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12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE EASTERN DISTRICT OF CALIFORNIA  
15 SACRAMENTO DIVISION  
16

17 **JERMAINE PADILLA,**

18 Plaintiff,

19 v.

20 **JEFFREY BEARD, et al.,**

21 Defendants.  
22  
23

No. 2:14-cv-1118 KJM-CKD

**STIPULATION AND PROTECTIVE  
ORDER**

Action Filed: May 6, 2014

24 In an effort to facilitate discovery in this matter, Plaintiff Jermaine Padilla and Defendants  
25 Acevedo, Baer, Beard, Castro, Davey, Drew, Garcia, Gipson, Godina, Holguin, Johnson, Kaiser,  
26 LaClaire, Martinez, Overley, Pruneda, Robicheaux, Silva, Sao, Solis, Stainer, and Wagner  
27 (collectively, "Defendants") stipulate as follows:  
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1           1. All information, testimony, documents, or things produced or given (by a party or by a  
2 non-party) as part of discovery in this action shall be governed by this Stipulated Protective  
3 Order. This Protective Order designates certain material as “CONFIDENTIAL.”

4           2. CONFIDENTIAL designation. The following materials are deemed to be  
5 CONFIDENTIAL and to contain CONFIDENTIAL INFORMATION no matter from whom or  
6 by whom they are obtained: (i) all personnel records, compensation information, and disciplinary  
7 records pertaining to any party; (ii) all materials containing the protected health information of  
8 any patient; (iii) training material currently used or used in the past by the California Department  
9 of Corrections and Rehabilitation (CDCR) and/or California State Prison-Corcoran (COR),  
10 including but not limited training material on the use of force, Oleoresin Capsicum spray (pepper  
11 spray), restraints, and extractions; (iv) CDCR and/or COR policies and procedures that have been  
12 designated as “confidential” by the department or prison; (v) drafts of or proposed changes to  
13 CDCR and/or COR policies and procedures that were not or have not been adopted or  
14 implemented by the department or prison; and (vi) any other material that the parties agree  
15 contains CONFIDENTIAL INFORMATION.

16           3. CONFIDENTIAL INFORMATION shall be designated as follows:

17           A. Documents provided by a party or non-party containing CONFIDENTIAL  
18 INFORMATION shall be designated by marking the first page of each such document and each  
19 page or pages on which such information appears with the following legend, or equivalent:  
20 “CONFIDENTIAL;”

21           B. Deposition testimony that comprises CONFIDENTIAL INFORMATION may be  
22 designated as such by indicating on the record at the deposition that the specific testimony is  
23 subject to the provisions of this Protective Order or by doing so in writing to the other parties  
24 within thirty (30) days after the transcript of the deposition has been sent to counsel for the parties  
25 by the Court reporter. All information revealed during a deposition, unless otherwise agreed to  
26 by the parties in writing or on the record, shall be treated as CONFIDENTIAL during the  
27 deposition and for a period of thirty (30) days after the deposition transcript has been sent to  
28 counsel for all parties by the Court reporter;

1 C. Discovery requests or responses, or affidavits, briefs, or other papers filed with the  
2 Court and containing CONFIDENTIAL INFORMATION may be designated as such by  
3 prominently marking the cover with the appropriate legend;

4 D. Tangible objects constituting or containing CONFIDENTIAL INFORMATION  
5 may be designated as such by affixing to the object or its container at the time of production a  
6 label or tag marked with the appropriate legend.

7 4. All CONFIDENTIAL INFORMATION produced or exchanged in the course of this  
8 litigation shall be used solely for the purpose of preparing for and conducting this litigation,  
9 including trials and appeals, if any, and shall not be used in any other civil action or for any other  
10 purpose. CONFIDENTIAL INFORMATION shall not be made public by the receiving party or  
11 disclosed to persons not entitled to access under this Protective Order.

12 5. Access to or dissemination of CONFIDENTIAL INFORMATION shall be limited by the  
13 receiving party to:

14 A. Litigation counsel for the receiving party in this litigation and their firm staff,  
15 including attorneys, paralegals, secretaries and support staff whose function requires access to  
16 CONFIDENTIAL INFORMATION;

17 B. Independent experts and consultants retained by a receiving party or counsel of  
18 record in connection with this lawsuit and their assistants and clerical staff;

19 C. Independent litigation support service personnel, including interpreters,  
20 translators, and personnel at copying, imaging, and/or coding services;

21 D. Court personnel, including any stenographic reporters, law clerks, paralegals,  
22 secretarial, clerical and other court personnel;

23 E. An officer before whom a deposition is taken, including stenographic reporters  
24 and any secretarial, clerical, or other lay personnel assisting such officer;

25 F. The Court or jury in this action;

26 G. The parties to this action or, in the case of any party that is not a natural person,  
27 the officers, directors, and managing agents of such party;

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1 H. Insurers and anyone potentially obligated to indemnify any party to the action for  
2 liability in this action.

