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

12 **CARLOS KINKEADE,**

13 Plaintiff,

14 v.

16 **JEFFERY BEARD, et al.,**

17 Defendants.

2:15-cv-1375 TLN CKD (PC)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Honorable Carolyn K. Delaney
Trial Date: None
Action Filed: June 29, 2015

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

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

23 In this action, Plaintiff has requested a copy of the record of 602-administrative grievances
24 filed by Plaintiff Kinkeade against Defendant in the above captioned matter, including documents
25 that the California Department of Corrections and Rehabilitation (“CDCR”) contends are
26 “Confidential Material” as defined herein and described as an internal review of the allegations
27 asserted in the grievances. This internal review includes a record of interviews with officers and
28 the inmate in question, and the observations of correctional personnel, as well as a summary of

1 the findings. This information is not made public, not disclosed to non-party officers (or even the
2 officer who is the subject of the appeal), and certainly not disclosed to inmates for security
3 reasons in order to preserve the sanctity of the information provided and protect the identities of
4 staff and inmates who are interviewed. CDCR contends that these evaluations contain information
5 about staff and inmates, any public disclosure of which poses a threat of harm to staff and inmates
6 involved and those who were interviewed and voluntarily disclosed information that may have led
7 to corrective action.

8 CDCR asserts that these materials have been deemed confidential for safety and security
9 reasons and have been restricted from general distribution, including but not limited to, inmates,
10 parolees, and the public. The undersigned parties, through their counsel of record, stipulate that
11 the provision of its Protective Order shall apply to the Confidential Materials described below.

12 This Order covers the following materials referred to herein as "Confidential Material:" The
13 records titled "Confidential Supplement to Appeal" for appeal log numbers KVSP-O-13-00650
14 and KVSP-O-13-01916.

15 **B. THE "CONFIDENTIAL SUPPLEMENT TO APPEAL" OF APPEAL**
16 **LOG NUMBERS KVSP-O-00650 AND KVSP-O-13-01916**

17 **NEED FOR PROTECTION OF CONFIDENTIAL MATERIAL.**

18 CDCR contends that the investigation into allegations of use of force by a staff member,
19 which documents the identities and observations of staff and inmates who witnessed or were
20 participants in purported use of force, are protected by the official information privilege and that
21 maintaining confidentiality of these reports is necessary to protect staff and inmates from harm
22 and encourage witnesses to provide candid and truthful statements. CDCR contends that
23 Government Code section 6254, and California Code of Regulations Title, 15 section 3321, are
24 applicable to the Confidential Material. Public disclosure of such information would endanger
25 institutional safety by disclosing the identities of staff and inmates and information obtained
26 regarding use of force incidents to those who may use the information to inflict further harm on
27 the persons involved.

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

2 Since CDCR is not a party to this litigation, a private agreement among the parties is not
3 sufficient to protect CDCR’s interests in maintaining the confidentiality of these investigative
4 documents and the identities of staff and inmates involved.

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

6 The Court orders the following to protect the confidentiality of the Confidential Material
7 described above:

8 1. The provisions of this Protective Order apply to the Confidential Material
9 described herein. The Court-issued Protective Order applies because CDCR contends that these
10 documents contain confidential information, which if shared, could jeopardize the safety and
11 security of CDCR institutions, its employees, inmates, informants and their families, the
12 Defendant, or other individuals. These documents shall be designated as “Confidential –
13 Attorneys Eyes Only” on each page. Any failure to mark the documents containing Confidential
14 Material as “Confidential – Attorneys Eyes Only” shall not operate as a waiver of the protections
15 provided under this Protective Order.

16 2. Confidential Material may only be disclosed to the following persons:

- 17 a. The Court, court personnel, and court reporters employed by the Court;
18 b. Defendant Kinkeade’s retained attorney of record, including any future
19 counsel Kinkeade may retain in this matter, if at all;
20 c. Paralegal, secretarial, or clerical personnel regularly employed by counsel for
21 Defendant Kinkeade, who are necessary to aid counsel for Kinkeade in the litigation of this
22 matter; and
23 d. Any other person to whom Kinkeade’s counsel and Defendant Oddie’s
24 counsel agree to, in writing.

25 3. This Stipulated Protective Order precludes Defendant Kinkeade’s counsel from
26 disclosing Confidential Material to Kinkeade, limited to the documents themselves and any
27 duplicates or copies thereof.

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1 4. This Stipulated Protective Order precludes Defendant Kinkeade’s counsel from
2 disclosing Confidential Material, including documents or information, to any member of
3 Kinkeade’s family, friends, or associates of Kinkeade, or any inmate, parolee, or member of the
4 public.

5 5. A copy of this order must be provided to any individual authorized to access the
6 Confidential Material before providing that individual with access to the Confidential Material,
7 and that individual must agree in writing to comply with this order. They must additionally agree
8 to maintain Confidential Material, including copies, notes, or other transcriptions made from the
9 Confidential Material, in a secure manner to prevent unauthorized access. Finally, they must
10 agree to return the Confidential Material, including copies, notes, or other transcriptions made
11 from the materials, to counsel for Defendant Oddie within thirty days after conclusion of this
12 action. Counsel for the parties shall maintain a record of all persons to whom access to the
13 Confidential Material has been provided. The Court and counsel for Defendant and CDCR may
14 request a copy of such record at any time to determine compliance with the Court’s order.

15 6. No person who has access to the Confidential Material, as set forth in paragraph 2,
16 shall copy any portion of the Confidential Material, except as necessary to provide a copy of the
17 Confidential Material to any other authorized individual listed in paragraph 2, or to submit copies
18 to the Court under seal in connection with this matter. Any copies made for such purpose will be
19 subject to this order.

20 7. None of the Confidential Material shall be shown to, discussed with, or disclosed
21 in any other manner to any other inmate or former inmate or any other person not indicated in
22 paragraph 2, unless a written waiver expressly authorizing such disclosure has been obtained
23 from counsel for Defendant Oddie and CDCR, who maintain possession and control over the
24 original Confidential Material.

25 8. No person who has been afforded access to Confidential Material under this
26 Protective Order shall disclose or discuss the Confidential Material except as is necessary for the
27 litigation, or settlement of this action, and then only in accordance with Paragraphs 2 through 4 of
28 this Order.

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

9 10. 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 Defendant and/or CDCR and kept under seal subject to a further order of the Court. Information
12 or material designated as confidential by Defendant and/or CDCR may be disclosed or discussed
13 in open court, subject to a Motion in Limine and/or Motion for Protective Order filed by
14 Defendant and/or CDCR.

15 11. 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 Kinkeade shall
17 destroy all Confidential Materials and all copies of such material in counsel’s possession or return
18 such materials to this Office.

19 12. 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 13. 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 14. 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

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c. To object to a discovery request.

15. Upon entry of this order by the Court, CDCR will produce the records forthwith.

16. The provisions of this order shall remain in effect until further order of this Court. The Court will provide counsel for Defendant and/or CDCR an opportunity to be heard should the Court find modification of this order necessary.

SO STIPULATED.

Dated: July 19, 2017

/s/ Ken I. Karan
KEN I. KARAN
Attorney for Carlos Kinkeade

XAVIER BECERRA
Attorney General of California
MONICA N. ANDERSON
Supervising Deputy Attorney General

/s/ Aseil Mohmoud
ASEIL MOHMOUD
Deputy Attorney General
Attorneys for Defendant Oddie

IT IS SO ORDERED, with the additional proviso that if the parties wish to file materials under seal, they must comply with Local Rules 141 and 141.1.

Dated: July 20, 2017


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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