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

12 **SAMUEL ANDERSON,**

13 Plaintiff,

14 v.

16 **J. CLARK KELSO, et al.,**

17 Defendants.

2:12-CV-00261 MCE KJN

**STIPULATED PROTECTIVE ORDER**

Judge: The Honorable Kendall J. Newman

Trial Date: March 14, 2016

Action Filed: April 18, 2012

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

21 **A. CONFIDENTIAL MATERIAL SUBJECT TO THIS PROTECTIVE**  
22 **ORDER.**

23 Plaintiff Anderson has requested production of declarations and expert witness reports  
24 prepared by the expert witness disclosed by Defendants, B. Barnett, M.D., in other actions, and  
25 medical records of third-party inmate-patients reviewed by Dr. Barnett in other actions. These  
26 documents refer to the medical conditions of the third-party inmate-patients who are the subjects  
27 of the declarations and expert witness reports prepared by Dr. Barnett.

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1           **B.     NEED FOR PROTECTION OF CONFIDENTIAL MATERIAL.**

2           The declarations and expert witness reports prepared by Dr. Barnett in other actions, and  
3 the medical records of third-party inmate-patients reviewed by Dr. Barnett in these other actions,  
4 contain confidential information concerning the medical condition of these third-party inmate-  
5 patients. Federal courts generally recognize a right of privacy which can be raised in response to  
6 discovery requests. *Johnson v. Thompson*, 971 F.2d 1487, 1497 (10<sup>th</sup> Cir. 1992); *DeMasi v.*  
7 *Weiss*, 669 F.2d 114, 119-120 (3<sup>rd</sup> Cir. 1982). Disclosure of health care information concerning  
8 inmates who are not parties to this litigation arguably violates the Health Insurance Portability  
9 and Accountability Act of 1996 (“HIPAA”) Privacy Rule. 45 C.F.R. §§ 160.102, 160.103.  
10 Production of inmate medical information violates CDCR procedures set forth by California Code  
11 of Regulations, Title 15, section 3370, "Case Records File and Unit Health Records Material —  
12 Access and Release."

13           **C.     NEED FOR A COURT ORDER.**

14           In the course of this litigation, Anderson has demanded that Dr. Barnett produce  
15 declarations and expert witness reports prepared by Dr. Barnett in other actions, and the medical  
16 records of third-party inmate-patients reviewed by Dr. Barnett in these other actions, which are in  
17 the possession, custody or control of the California Department of Corrections and Rehabilitation  
18 (CDCR) and California Correctional Health Care Services (CCHCS). Since CDCR and CCHCS  
19 are not parties to this litigation, a private agreement among the parties is not sufficient to protect  
20 the interests of CDCR and CCHCS in maintaining the confidentiality of these documents.

21           **D.     CONDITIONS FOR RELEASE OF CONFIDENTIAL DOCUMENTS.**

22           The Court orders the following to protect the confidentiality of the confidential documents  
23 described above:

24           1.     The provisions of this Protective Order apply to the confidential records and  
25 information (“confidential material”) designated by Defendants, CDCR and/or CCHCS as  
26 “Confidential,” and those confidential records and information which the Court orders  
27 Defendants and/or CDCR to produce following an *in camera* hearing. The Court-issued  
28 Protective Order applies because those documents contain confidential information, which if

1 shared, could jeopardize the privacy rights of third-party inmate-patients.

2 2. The confidential material may be disclosed only to the following persons:

3 (a) Plaintiff Anderson's retained attorney(s) of record;

4 (b) The attorney(s) of record for Defendants, CDCR, and CCHCS;

5 (c) Any paralegal, secretarial, or clerical personnel regularly employed by counsel  
6 for Anderson, Defendants, CDCR, and CCHCS who are necessary to aid counsel for Anderson,  
7 Defendants, CDCR and CCHCS in the litigation of this matter;

8 (d) Court personnel and stenographic reporters necessarily involved in these  
9 proceedings; and

10 (e) Any outside expert or consultant retained by counsel for Anderson, Defendants,  
11 CDCR, and/or CCHCS for purposes of this action.

