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18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION

21
22 **CURTIS LEE HENDERSON,**
23
24 Plaintiff,
25
26 **v.**
27
28 **J. PETERSEN, et al.,**
Defendants.

C 07-2838 SBA
**AMENDED STIPULATED PROTECTIVE
ORDER**

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Subject to the approval of this Court, the parties stipulate to the following protective order:

1. In connection with discovery proceedings in this action, the parties may designate any document, thing, material, testimony, or other information derived from them, as “Confidential” under the terms of this Stipulated Protective Order (Order). Confidential information is information that has not been made public or that concerns or relates to the processes, operations, investigations, or other information relating to the California Department of Corrections and Rehabilitation, disclosure of which may have the effect of causing harm to the safety and security of the prison, prison staff, inmates, the public, Plaintiff, or Defendants. Confidential information is also personal information of the Plaintiff and Defendants, including but not limited to home addresses, social security numbers, telephone numbers, email addresses, names or identifying information of family members, the disclosure of which places the safety of Defendants, who are current and former peace officers, and their family members at risk. Confidential information also includes all personal identifying information of any inmate, current or former California Department of Corrections employee, and any third party entitled to confidential protection of personal identifying information under California and/or applicable federal law.

By designating a document, thing, material, testimony or other information derived from them as “Confidential,” under the terms of this Order, the party making the designation is certifying to the Court that there is a good-faith basis both in law and in fact for the designation within the meaning of Federal Rule of Civil Procedure 26.

2. Confidential documents will be designated by stamping copies of the document produced to a party with the legend “CONFIDENTIAL.” Stamping the legend “CONFIDENTIAL” on the cover of any multipage document will designate all pages of the document as confidential, unless otherwise indicated by the producing party.

3. The parties may further designate certain discovery material or testimony of a highly confidential as “CONFIDENTIAL—ATTORNEY’S EYES ONLY” (Attorney’s Eyes Only Material), in the manner described in paragraph two. Attorney’s Eyes Only Material, and the information contained in them, may be disclosed only to the Court, to counsel for the parties

1 (including the paralegal, clerical, and secretarial staff employed by counsel), and to the “qualified
2 persons” listed in subparagraphs 7(a) through (c) below, but will not be disclosed to a party,
3 unless otherwise agreed or ordered. If disclosure of Attorney’s Eyes Only Material is made, all
4 other provisions in this Order with respect to confidentiality will also apply.

5 4. Testimony taken at a deposition, conference, hearing or trial may be designated as
6 Confidential or Attorneys’ Eyes Only by making a statement to that effect on the record at the
7 deposition or other proceeding. Arrangements will be made with the court reporter taking and
8 transcribing the proceeding to separately bind portions of the transcript containing information
9 designated as Confidential or Attorneys’ Eyes Only, and to label the separately bound portions
10 appropriately. Defendants, and employees of the California Department of Corrections and
11 Rehabilitation, will not be required to disclose confidential personal information, as described in
12 paragraph one, in response to discovery, including questioning at deposition, without the
13 protections for “Confidential” or “Attorneys’ Eyes Only” information required by this Stipulated
14 Protective Order. Contact with Defendants and all other employees or officers of the California
15 Department of Corrections and Rehabilitation will be made through the Office of the Attorney
16 General.

17 5. Material designated as Confidential or Attorneys’ Eyes Only under this Order, the
18 information contained in them, and any summaries, copies, abstracts, or other documents derived
19 in whole or in part from material designated as Confidential (Confidential Material) or Attorneys’
20 Eyes Only (Attorneys’ Eyes Only Material) may be used only for the purpose of prosecution,
21 defense, or settlement of this action, but for no other purpose.

22 6. Pursuant to the Court’s June 24, 2010 order, relevant documents contained in
23 Defendants’ Personnel Files or related to internal investigations by the California Department of
24 Corrections and Rehabilitation will be submitted to the Court for in camera review before
25 production. Following a determination by the Court that the documents are relevant and should
26 be produced, the documents will be designated “Confidential” or “Attorneys’ Eyes Only” by the
27 producing party.

28 7. Any Confidential or Attorneys’ Eyes Only Materials will be disclosed or made

1 available only to counsel for a party (including the paralegal, clerical, and secretarial staff
2 employed by such counsel), and to the “qualified persons” designated below:

3 (a) experts (together with their clerical staff) retained by counsel to assist in the
4 prosecution, defense, or settlement of this action;

5 (b) court reporter(s) employed in this action;

6 (c) any other person about whom the parties in writing agree.

7 Prior to receiving any Confidential or Attorneys' Eyes Only Material, each “qualified
8 person” will be provided with a copy of this Order and will execute a nondisclosure agreement in
9 the form of Attachment A. A copy of the executed agreement will be provided to counsel for
10 each other party.

11 8. Any Party or Non-Party may challenge a designation of confidentiality at any time.
12 Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to
13 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
14 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
15 designation by electing not to mount a challenge promptly after the original designation is
16 disclosed.

17 (a) The Challenging Party shall initiate the dispute resolution process by providing
18 written notice of each designation it is challenging and describing the basis for each challenge.
19 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that
20 the challenge to confidentiality is being made in accordance with this specific paragraph of the
21 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
22 the process by conferring directly (in voice to voice dialogue; other forms of communication are
23 not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
24 Party must explain the basis for its belief that the confidentiality designation was not proper and
25 must give the Designating Party an opportunity to review the designated material, to reconsider
26 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
27 designation. A Challenging Party may proceed to the next stage of the challenge process only if
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1 it has engaged in this meet and confer process first or establishes that the Designating Party is
2 unwilling to participate in the meet and confer process in a timely manner.