3 6. The persons entitled to have access to CONFIDENTIAL INFORMATION pursuant to  
4 the terms of paragraph 5 shall not make available such CONFIDENTIAL INFORMATION to  
5 any person other than: (i) those persons entitled to such access pursuant to the terms of paragraph  
6 5, or (ii) the party who produced the CONFIDENTIAL INFORMATION. With respect to a  
7 document or thing designated as containing CONFIDENTIAL INFORMATION, a person  
8 indicated on the face of the document or thing to be its originator, author, or recipient of a copy or  
9 where it is otherwise established at deposition and/or to the satisfaction of both parties that the  
10 person had access to the document or thing prior to its production in this litigation, may be shown  
11 that document or thing.

12 7. When a party seeks to submit documents to the Court that are or contain  
13 CONFIDENTIAL INFORMATION, or that quote or refer to the substance of any such  
14 CONFIDENTIAL INFORMATION, the submitting party shall bring a motion to file such  
15 documents under seal in compliance with Local Rule 141. The parties must comply with all local  
16 rules regarding the filing of documents under seal. When a party seeks to submit documents  
17 containing its own CONFIDENTIAL INFORMATION to the Court, the submitting party may, in  
18 its discretion, bring a motion to file such documents under seal. When a party declines to seek an  
19 order sealing documents submitted to the Court containing its own CONFIDENTIAL  
20 INFORMATION, the submitted material will no longer qualify for protection as  
21 CONFIDENTIAL INFORMATION under this Protective Order.

22 8. In the event that any CONFIDENTIAL INFORMATION is used in any Court pre-trial  
23 proceeding in this litigation (including but not limited to conferences, oral arguments, or  
24 hearings), the CONFIDENTIAL INFORMATION shall not lose its status as CONFIDENTIAL  
25 INFORMATION through such use. Prior to such pre-trial proceeding, the party intending to use  
26 such CONFIDENTIAL INFORMATION shall notify the party whose CONFIDENTIAL  
27 INFORMATION is at issue of its intention. Upon such notification, the parties shall meet and  
28 confer, and the party seeking to use the CONFIDENTIAL INFORMATION shall take all steps

1 reasonably required to protect the confidentiality of the CONFIDENTIAL INFORMATION  
2 during such use, including, but not limited to, requesting in camera proceedings. The terms of  
3 this Protective Order do not preclude, limit, restrict, or otherwise apply to the use of documents at  
4 trial. The parties agree to meet and confer in good faith prior to trial to establish procedures for  
5 the use of CONFIDENTIAL INFORMATION at trial.

6 9. Documents and things designated as containing CONFIDENTIAL INFORMATION and  
7 any copies or extracts shall be retained by the receiving party in the custody of the attorneys of  
8 record during the pendency of this action, except as reasonably necessary to provide access to  
9 persons authorized under the provisions of this Stipulated Protective Order. Any person who  
10 receives any CONFIDENTIAL INFORMATION shall maintain such material in a secure and  
11 safe area and shall exercise due and proper care with respect to the storage, custody, use, and/or  
12 dissemination of such material.

13 10. Nothing in this Protective Order shall bar or otherwise restrict any attorney for a  
14 receiving party from rendering appropriate advice to the client with respect to this litigation, and  
15 in the course of rendering such advice, referring to or relying generally on the substance of  
16 CONFIDENTIAL INFORMATION reviewed.

17 11. Nothing in this Protective Order shall be construed as a limitation on a party's ability to  
18 show its own CONFIDENTIAL INFORMATION to whomever the party may deem appropriate.  
19 Nothing in this Protective Order shall be construed to limit a party's use of information already in  
20 its possession prior to the litigation, provided that use complies with all other legal requirements.

21 12. A receiving party shall not be obligated to challenge the propriety of a  
22 CONFIDENTIAL INFORMATION designation at the time it is made, and a failure to do so shall  
23 not preclude a subsequent challenge thereto. In the event that a party disagrees with a designation  
24 of information as CONFIDENTIAL INFORMATION, the parties shall try first to dispose of such  
25 dispute in good faith and on an informal basis. If the dispute cannot be resolved, any party may  
26 seek appropriate relief from this Court. If such relief is requested from the Court, it shall be the  
27 burden of the party claiming protection under this Protective Order to establish that the contested  
28 material is CONFIDENTIAL INFORMATION. The information underlying the dispute shall be

1 treated as CONFIDENTIAL INFORMATION until the Court enters a ruling resolving the  
2 dispute.