12 3. None of the confidential material or information contained within the confidential  
13 material shall be shown to Anderson, or shown to, discussed with, or disclosed in any other  
14 manner to any other inmate or former inmate, any parolee or former parolee, or any other person  
15 not indicated in paragraph 2, unless a written waiver expressly authorizing such disclosure has  
16 been obtained from counsel for Defendants, CDCR, and CCHCS who maintain possession and  
17 control over the original confidential material.

18 4. No person who has access to the confidential material, as set forth in paragraph 2,  
19 shall copy any portion of the confidential material, except as necessary to provide a copy of the  
20 confidential material to any other authorized individual listed in paragraph 2, or to submit copies  
21 to the Court under seal in connection with this matter. Any copies made for such purpose will be  
22 subject to this order. A copy of this order must be provided to any individual authorized to access  
23 the confidential material before providing that individual with access to the confidential material,  
24 and that individual must agree in writing to comply with this order. Counsel for the parties shall  
25 maintain a record of all persons to whom access to the confidential material has been  
26 provided. The Court and counsel for Defendants, CDCR, and CCHCS may request a copy of  
27 such record at any time to determine compliance with the Court's order.

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1           5. Any exhibits or documents filed with the Court that reveal confidential material, or  
2 the contents of any confidential material, shall be submitted on purple or pink paper, filed under  
3 seal, labeled with a cover sheet bearing the case name and number and the statement: “This  
4 document is subject to a Protective Order issued by the Court and may not be copied or examined  
5 except in compliance with that Order.” Documents so labeled shall be kept by the Clerk of this  
6 Court under seal and shall be made available only to the Court or counsel of record for the  
7 parties. If any party fails to file confidential material in accordance with this paragraph, any party  
8 may request that the Court place the filing under seal.

9           6. The portion(s) of any transcript of a deposition of any witness testifying about  
10 confidential information shall be designated as confidential by the court reporter at the request of  
11 Defendants, CDCR, and/or CCHCS and kept under seal subject to a further order of the Court.  
12 Information or material designated as confidential by Defendants, CDCR, and/or CCHCS may be  
13 disclosed or discussed in open court, subject to a Motion in Limine and/or Motion for Protective  
14 Order filed by Defendant, CDCR, and/or CCHCS.

15           7. At the conclusion of the proceedings in this case, including any period for appeal  
16 or collateral review, or upon other termination of this litigation, counsel for Anderson shall  
17 destroy all confidential materials and all copies of such material in counsel’s possession or return  
18 such materials to counsel for Defendant.

19           8. All confidential material in this matter shall be used solely in connection with the  
20 litigation of this matter, or any related appellate proceeding and collateral review, and not for any  
21 other purpose, including any other litigation or proceeding.

22           9. Any violation of this order may result in sanctions by this Court, including  
23 contempt, and may be punishable by state or federal law.

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

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

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

1 c. To object to a discovery request.

2 11. The provisions of this order shall remain in effect until further order of this  
3 Court. The Court will provide counsel for Defendants, CDCR, and/or CCHCS an opportunity to  
4 be heard should the Court find modification of this order necessary.

5 12. This order is applicable to declarations, reports, and medical records pertaining to  
6 third party inmates previously produced to counsel for Anderson.

7 **SO STIPULATED.**

8 Dated: September 29, 2015

Respectfully submitted,

*/s/ Chijioke O. Ikonte*

CHIJOKE O. IKONTE  
Law Offices of Akudinobi & Ikonte

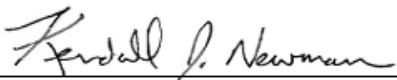
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*/s/ R. Lawrence Bragg*

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20 Good cause appearing, IT IS SO ORDERED, with the clarification that although the  
21 parties refer to an in camera review, the court has not reviewed any documents and will not  
22 review any documents without adequate showing and proper notice.

23  
24 Dated: October 8, 2015

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26 \_\_\_\_\_  
27 KENDALL J. NEWMAN  
28 UNITED STATES MAGISTRATE JUDGE

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