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21 **UNITED STATES DISTRICT COURT**

22 **EASTERN DISTRICT OF CALIFORNIA**

23 OLEGS KOZACENKO,

No. 2:12-cv-02196-MCE-DAD

24 Plaintiff,

25 **STIPULATED PROTECTIVE ORDER**

26 vs.

27 California Highway Patrol Officer

28 ANDREW P. MURRILL (Badge #19671),

California Highway Patrol Officer J.

SHERMAN (Badge # 11614) California

Highway Patrol Sergeant KEVIN PIERCE;

California Highway Patrol Lieutenant

JOHN ARRABIT; California Highway

Patrol Assistant Chief KENNETH HILL;

and California Highway Patrol

Commander Chief STEPHEN LERWILL,

Defendants.

1 IT IS HEREBY STIPULATED by, among and between the parties to the above-captioned
2 action through their counsel of record, that the documents described herein may be designated as
3 “Confidential” and produced subject to the following Protective Order:

4 1. Categories of documents described as follows:

5 (a) Portions of the Personnel Records of California Highway Patrol Officer
6 Andrew P. Murrill;

7 (b) Portions of the Personnel records, of California Highway Patrol Officer
8 J. Sherman;

9 2. The portions designated as confidential contain information that is not available to
10 the public, statutorily protected under state law and information in which Murrill, Sherman and
11 potentially other individuals have a privacy interest in.

12 3. A Court approved protective order is appropriate pursuant to Local Rule 141.1
13 because the Court stated that such an order would be signed at a hearing on October 18, 2013, and
14 because the employing agency does not believe it can lawfully waive its perceived statutory duties
15 to protect the confidentiality of the materials subject to this order without the imprimatur of the
16 Court.

17 4. The disclosed documents shall be used solely in connection with the civil action of
18 *Kozacenko v. State of California, et al.*, E.D. Cal. Case No. 2:12-cv-02196-MCE-DAD. The
19 parties do not waive any objections to the admissibility of the documents or portions thereof in
20 future proceedings in this action, including trial.

21 5. A party may only designate as “Confidential” a document which it has determined
22 in good faith to be: (a) confidential or potentially invasive of an individual’s privacy interests;
23 (b) not generally known; and (c) not normally revealed to the public or third parties or, if disclosed
24 to third parties, such that third parties would be required to maintain the information in confidence.
25 By designating a document or portion thereof as “Confidential,” the party making the designation
26 avers that it can and would make a showing to the Court sufficient to justify entry of a protective
27 order covering that document or portion thereof under Federal Rule of Civil Procedure 26 and
28 Eastern District of California Local Rule 141.1.

1 6. A party producing the documents described herein may designate those documents
2 as confidential by affixing a mark labeling them “Confidential,” provided that such marking does
3 not obscure or obliterate the content of any record. If any confidential documents cannot be
4 labeled with this marking, those documents shall be placed in a sealed envelope or other container
5 that is in turn marked “Confidential” in a manner agreed upon by the disclosing and requesting
6 parties.

7 7. A party may apply to the Court for an order that information or materials labeled
8 “Confidential” are not, in fact, confidential. Prior to applying to the Court for such an order, the
9 party seeking to reclassify Confidential information shall meet and confer with the producing
10 party. Until the matter is resolved by the parties or the Court, the document in question shall
11 continue to be treated according to its designation under the terms of this Protective Order. The
12 producing party shall have the burden of establishing the propriety of the “Confidential”
13 designation. A party shall not be obligated to challenge the propriety of a confidentiality
14 designation at the time made, and a failure to do so shall not preclude a subsequent challenge
15 thereto.

16 8. Documents designated under this Protective Order as “Confidential” may be
17 disclosed only to the following persons:

18 (a) All counsel of record and attorneys in the offices of counsel for any of the
19 Defendants in this action;

20 (b) All counsel of record, and attorneys in the offices of counsel for Plaintiffs in this
21 action;

22 (c) Paralegal, clerical and secretarial personnel regularly employed by counsel
23 referred to in subparts (a) and (b) immediately above, including stenographic deposition reporters or
24 videographers retained in connection with this action;

25 (d) Court personnel, including stenographic reporters or videographers engaged in
26 proceedings as are necessarily incidental to the preparation for the trial of this action;

27 (e) Any expert, consultant or investigator retained in connection with this action;

28 (f) The parties to this action;

1 (g) The finder of fact at the time of trial, subject to the Court’s ruling on in limine
2 motions and objections of counsel; and

3 (h) Witnesses during their depositions in this action.

