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24 UNITED STATES DISTRICT COURT
25 FOR THE NORTHERN DISTRICT OF CALIFORNIA
26 SAN JOSE DIVISION
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JESSE WASHINGTON,

Plaintiff,

v.

D. SANDOVAL,

Defendant.

Case No. 10-CV-250-LHK (PSG)

JOINT STIPULATED PROTECTIVE ORDER

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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, Plaintiff Jesse Washington and Defendant David Sandoval (the “parties”) hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

- 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.
- 2.2 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and constitutes or discloses information which threatens prisons safety or security, or the safety or security of any inmate or prison staff.
- 2.3 Counsel of Record: attorneys who are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that Party (as well as their support staff).
- 2.4 Counsel (without qualifier): Counsel of Record (as well as their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or items that
2 it produces in disclosures or in responses to discovery as “CONFIDENTIAL - ATTORNEYS’
3 EYES ONLY.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner in which it is generated, stored, or maintained (including, among other
6 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
7 or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
9 to the litigation who has been retained by a Party or its Counsel to serve as an expert witness or
10 as a consultant in this action.

11 2.8 Non-Party: any natural person, partnership, corporation, association, or other
12 legal entity not named as a Party to this action.

13 2.9 Party: any party to this action, including all of its officers, directors, employees,
14 consultants, retained experts, and Counsel of Record (and their support staffs).

15 2.10 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.

17 2.11 Professional Vendors: persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
19 organizing, storing, or retrieving data in any form or medium) and their employees and
20 subcontractors.

21 2.12 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

23 2.13 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from Protected
28 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any

1 testimony, conversations, or presentations by Parties or their Counsel that might reveal
2 Protected Material. However, the protections conferred by this Stipulation and Order do not
3 cover the following information: (a) any information that is in the public domain at the time of
4 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
5 Receiving Party as a result of publication not involving a violation of this Order, including
6 becoming part of the public record through trial or otherwise; and (b) any information known to
7 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
8 disclosure from a source who obtained the information lawfully and under no obligation of
9 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
10 by a separate agreement or order.

11 **4. DURATION**

12 Even after final disposition of this litigation, the confidentiality obligations imposed by
13 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
14 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
15 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
16 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
17 action, including the time limits for filing any motions or applications for extension of time
18 pursuant to applicable law.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
21 or Non-Party that designates information or items for protection under this Order must take care
22 to limit any such designation to specific material that qualifies under the appropriate standards.
23 The Designating Party must designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify – so that other portions of the material,
25 documents, items, or communications for which protection is not warranted are not swept
26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
28 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated
4 for protection do not qualify for protection, that Designating Party must promptly notify all
5 other Parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
9 so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents,
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
13 Party affix the legend "CONFIDENTIAL - ATTORNEYS' EYES ONLY" to each page that
14 contains protected material. If only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
16 making appropriate markings in the margins).

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
18 the Designating Party identify on the record, before the close of the deposition, hearing, or other
19 proceeding, all protected testimony.

20 (c) for information produced in some form other than documentary and for any
21 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
22 container or containers in which the information or item is stored the legend "CONFIDENTIAL
23 - ATTORNEYS' EYES ONLY." If only a portion or portions of the information or item
24 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating Party's
28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
11 process by providing written notice of each designation it is challenging and describing the basis
12 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
13 notice must recite that the challenge to confidentiality is being made in accordance with this
14 specific paragraph of the Protective Order. The Challenging Party and the Designating Party
15 shall attempt to resolve each challenge in good faith and must begin the process by conferring
16 directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
17 days of the date of service of notice. In conferring, the Challenging Party must explain the basis
18 for its belief that the confidentiality designation was not proper and must give the Designating
19 Party an opportunity to review the designated material, to reconsider the circumstances, and, if
20 no change in designation is offered, to explain the basis for the chosen designation. A
21 Challenging Party may proceed to the next stage of the challenge process only if it has engaged
22 in this meet and confer process first or establishes that the Designating Party is unwilling to
23 participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Challenging Party and the Designating Party cannot
25 resolve a challenge without court intervention, the Designating Party shall file and serve a
26 motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local
27 Rule 79-5 and General Order 62, if applicable) within 21 days of the initial notice of challenge
28 or within 14 days of the parties agreeing that the meet and confer process will not resolve their

1 dispute, whichever is earlier. Each such motion must be accompanied by a competent
2 declaration affirming that the movant has complied with the meet and confer requirements
3 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
4 including the required declaration within 21 days (or 14 days, if applicable) shall automatically
5 waive the confidentiality designation for each challenged designation. In addition, the
6 Challenging Party may file a motion challenging a confidentiality designation at any time if
7 there is good cause for doing so, including a challenge to the designation of a deposition
8 transcript or any portions thereof. Any motion brought pursuant to this provision must be
9 accompanied by a competent declaration affirming that the movant has complied with the meet
10 and confer requirements imposed by the preceding paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating
12 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
14 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
15 file a motion to retain confidentiality as described above, all parties shall continue to afford the
16 material in question the level of protection to which it is entitled under the Producing Party's
17 designation until the court rules on the challenge.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
20 or produced by another Party or by a Non-Party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
22 disclosed only to the categories of persons and under the conditions described in this Order.
23 When the litigation has been terminated, a Receiving Party must comply with the provisions of
24 section 13 below (FINAL DISPOSITION).

