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

12 **JOSEPH BUFFKIN,**
 13
 Plaintiff,
 14
 v.
 15
 16 **J. FISK,**
 17 Defendant.

2:15-cv-0802-MCE-EFB P
**~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER**
 Judge: The Honorable Edmund F.
 Brennan
 Trial Date: October 3, 2016
 Action Filed: April 14, 2015

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 In this action Defendant Fisk, an employee of the California Department of Corrections
 24 and Rehabilitation (CDCR), fired a 40 mm direct impact round which struck Plaintiff in the head
 25 during an incident involving a fist fight between other inmates at Mule Creek State Prison
 26 (MCSP) on April 21, 2014. This incident and the use of force by Fisk were investigated by
 27 CDCR personnel who prepared confidential reports documenting the results of these
 28 investigations.

1 CDCR also maintains a personnel file concerning Defendant Fisk.

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

3 CDCR contends that the investigative reports are protected by the official information and
4 deliberative process privileges. CDCR asserts that maintaining confidentiality of these
5 investigative reports is necessary to encourage witnesses to provide candid and truthful
6 statements and that the release of the information to inmates would endanger institutional safety
7 by disclosing the processes and procedures used to respond to inmate violence. Disclosure also
8 could inform inmates of CDCR's investigatory techniques and could hamper future
9 investigations.

10 CDCR maintains that the personnel file of Defendant Fisk is protected by the official
11 information privilege, the right of privacy, under Cal. Const. Art. I, § 1, Penal Code sections
12 832.5, 832.7, 832.8, Government Code section 6254, Civil Code sections 1798.24 and 1798.40,
13 and California Code of Regulations Title, 15 section 3400. CDCR further maintains that the
14 personnel files also are protected under California Evidence Code section 1040, *et. seq.*, including
15 section 1043. In addition, CDCR asserts that the personnel file of Fisk is considered as
16 confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which to an inmate could: (1)
17 endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the
18 institution.

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

20 In the course of this litigation, Plaintiff Buffkin has demanded the production of the
21 investigative reports prepared by CDCR personnel concerning the incident of April 21, 2014, and
22 the use of force by Fisk, as well as the personnel file maintained by CDCR concerning Fisk. Since
23 CDCR is not a party to this litigation, a private agreement among the parties is not sufficient to
24 protect CDCR's interests in maintaining the confidentiality of these investigative documents.

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

26 The Court orders the following to protect the confidentiality of the confidential documents
27 described above:
28

1 1. The provisions of this Protective Order apply to the confidential records and
2 information (“confidential material”) designated by Defendant and/or CDCR as “Confidential,”
3 and those confidential records and information which the Court orders Defendant and/or CDCR
4 to produce following an *in camera* hearing. The Court-issued Protective Order applies because
5 those documents contain confidential information, which if shared, could jeopardize the safety
6 and security of CDCR institutions, its employees, inmates, informants and their families, the
7 Defendants, or other individuals.

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

9 (a) Plaintiff Buffkin’s retained attorney(s) of record;

10 (b) The attorney(s) of record for Defendant and CDCR;

11 (c) Any paralegal, secretarial, or clerical personnel regularly employed by counsel
12 for Buffkin, Defendant, and CDCR, who are necessary to aid counsel for Buffkin, Defendant, and
13 CDCR in the litigation of this matter;

14 (d) Court personnel and stenographic reporters necessarily involved in these
15 proceedings; and

16 (e) Any outside expert or consultant retained by counsel for Buffkin, Defendant,
17 and/or CDCR for purposes of this action.

18 3. None of the confidential material or information contained within the confidential
19 material shall be shown to Buffkin, or shown to, discussed with, or disclosed in any other manner
20 to any other inmate or former inmate, any parolee or former parolee, or any other person not
21 indicated in paragraph 2, unless a written waiver expressly authorizing such disclosure has been
22 obtained from counsel for Defendant and CDCR, who maintain possession and control over the
23 original confidential material.

24 4. No person who has access to the confidential material, as set forth in paragraph 2,
25 shall copy any portion of the confidential material, except as necessary to provide a copy of the
26 confidential material to any other authorized individual listed in paragraph 2, or to submit copies
27 to the Court under seal in connection with this matter. Any copies made for such purpose will be
28 subject to this order. A copy of this order must be provided to any individual authorized to access

1 the confidential material before providing that individual with access to the confidential material,
2 and that individual must agree in writing to comply with this order. Counsel for the parties shall
3 maintain a record of all persons to whom access to the confidential material has been
4 provided. The Court and counsel for Defendant and CDCR may request a copy of such record at
5 any time to determine compliance with the Court's order.

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

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

20 7. At the conclusion of the proceedings in this case, including any period for appeal
21 or collateral review, or upon other termination of this litigation, counsel for Buffkin shall destroy
22 all confidential materials and all copies of such material in counsel's possession or return such
23 materials to counsel for Defendant.

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

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

