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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 JAHIR ALBERTO ROJAS,
20 Plaintiff,

21 v.

22 R. LOZA, Correctional Officer, R. SINGH,
23 Correctional Officer, and D. SANDOVAL,
24 Correctional Officer,
25 Defendants.

No. 07-4662 MMC (PR)

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it affords
8 extends only to the limited information or items that are entitled under the applicable legal
9 principles to treatment as confidential.

10 2. DEFINITIONS

11 2.1 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and counsel (and their support staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner generated, stored, or maintained (including, among other things,
15 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 2.3 “Confidential” Information or Items: information (regardless of how
18 generated, stored or maintained) or tangible things that if disclosed to another party or non-party
19 would create a serious risk of harm or serious injury to inmates or prison staff.

20 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material
21 from a Producing Party.

22 2.5 Producing Party: a Party or non-party that produces Disclosure or
23 Discovery Material in this action.

24 2.6. Designating Party: a Party or non-party that designates information or
25 items that it produces in disclosures or in responses to discovery as “Confidential.”

26 2.7 Protected Material: any Disclosure or Discovery Material that is
27 designated as “Confidential.”
28

1 2.8. Counsel: attorneys who are retained to represent or advise a Party in this
2 action.

3 2.9 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert
5 witness or as a consultant in this action. This definition includes a professional jury or trial
6 consultant retained in connection with this litigation.

7 2.10 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
14 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
15 Parties or Counsel to or in court or in other settings that might reveal Protected Material.

16 4. DURATION

17 Even after the termination of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or non-party that designates information or items for protection under this
23 Order must take care to limit any such designation to specific material that qualifies under the
24 appropriate standards. A Designating Party must take care to designate for protection only those
25 parts of material, documents, items, or oral or written communications that qualify - so that other
26 portions of the material, documents, items, or communications for which protection is not
27 warranted are not swept unjustifiably within the ambit of this Order.
28

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
3 unnecessarily encumber or retard the case development process, or to impose unnecessary
4 expenses and burdens on other parties), expose the Designating Party to sanctions.

5 If it comes to a Producing Party's attention that information or items that it designated for
6 protection do not qualify for protection at all, or do not qualify for the level of protection initially
7 asserted, that Producing Party must promptly notify all other parties that it is withdrawing the
8 mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
11 ordered, material that qualifies for protection under this Order must be clearly so designated
12 before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (apart from transcripts of
15 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
16 "CONFIDENTIAL" on each page that contains protected material. If only a portion or portions
17 of the material on a page qualifies for protection, the Producing Party also must clearly identify
18 the protected portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or non-party that makes original documents or materials available
20 for inspection need not designate them for protection until after the inspecting Party has indicated
21 which material it would like copied and produced. During the inspection and before the
22 designation, all of the material made available for inspection shall be deemed
23 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and
24 produced, the Producing Party must determine which documents, or portions thereof, qualify for
25 protection under this Order, then, before producing the specified documents, the Producing Party
26 must affix the appropriate legend ("CONFIDENTIAL") on each page that contains Protected
27 Material. If only a portion or portions of the material on a page qualifies for protection, the
28

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
5 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
6 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.” When it is
7 impractical to identify separately each portion of testimony that is entitled to protection, and
8 when it appears that substantial portions of the testimony may qualify for protection, the Party or
9 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
10 deposition or proceeding is concluded) a right to have up to 30 calendar days to identify the
11 specific portions of the testimony as to which protection is sought. Only those portions of the
12 testimony that are appropriately designated for protection within the 30 calendar days shall be
13 covered by the provisions of this Stipulated Protective Order.

14 Transcript pages containing Protected Material must be separately bound
15 by the court reporter, who must affix to the top of each such page the legend
16 “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring the witness
17 or presenting the testimony.

18 (c) for information produced in some form other than documentary, and
19 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
20 the container or containers in which the information or item is stored the legend
21 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
22 Producing Party, to the extent practicable, shall identify the protected portions.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items as “Confidential” does not, standing alone,
25 waive the Designating Party’s right to secure protection under this Order for such material. If
26 material is appropriately designated as “Confidential” after the material was initially produced,
27 the Receiving Party, on timely notification of the designation, must make reasonable efforts to
28 assure that the material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATION

2 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
3 "CONFIDENTIAL" designation is necessary to avoid substantial unfairness, unnecessary
4 economic burdens, or later significant disruption or delay of the litigation, a Party does not waive
5 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
6 after the original designation is disclosed.

7 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
8 Designating Party's confidentiality designation must do so in good faith and must begin the
9 process by conferring directly with counsel for the Designating Party. In conferring, the
10 challenging Party must explain the basis for its belief that the confidentiality designation was not
11 proper. The Designating Party shall, within 10 calendar days after conferring with the challenging
12 Party, review the designated material, reconsider the circumstances, and, if no change in
13 designation is offered, explain the basis for the chosen designation. If this meet and confer
14 process does not resolve the challenge, the challenging Party may proceed to the next stage of
15 the challenge process, i.e. seek appropriate relief from the Court.

16 6.3 Judicial Intervention. A Party that elects to press a challenge to a
17 confidentiality designation after considering the justification offered by the Designating Party
18 may file and serve a motion, pursuant to FRCP 26(c), that identifies the challenged material and
19 sets forth in detail the basis for the challenge. Such a motion must be accompanied by a
20 declaration that affirms that the movant has complied with the meet-and-confer requirements
21 imposed in Section 6.2 of this Stipulated Protective Order, and that sets forth with specificity the
22 justification for the confidentiality designation that was given by the Designating Party in the meet-
23 and-confer dialogue. Until the court rules on the challenge, all parties shall continue to afford the
24 material in question the level of protection to which it is entitled under the Producing Party's
25 designation.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a non-party in connection with this case only for

1 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
2 disclosed only to the categories of persons and under the conditions described in this Order.
3 When the litigation has been terminated, a Receiving Party must comply with the provisions of
4 section 10, below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons authorized
7 under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party
10 may disclose any information or item designated CONFIDENTIAL only to:

11 (a) the Receiving Party’s Counsel of record in this action, as well as
12 employees of said Counsel to whom it is reasonably necessary to disclose the information for
13 this litigation;

14 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
15 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective
16 Order” (Exhibit A);

17 (c) the Court and its personnel;

18 (d) court reporters their staffs, and professional vendors to whom
19 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
20 Bound by Protective Order” (Exhibit A);

21 (e) the author of the document or the original source of the information;
22 and

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 8.1 Disclosure to Plaintiff and Other Inmates. Absent written permission by the
25 Designating Party or Court Order, information or items designated for protection under this order
26 shall not be shown or otherwise disclosed to Plaintiff or any other inmates. The parties agree
27 that any videos of the yard disturbance at Salinas Valley State Prison and inmate interviews
28 designated pursuant to this order shall only be shown to Plaintiff to the extent necessary to

1 question him about the incident and prepare him for trial. Plaintiff may not retain a copy of any
2 such videos, however. Counsel for Plaintiff may of course have and retain copies of any items or
3 information designated for protection under this order.

4 8.2 Unauthorized Disclosure by Receiving Party. If a Receiving Party learns that, by
5 inadvertence or otherwise, it has disclosed Protected Material to any person or in any
6 circumstance not authorized under this Stipulated Protective Order, the Receiving Party must (a)
7 notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
8 retrieve all copies of the Protected Material, (c) inform the person or persons to whom
9 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
10 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
11 Exhibit A.

12 If the Designating Party learns that the Receiving Party has disclosed Protected Material
13 to any person or in any circumstance not authorized under this Stipulated Protective Order, the
14 Designating Party must immediately (a) notify, in writing, the Receiving Party of the suspected
15 unauthorized disclosures, (b) meet and confer with the Receiving Party in order to enable the
16 Receiving Party to inform the person or persons to whom unauthorized disclosures were made of
17 all terms of this Order, and (d) request such person to execute the “Acknowledgement and
18 Agreement to Be Bound” that is attached as Exhibit A.

19 Any knowing and willful violation of this Protective Order that results in disclosure of
20 Protected Material shall entitle the Designating Party to seek sanctions and any other relief the
21 Court deems appropriate.

22 9. USE OF PROTECTED MATERIAL IN COURT

23 The parties shall confer and attempt to agree before any hearing or trial or additional
24 procedures which “CONFIDENTIAL” information may be introduced into evidence or
25 otherwise used in court, and shall seek approval from the court as necessary. If necessary, the
26 court may be asked to issue an order governing the use of Protected Material.

27 10. FILING PROTECTED MATERIAL

28 Without written permission from the Designating Party or a court order secured after

1 appropriate notice to all interested persons, a Party may not file in the public record in this action
2 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
3 with Civil Local Rule 79-5

4 11. FINAL DISPOSITION

5 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
6 after the final termination of this action, whether by settlement, satisfaction of judgment, verdict,
7 appeal, or otherwise, each Receiving Party must return all Protected Material to the Producing
8 Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
9 compilations, summaries or any other form of reproducing or capturing any of the Protected
10 Material. With permission in writing from the Designating Party, the Receiving Party may
11 destroy some or all of the Protected Material instead of returning it. Whether the Protected
12 Material is returned or destroyed, the Receiving Party must submit a written certification to the
13 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
14 deadline that identifies (by category, where appropriate) all the Protected Material that was
15 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
16 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
17 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
18 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
19 work product, even if such materials contain Protected Material. Any such archival copies that
20 contain or constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4 (DURATION), above.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to disclosing or
27 producing any information or item on any ground not addressed in this Stipulated Protective
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1 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
2 the material covered by this Protective Order.

3
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: December 3, 2010

/s/ Teresa N. Burlison

TERESA N. BURLISON

Attorneys for Plaintiff

Jahir Alberto Rojas

8 DATED: December 3, 2010

/s/ D. Robert Duncan

D. ROBERT DUNCAN

Attorneys for Defendants

R. Loza, R. Singh, and D. Sandoval

11
12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13 DATED: December 8, 2010



14 MAXINE M. CHESNEY
15 United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, of _____,
4 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
5 Protective Order that was issued by the United States District Court for the Northern District of
6 California on _____ [date] in the case of *Rojas v. Loza, et al.*, Case No. 07-4662 MMC
7 (N.D. Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective
8 Order and I understand and acknowledge that failure to so comply could expose me to sanctions
9 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Stipulated Protective Order to any person
11 or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
13 Northern District of California for the purpose of enforcing the terms of this Stipulated
14 Protective Order, even if such enforcement proceedings occur after termination of this action.

15 Date: _____

16 City and State where sworn and signed: _____

17 Printed name: _____

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19 Signature: _____
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