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18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 SAN FRANCISCO DIVISION

21 RUSSELL MARTIN,
 22 Plaintiff,
 23 v.
 24 M. S. EVANS, *et al.*,
 25 Defendants.
 26
 27

Case No. C 08-4067 JW-MEJ

**STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING PRODUCTION
 OF DOCUMENTS BY NON-PARTY
 CALIFORNIA OFFICE OF THE
 INSPECTOR GENERAL**

[Local Rule 7-11; Fed. R. Civ. P. 26, 45.]

1 Pursuant to Local Rule 7-11 and Rules 26 and 45 of the Federal Rules of Civil Procedure,
2 Plaintiff Russell Martin (“Martin”) and non-party California Office of the Inspector General (“OIG”),
3 by and through their respective counsel, hereby stipulate and request that the Court enter an order as
4 follows:

5 WHEREAS, on or about March 21, 2012, Martin, through counsel, issued a subpoena to OIG
6 seeking certain categories of documents in connection with discovery in this litigation (the
7 “Subpoena”);

8 WHEREAS, on or about April 4, 2012, OIG served responses to that subpoena and objected
9 to the production of documents based, *inter alia*, on grounds of confidentiality, official information,
10 and California statutory protections for documents in OIG’s possession, and OIG produced a
11 privilege log listing all responsive documents that were being withheld on these bases;

12 WHEREAS, on May 23, 2012, the Court (Magistrate Judge James) entered a discovery order
13 resolving disputes arising from Martin’s subpoena requests to non-party Salinas Valley State Prison
14 (“SVSP”) that were substantially similar to the subpoena requests issued to OIG, which order held
15 that the documents requested by Martin from SVSP were discoverable pursuant to a protective order
16 containing terms agreed to by the counsel for the parties and as instructed by the Court;

17 WHEREAS, on May 31, 2012, the parties, through counsel, submitted a compliant proposed
18 stipulated protective order, and on June 5, 2012, the Court entered that protective order (“Protective
19 Order”);

20 WHEREAS, in light of these orders, on or about June 7, 2012, Martin’s counsel sent a letter
21 to OIG’s counsel seeking to meet and confer about OIG’s production of documents responsive to
22 Martin’s subpoena that had been withheld by OIG;

23 WHEREAS, Martin’s counsel and OIG’s counsel discussed the issue by telephone on June
24 15, 2012, and OIG’s counsel agreed that, in light of the May 23 discovery order, the OIG would be
25 willing to produce them subject to the Protective Order and to entry of a separate stipulation by
26 which:

1 (A) OIG would reserve and not waive any and all rights to object to the disclosure
2 or production of these or any other documents in its possession, custody, or control in
3 connection with any other matter or proceeding;

4 (B) The documents responsive to the Subpoena would be produced only subject to
5 the terms of the Protective Order, would not be disclosed or used outside of this litigation or
6 for any purpose other than this litigation; and

7 (C) Production of the documents responsive to the Subpoena would occur only
8 pursuant to entry of this stipulation as an order and that such production would not in the
9 future be construed as a waiver of the OIG's legal right and authority to conduct confidential
10 reviews of the California Department of Corrections and Rehabilitation ("CDCR") or its
11 processes, policies, practices or procedures.

12 THEREFORE, it is hereby stipulated and, subject to the Court's approval, ORDERED that:

13 1. OIG shall produce all documents in its possession, custody, or control that are
14 responsive to the Subpoena within fourteen (14) days of the date this order is entered.

15 2. OIG's production pursuant to paragraph 1, above, shall be subject to all terms and
16 conditions of the Protective Order, including without limitation any confidentiality designation(s)
17 OIG may make consistent with the Protective Order;

18 3. OIG's production pursuant to paragraph 1, above, shall be without prejudice to its
19 ability to object to the disclosure or production of the documents to be produced pursuant to
20 paragraph 1, and/or any other documents, in connection with any other matter or proceeding. OIG
21 expressly reserves any and all rights that it may have to refuse or object to production of documents
22 except as expressly required by this order. OIG's production of documents pursuant to this order
23 shall not waive any objection or privilege it may assert in response to a request to produce or disclose
24 of such documents, and/or any other documents, in connection with in any other matter or
25 proceeding.

26 4. Documents produced by OIG pursuant to paragraph 1, above, shall not be disclosed or
27 used outside of this litigation or for any purpose other than this litigation.
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1 5. OIG's production pursuant to paragraph 1, above, shall not be deemed or construed as
2 a waiver of its legal right and authority to conduct confidential reviews of the CDCR or its processes,
3 policies, practices or procedures.

4 IT IS SO STIPULATED.

5 Dated: August 29, 2012

NIXON PEABODY LLP

7 By: /s/ Matthew J. Frankel

8 Attorneys for Plaintiff
9 RUSSELL MARTIN

10 Dated: August 29, 2012

ROBERT A. BARTON
INSPECTOR GENERAL

12 By: /s/ James C. Spurling
13 Chief Counsel

14 Attorneys for Non-Party
15 CALIFORNIA OFFICE OF THE
INSPECTOR GENERAL

16 GENERAL ORDER 45 SUBSECTION (X)(B) ATTESTATION

17 I hereby attest that concurrence in the filing of the document has been obtained from James C.
18 Spurling.

19 /s/ Matthew J. Frankel

20
21 PURSUANT TO STIPULATION, AND GOOD CAUSE APPEARING, IT IS SO ORDERED.

22 DATED: September 5, 2012

23 
24 Hon. Maria-Elena James
Chief United States Magistrate Judge

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