3 13. If a party, through inadvertence, produces or discloses any CONFIDENTIAL  
4 INFORMATION without designating, labeling, marking or otherwise indicating it as such in  
5 accordance with the provisions of this Stipulated Protective Order, the producing party will not be  
6 deemed to have waived confidentiality, as to that information, provided that, as soon as  
7 reasonably possible after becoming aware of the inadvertent failure to mark, the producing party  
8 gives written notice to the receiving party that the document or thing produced is deemed  
9 CONFIDENTIAL INFORMATION and should be treated as such in accordance with the  
10 provisions of this Order. Such correction and notice thereof shall be made in writing,  
11 accompanied by substitute copies of each item, appropriately marked as CONFIDENTIAL  
12 INFORMATION. The receiving party must thereafter treat such documents and things as  
13 CONFIDENTIAL INFORMATION and must make reasonable attempts to retrieve  
14 CONFIDENTIAL INFORMATION previously disclosed to persons not entitled to such access.  
15 Within ten (10) days of receipt of the substitute copies, the receiving party shall return or destroy  
16 the previously unmarked items and all copies.

17 14. Any request by a party for an order permitting disclosure of CONFIDENTIAL  
18 INFORMATION to persons to whom disclosure of such information would otherwise be  
19 prohibited hereunder shall be denied unless good cause is shown.

20 15. No provision of this Protective Order shall be deemed to waive any applicable privilege  
21 or work-product protection or to affect the ability of a party to seek relief for inadvertent  
22 disclosure of material protected by privilege or work-product protection. If a party, through  
23 inadvertence, produces or discloses any document or information that it believes is subject to any  
24 privilege or immunity, e.g., the attorney-client privilege or work product immunity, such  
25 production shall not be deemed a waiver of any such privilege or immunity when the producing  
26 party gives written notice to the receiving party that the document or information produced is  
27 deemed privileged or immune and requests the return or destruction of the document or  
28 information. Upon receipt of such written notice, the receiving party shall promptly return to the

1 producing party or destroy the original, all copies, and any portions of notes, papers, summaries  
2 or other instruments that comprise, embody, summarize, discuss or quote from documents or  
3 things for which the attorney-client privilege or work product immunity is asserted. Subsequent  
4 to such written notice, no use shall be made of such documents, including during depositions or at  
5 trial, nor shall they be shown to anyone.

6 16. Within sixty (60) days after the termination of this litigation including all appeals  
7 thereof, each party shall assemble all documents, objects, and other material furnished and  
8 designated as containing CONFIDENTIAL INFORMATION, all copies or reproductions, and all  
9 documents incorporating CONFIDENTIAL INFORMATION, and shall either (i) return such  
10 CONFIDENTIAL INFORMATION to the producing party, or (ii) destroy such  
11 CONFIDENTIAL INFORMATION. The attorneys of record for each receiving party shall be  
12 entitled to retain a copy of all pleadings, motion papers, discovery responses, deposition and trial  
13 transcripts, exhibits, legal memoranda, correspondence, attorney work product, and any other  
14 documents related to this litigation, provided said attorney and the employees of said attorney  
15 shall not disclose any CONFIDENTIAL INFORMATION of a producing party except as  
16 compelled by law and after reasonable notice to the producing party.

17 17. Any person receiving CONFIDENTIAL INFORMATION under the terms of this  
18 Protective Order hereby agrees to subject himself or herself to the jurisdiction of this Court for  
19 purposes of any proceedings relating to the performance under, compliance with or violation of  
20 this Protective Order.

21 18. The terms of the Stipulated Protective Order shall survive the final termination of this  
22 civil action except to the extent that any CONFIDENTIAL INFORMATION becomes known to  
23 the public.

24 19. Unless the parties stipulate otherwise, evidence of the existence or nonexistence of a  
25 designation under this Protective Order shall not be admissible for any purpose, and adherence to  
26 this Protective Order in no way constitutes an admission by any party that any information  
27 designated pursuant to this Protective Order is or is not confidential. In addition, adherence to  
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1 this Protective Order in no way constitutes a waiver of any party's right to object to any discovery  
2 requests or admission of evidence on any grounds.

3 20. This Stipulated Protective Order and the parties' agreements and obligations under this  
4 stipulation shall not prevent any party from applying to the Court for further or additional  
5 protective orders, for modification of any of the terms and provisions of this Protective Order, or  
6 from agreeing between themselves to a modification of this Protective Order, subject to the  
7 approval of the Court, or from presenting to the Court any matter relating to this Protective Order.

8 21. This Court shall retain jurisdiction to resolve any disputes arising under this Protective  
9 Order for twelve (12) months after the conclusion of the litigation.

10 IT IS SO STIPULATED.

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12 Dated: May 28, 2015

Respectfully submitted,

13 KAMALA D. HARRIS  
14 Attorney General of California  
15 CHRISTOPHER J. BECKER  
Supervising Deputy Attorney General

16 */s/ Diana Esquivel*

17 DIANA ESQUIVEL  
18 Deputy Attorney General  
*Attorneys for Defendants*

19  
20 Dated: May 28, 2015

RIFKIN LAW OFFICE

21 */s/ Lori Rifkin*  
22 LORI RIFKIN  
23 Attorneys for Plaintiff

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**ORDER**

Good cause appearing, the parties' stipulated request for a protective order is granted. The protective order shall govern discovery in this case as set forth above.

IT IS SO ORDERED.

Dated: June 2, 2015



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE