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17  
 18 IN THE UNITED STATES DISTRICT COURT  
 19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 20 OAKLAND DIVISION

NICHOLAS BART ELLIS,	)		)	No. C 07-5126 SBA (DMR)
	)		)	
Plaintiff,	)		)	<b>STIPULATED PROTECTIVE ORDER</b>
	)		)	<b><u>AS MODIFIED</u></b>
vs.	)		)	
	)		)	
A. NAVARRO, et al.,	)		)	
	)		)	
Defendants.	)		)	
	)		)	

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

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

18 By designating a document, thing, material, testimony or other information derived  
19 from them as Attorney’s Eyes Only Material under the terms of this Order, the party  
20 making the designation is certifying to the Court that there is a good-faith basis both in law  
21 and in fact for the designation within the meaning of Federal Rule of Civil Procedure 26.

22 2. Attorney’s Eyes Only Material will be designated by stamping copies of the  
23 document produced to a party with the legend “CONFIDENTIAL – ATTORNEYS’ EYES  
24 ONLY”. Stamping the legend “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on the  
25 cover of any multipage document will designate all pages of the document as confidential,  
26 unless otherwise indicated by the producing party. Attorney’s Eyes Only Material, and the  
27 information contained therein, may be disclosed only to the Court, to counsel for the parties  
28 (including the paralegal, clerical, and secretarial staff employed by counsel), and to the

1 “qualified persons” listed in subparagraphs 5(a) through (c) below, but will not be disclosed  
2 to a party, unless otherwise agreed or ordered. If disclosure of Attorney’s Eyes Only  
3 Material is made, all other provisions in this Order with respect to confidentiality will also  
4 apply.

5 3. Testimony taken at a deposition, conference, hearing or trial may be  
6 designated as Attorney’s Eyes Only Material by making a statement to that effect on the  
7 record at the deposition or other proceeding. Arrangements will be made with the court  
8 reporter taking and transcribing the proceeding to separately bind portions of the transcript  
9 containing information designated as Attorney’s Eyes Only Material, and to label the  
10 separately bound portions appropriately. Defendants, and employees of the CDCR, will not  
11 be required to disclose confidential personal information, as described in paragraph one, in  
12 response to discovery, including questioning at deposition, without the protections for  
13 Attorney’s Eyes Only Material required by this Order.

14 4. Material designated as Attorney’s Eyes Only Material under this Order, the  
15 information contained therein, and any summaries, copies, abstracts, or other documents  
16 derived in whole or in part from material designated as Attorney’s Eyes Only Material may  
17 be used only for the purpose of prosecution, defense, or settlement of this action, but for no  
18 other purpose.

19 5. Any Attorney’s Eyes Only Material will be disclosed or made available only  
20 to counsel for a party (including the paralegal, clerical, and secretarial staff employed by  
21 such counsel), and to the “qualified persons” designated below:

- 22 (a) experts (together with their clerical staff) retained by counsel to assist in the  
23 prosecution, defense, or settlement of this action;
- 24 (b) court reporter(s) employed in this action;
- 25 (c) any other person about whom the parties in writing agree.

26 Prior to receiving any Attorney’s Eyes Only Material, each “qualified person” will  
27 be provided with a copy of this Order and will execute a nondisclosure agreement in the form  
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1 of Attachment A. A copy of the executed agreement will be provided to counsel for each  
2 other party.

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

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

23           (b) If the Parties cannot resolve a challenge without Court intervention, the  
24 Challenging Party shall comply with the applicable rules and procedures governing  
25 discovery disputes within twenty one (21) days of the initial notice of challenge or within  
26 fourteen (14) days of the parties agreeing that the meet and confer process will not resolve  
27 their dispute, whichever is earlier.

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1 (c) The burden of persuasion in any such challenge proceeding shall be on the  
2 Challenging Party. All parties shall continue to afford the material in question the level of  
3 protection to which it is entitled under the Producing Party’s designation until the Court rules  
4 on the challenge.

5 7. Nothing in this Order will impose any restrictions on the use or disclosure by  
6 a party of material obtained by the party independent of discovery in this action, or from  
7 disclosing its own Attorney’s Eyes Only Material as it deems appropriate.

