Attachment A.

14 **IX. Miscellaneous**

15 **A. Right to Further Relief**

16 Nothing in this Order abridges the right of any person to seek its modification in the future
17 by the Court or by signed stipulation by all parties.

18 **B. Non Parties**

19 The terms of this Order are applicable to information produced by a Non-Party in this
20 action and designated as “Highly Confidential—Attorneys’ Eyes Only.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the remedies and relief
22 provided by this Order.

23 **C. Right to Assert Other Objections**

24 By stipulating to the entry of this Protective Order no Party waives any right it otherwise
25 would have to object to disclosing or producing any information or item on any ground not
26 addressed in this Stipulated Protective Order.

1 The attorney-client privilege and work-product protection are not waived by inadvertent
2 disclosure or production of documents containing such information under this Stipulated
3 Protective Order.

4 The provisions of this Stipulated Protective Order are without prejudice to any Party's
5 right to (1) apply to the Court for a further protective order relating to any personnel information
6 or relating to discovery in this litigation; (2) apply to the Court for an order removing personnel
7 information from any documents; (3) apply to the Court for an order removing the designation of
8 Confidential Information made by CSP-SAC or the Parties from a document; (4) object to a
9 discovery request; (5) object on any ground to the introduction of any of the Confidential
10 Information as evidence; or (6) apply to the Court to modify or rescind this Protective Order.

11 If a Party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any Confidential Information that party must:

- 13 a) Promptly notify in writing the designating Party. Such notification shall include a copy of
14 the subpoena or court order;
- 15 b) Promptly notify in writing the Party who caused the subpoena or order to issue in the
16 other litigation that some or all of the material covered by the subpoena or order is subject
17 to this Stipulated Protective Order. Such notification shall include a copy of this
18 Stipulated Protective Order; and
- 19 c) Cooperate with respect to all reasonable procedures sought to be pursued by the
20 Designating Party whose Confidential Information may be affected.

21 If the Designating Party timely seeks a protective order, the party served with the
22 subpoena or Court order shall not produce any Confidential Information before a determination
23 by the Court from which the subpoena or order issued, unless the Party has obtained the
24 Designating Party's permission.

25 **X. Final Disposition**

26 Within 60 days after the final disposition of this action, as defined in section III,
27 Receiving Counsel must return all Protected Material to the Producing Party or destroy such
28 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the Protected
2 Material. Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
3 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
4 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
5 such materials contain Protected Material. Any such archival copies that contain or constitute
6 Protected Material remain subject to this Stipulated Protective Order as set forth in Section III
7 (Duration).

8
9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: July 16, 2019

SIMPSON THACHER & BARTLETT LLP

11
12 By /s/ Harrison J. Frahn IV
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19 XAVIER BECERRA
Attorney General of the State of California

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21 By /s/ Van Kamberian
Van Kamberian
22 Deputy Attorney General
California Department of Justice
23
24 *Attorneys for Defendants Donahoo, Salas,
Walker, Bradford, Lynch, Pool, Quinn, Morrow,
25 Gaddi, Besenaiz, Virga, and Non-Party
California State Prison, Sacramento*

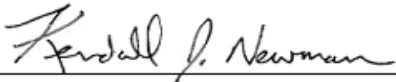
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Attorneys for Defendant L. Johnson

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 17, 2019


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

pent0518.po

1 ATTACHMENT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Eastern
6 District of California on [date] in the case of *Penton v. Johnson et al.*, No. 2:11-CV-00518-TLN-
7 KJN. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
8 and I understand and acknowledge that failure to so comply could expose me to sanctions and
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
10 any information or item that is subject to this Stipulated Protective Order to any person or entity
11 except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Eastern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
14 even if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone
17 number] as my California agent for service of process in connection with this action or any
18 proceedings related to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____