4 9. Prior to the disclosure of any Confidential documents to any person identified in
5 Paragraph 5, each such recipient of Confidential documents shall be provided with a copy of this
6 Protective Order, which he or she shall read. Upon reading this Protective Order, such person
7 shall acknowledge in writing as follows:

8 I have read the Protective Order that applies in *Kozacenko v. State of California, et al.*,
9 E.D. Cal. Case No. 2:12-cv-02196-MCE-DAD and shall abide by its terms. I consent
10 to be subject to the jurisdiction of the United States District Court for the Eastern
11 District of California, including without limitation in any proceeding for contempt.

12 10. The following procedures shall be utilized by the parties making copies of
13 documents designated as “Confidential”:

14 (a) The producing party shall provide one copy of the Confidential documents to the
15 receiving party.

16 (b) The receiving party shall not furnish, disclose, or otherwise divulge any the
17 Confidential documents to any source, except those persons identified in Paragraph 5 herein, without
18 further order of the Court or authorization from counsel for the producing party.

19 (c) If any document designated as “Confidential” pursuant to this Protective Order is
20 used or disclosed during the course of a deposition, that portion of the deposition record reflecting such
21 material shall be stamped with the appropriate designation and access shall be limited pursuant to the
22 terms of this Protective Order. The court reporter will be directed to bind those portions of the
23 transcript that contain discussion of the contents of the Confidential documents separately. The cover
24 of any portion of a deposition transcript that contains testimony or documentary evidence that has been
25 designated Confidential, including exhibits designated as “Confidential,” will be marked:

26 CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.

27 11. Should any documents designated “Confidential” be disclosed, through
28 inadvertence or otherwise, to any person not authorized to receive the documents under this

1 Protective Order, the disclosing person(s) shall promptly: (a) inform the producing party of the
2 recipient(s) and the circumstances of the unauthorized disclosure, and (b) use best efforts to bind
3 the recipient(s) to the terms of this Protective Order. No document shall lose its Confidential
4 status because it was inadvertently or unintentionally disclosed to a person not authorized to
5 receive it under this Protective Order.

6 12. Confidential Material produced pursuant to this Order may be disclosed or made
7 available only to counsel for a party. Confidential Material may be provided to any expert
8 retained for consultation and/or trial. In the event that Confidential Material is given to an expert,
9 counsel that retained the expert shall provide a copy of this Order to the expert and require and
10 receive an executed acknowledgment of the Order by the expert prior to providing the records to
11 any retained expert.

12 13. The Confidential Material produced pursuant to this Order will be redacted with
13 respect to any purely confidential identifying personal and family information.

14 14. If Plaintiffs or Defendants would like to use Confidential Material in Court filings,
15 at least seven (7) days notice shall be given to all parties. Plaintiffs and Defendants shall comply
16 with the requirements of Eastern District local Rule 141, in the event that a party would like
17 Confidential Material to be sealed. The Parties agree a request to seal or remove the designation of
18 Confidential Information may be heard on shortened time and/or by telephone conference with a
19 showing of good cause.

20 15. Nothing in this Order shall in any way limit or prevent Confidential Material from
21 being used in any deposition or other proceeding in this action. In the event that any Confidential
22 Material is used in any deposition or other proceeding in this action it shall not lose its confidential
23 status through such use. If any Confidential Material is used in a deposition then arrangements
24 shall made with the court reporter to separately bind such portions of the transcript containing
25 information designated as "CONFIDENTIAL" and to label such portions appropriately.

26 16. This order is entered for the purpose of facilitating the exchange or documents
27 between the parties to this action without involving the Court unnecessarily in the process.
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IT IS SO STIPULATED.

Dated: December 4, 2013

LAW OFFICE OF STEWART KATZ

/s/ Stewart Katz
Stewart Katz
Attorney for Plaintiff

Dated: December 4, 2013

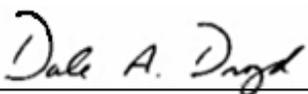
KAMALA D. HARRIS
Attorney General of California

/s/ Jill Scally
JILL SCALLY
Deputy Attorney General
Attorneys for Defendants

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

Dated: December 9, 2013



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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