8 8. If Attorney’s Eyes Only Material, including any portion of a deposition  
9 transcript designated as Attorney’s Eyes Only Material, is included in any papers to be filed  
10 in Court, such papers will be labeled “Confidential—Subject to Court Order” and filed  
11 ~~under seal~~, according to the procedure set out in Local Rule 79-5, until further order of this  
12 Court.

13 9. In the event that any Attorney’s Eyes Only Material is used in any court  
14 proceeding in this action other than trial, it will not lose its confidential status through such  
15 use, and the party using the material will take all reasonable steps to maintain its  
16 confidentiality during such use. Any use of Attorney’s Eyes Only Material at trial shall be  
17 governed by a separate agreement or order to be addressed as part of the pretrial conference  
18 procedures.

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

25 11. This Order is entered solely for the purpose of facilitating the exchange of  
26 documents and information between the parties to this action. Nothing in this Order, or the  
27 production of any information or document under the terms of this Order, or any  
28 proceedings under this Order will be deemed as an admission or a waiver by any party, and

1 will not alter the confidentiality or non-confidentiality or any such document or information  
2 or alter any existing obligation of any party or the absence of obligation.

3           12. This Order will survive the final termination of this action, to the extent that  
4 the information contained in Attorney's Eyes Only Material is not or does not become  
5 known to the public, and the Court will retain jurisdiction to resolve any dispute concerning  
6 the use of information disclosed under this Order. Unless otherwise ordered or agreed to in  
7 writing by the Producing Party, within sixty (60) days after the final termination of this  
8 litigation by settlement or exhaustion of all appeals all parties in receipt of Attorney's Eyes  
9 Only Material shall use reasonable efforts to either return such materials and copies thereof  
10 to the Producing Party or destroy such Attorney's Eyes Only Material and certify that fact.  
11 The Receiving Party's reasonable efforts shall not require the return or destruction of  
12 Attorney's Eyes Only Material that is (a) stored on backup storage media made in  
13 accordance with regular data backup procedures for disaster recovery purposes, (b) located  
14 in the email archive system or archived electronic files of departed employees, or (c)  
15 subject to legal hold obligations. Backup storage media will not be restored for purposes of  
16 returning or certifying destruction of Attorney's Eyes Only Material, but such retained  
17 information shall continue to be treated in accordance with this Order. Counsel for the  
18 parties shall be entitled to retain copies of court papers (and exhibits thereto),  
19 correspondence, pleadings, deposition and trial transcripts (and exhibits thereto), expert  
20 reports and attorney work product that contain or refer to Attorney's Eyes Only Material,  
21 provided that such counsel and employees of such counsel shall not disclose such  
22 Attorney's Eyes Only Material to any person, except pursuant to Court order. Nothing shall  
23 be interpreted in a manner that would violate applicable canons of ethics or codes of  
24 professional responsibility.

25           13. Absent written permission by the designating party or Court order,  
26 information or items designated as Attorney's Eyes Only Material will not be shown or  
27 otherwise disclosed to Plaintiff or any other inmates. The parties agree that any audio or  
28 video recordings of inmate interviews or other recordings designated as Attorney's Eyes



1 ATTACHMENT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [print full address], declare under penalty of perjury that  
5 I have read in its entirety and understand the Stipulated Protective Order that was issued by  
6 the United States District Court for the Northern District of California on [\_\_\_\_\_] in  
7 the case of *Nicholas Bart Ellis v. A. Navarro, et al.*, United States District Court, Northern  
8 District of California, Case No. C07-5126 SBA. I agree to comply with and to be bound by  
9 all the terms of this Stipulated Protective Order and I understand and acknowledge that  
10 failure to do so could expose me to sanctions and punishment in the nature of contempt. I  
11 solemnly promise that I will not disclose in any manner any information or item that is  
12 subject to this Stipulated Protective Order to any person or entity except in strict  
13 compliance with the provisions of this Order.

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

18 I hereby appoint \_\_\_\_\_ [print full name], of  
19 \_\_\_\_\_ [print full address and telephone  
20 number] as my California agent for service of process in connection with this action or any  
21 proceedings related to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24

25 Printed name: \_\_\_\_\_

26

27 Signature: \_\_\_\_\_

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