3 (b) If the Parties cannot resolve a challenge without court intervention, the
4 Challenging Party shall file and serve a motion to challenge confidentiality under Civil Local
5 Rule 7 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
6 that the meet and confer process will not resolve their dispute, whichever is earlier. Each such
7 motion must be accompanied by a competent declaration affirming that the movant has complied
8 with the meet and confer requirements imposed in the preceding paragraph.

9 (c) The burden of persuasion in any such challenge proceeding shall be on the
10 Challenging Party. All parties shall continue to afford the material in question the level of
11 protection to which it is entitled under the Producing Party's designation until the court rules on
12 the challenge.

13 9. Depositions will be taken only in the presence of qualified persons.

14 10. Nothing in this Stipulated Protective Order will impose any restrictions on the use or
15 disclosure by a party of material obtained by the party independent of discovery in this action, or
16 from disclosing its own Confidential Material as it deems appropriate.

17 11. If Confidential or Attorneys' Eyes Only Material, including any portion of a
18 deposition transcript designated as Confidential or Attorney's Eyes Only, is included in any
19 papers to be filed in Court, such papers will be labeled "Confidential—Subject to Court Order"
20 and filed under seal, according to the procedure set out in Local Rule 79-5, until further order of
21 this Court.

22 12. In the event that any Confidential or Attorneys' Eyes Only Material is used in any
23 court proceeding in this action other than trial, it will not lose its confidential status through such
24 use, and the party using the material will take all reasonable steps to maintain its confidentiality
25 during such use. Any use of Confidential or Attorneys' Eyes Only Material at trial shall be
26 governed by a separate agreement or order to be addressed as part of the pretrial conference
27 procedures.

1 13. This Order will be without prejudice to the right of the parties (i) to bring before the
2 Court at any time a question of whether any particular document or information is confidential or
3 whether its use should be restricted or (ii) to present a motion to the Court under FRCP 26(c) for a
4 separate protective order as to any particular document or information, including restrictions
5 differing from those as specified herein. This Order will not prejudice the parties in any way in
6 any future application for modification of this Order.

7 14. This Order is entered solely for the purpose of facilitating the exchange of documents
8 and information between the parties to this action. Nothing in this Order, or the production of any
9 information or document under the terms of this Order, or any proceedings under this Order will
10 be deemed as an admission or a waiver by any party, and will not alter the confidentiality or
11 nonconfidentiality or any such document or information or alter any existing obligation of any
12 party or the absence of obligation.

13 15. This Order will survive the final termination of this action, to the extent that the
14 information contained in Confidential or Attorneys' Eyes Material is not or does not become
15 known to the public, and the Court will retain jurisdiction to resolve any dispute concerning the
16 use of information disclosed under this Order. Unless otherwise ordered or agreed to in writing
17 by the Producing Party, within sixty (60) days after the final termination of this litigation by
18 settlement or exhaustion of all appeals all parties in receipt of Protected Materials shall use
19 reasonable efforts to either return such materials and copies thereof to the Producing Party or
20 destroy such Protected Material and certify that fact. The Receiving Party's reasonable efforts
21 shall not require the return or destruction of Protected Material that is (a) stored on backup
22 storage media made in accordance with regular data backup procedures for disaster recovery
23 purposes, (b) located in the email archive system or archived electronic files of departed
24 employees, or (c) subject to legal hold obligations. Backup storage media will not be restored for
25 purposes of returning or certifying destruction of Protected Material, but such retained
26 information shall continue to be treated in accordance with the Order. Counsel for the parties
27 shall be entitled to retain copies of court papers (and exhibits thereto), correspondence, pleadings,
28 deposition and trial transcripts (and exhibits thereto), expert reports and attorney work product

1 that contain or refer to Protected Materials, provided that such counsel and employees of such
2 counsel shall not disclose such Protected Material to any person, except pursuant to court order.
3 Nothing shall be interpreted in a manner that would violate applicable canons of ethics or codes
4 of professional responsibility.

5 16. Absent written permission by the designating party or Court order, information or
6 items designated as Confidential Material and/or Attorney's Eyes Only Material will not be
7 shown or otherwise disclosed to Plaintiff or any other inmates. The parties agree that any audio
8 or video recordings of inmate interviews or other recordings designated as Confidential under this
9 Order will only be shown to Plaintiff to the extent necessary to question him about the incident
10 and prepare him for trial. Plaintiff may not retain copies of any recordings. Counsel for Plaintiff
11 may have and retain copies of any material designated for protection under this order.

12 17. The Rule 26 Amendments effective December 21, 2010 relating to experts will apply
13 to this matter.

14 SO STIPULATED:

15 DATED: March 11, 2011


16 /s/ Julianne Mossler
17 JULIANNE MOSSLER
18 Deputy Attorney General
19 Attorney for Defendants Bullock, Christ,
20 Kelley, McBride, Petersen, and Speaker

21 DATED: March 11, 2011

22 /s/ R. Adam Lauridsen
23 R. ADAM LAURIDSEN
24 SHARIF E. JACOB
25 Attorneys for Plaintiff Henderson

26 APPROVED AND SO ORDERED:

27 DATED: 3/11/2011

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SAUNDRA BROWN ARMSTRONG
United States District Judge
Bernard Zimmerman
United States
Magistrate Judge

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ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of Curtis Lee Henderson, Sr. v. J. Petersen, et al., United States District Court, Northern District of California, Case No. 07-CV-2838. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]