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

27 7.2 Disclosure of "CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information
28 or Items.

1 This Protective Order is intended to and does preclude the Receiving Party's Counsels
2 of Record from disclosing documents and information designated "CONFIDENTIAL -
3 ATTORNEYS' EYES ONLY" to their clients, Plaintiff Jesse Washington or Defendant David
4 Sandoval, members of Plaintiff Washington or Defendant Sandoval's family, friends, or
5 associates, or to any inmate or parolee, or to the public. It is agreed by the Parties and ordered
6 by the Court that the information designated "CONFIDENTIAL - ATTORNEYS' EYES
7 ONLY" is never to be disseminated to or discussed with any inmates, including a Party or
8 witness, parolee, and the public, in this case or in any other capacity, unless there is a successful
9 challenge to such information under section 6. In the event the Receiving Party believes that
10 information designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY" needs to be
11 discussed with their client or another person, the Receiving Party must first contact the
12 Designating Party to discuss disclosure of the specific record.
13

14 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated "CONFIDENTIAL -
16 ATTORNEYS' EYES ONLY" only to:

17 (a) the Receiving Party's Counsel of Record in this action, as well as employees
18 of said Counsel of Record to whom it is reasonably necessary to disclose the information for
19 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
20 attached hereto as Exhibit A;

21 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure
22 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (c) the court and its personnel;

25 (d) court reporters and their staff, professional jury or trial consultants, mock
26 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
27 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be construed as
2 prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is subject to an
5 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
6 Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party
8 that some or all of the information requested is subject to a confidentiality agreement with a
9 Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and

13 (3) make the information requested available for inspection by the
14 Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this court
16 within 14 days of receiving the notice and accompanying information, the Receiving Party may
17 produce the Non-Party's confidential information responsive to the discovery request. If the
18 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
19 information in its possession or control that is subject to the confidentiality agreement with the
20 Non-Party before a determination by the court.¹ Absent a court order to the contrary, the Non-
21 Party shall bear the burden and expense of seeking protection in this court of its Protected
22 Material.

23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective
26

27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
4 made of all the terms of this Order, and (d) request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 In the event the Receiving Party believes that documents labeled “CONFIDENTIAL -
7 ATTORNEYS’ EYES ONLY” have been viewed or obtained by persons other than those
8 permitted access under Paragraph 7.2, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) identify the person or persons
10 to whom unauthorized disclosures were made, (c) inform the person or persons to whom
11 unauthorized disclosures were made of all the terms of this Order, and (d) use its best efforts to
12 retrieve all unauthorized copies of the Protected Material.

13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
14 **PROTECTED MATERIAL**

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the obligations of the
17 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
18 provision is not intended to modify whatever procedure may be established in an e-discovery
19 order that provides for production without prior privilege review. Pursuant to Federal Rule of
20 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of
21 a communication or information covered by the attorney-client privilege or work product
22 protection, the parties may incorporate their agreement in the stipulated protective order
23 submitted to the court.

24 **12. MISCELLANEOUS**

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
26 seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
28 Order no Party waives any right it otherwise would have to object to disclosing or producing

1 any information or item on any ground not addressed in this Stipulated Protective Order.

2 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
3 material covered by this Protective Order.

4 12.3 Filing Protected Material. Without written permission from the Designating Party
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in
6 the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
8 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
10 sealing order will issue only upon a request establishing that the Protected Material at issue is
11 privileged, protectable as a trade secret, is required to protect safety and security of any
12 California Department of Corrections and Rehabilitation institution, employee, or inmate, or
13 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
14 Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the
15 court, then the Receiving Party may file the information in the public record pursuant to Civil
16 Local Rule 79-5(e) unless otherwise instructed by the court.

17 12.4 Redaction of Personal Information. The Designating Party is permitted to
18 redact any and all personal information from the Protected Material that is produced under this
19 protective order. The Parties agree that the Designating Party is allowed to redact personal
20 information such as addresses, social security numbers, birthdates, or any other personal and
21 confidential information.

22 **13. FINAL DISPOSITION**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
24 Receiving Party must return all Protected Material to the Producing Party or destroy such
25 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
28 submit a written certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
2 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
3 has not retained any copies, abstracts, compilations, summaries or any other format reproducing
4 or capturing any of the Protected Material. Notwithstanding this provision, Counsel of Record
5 are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
6 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
7 reports, attorney work product, and consultant and expert work product, even if such materials
8 contain Protected Material. Any such archival copies that contain or constitute Protected
9 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15

16 DATED: 4/8/2013 /s/ Sasha G. Rao

17 Attorneys for Plaintiff
18 Jesse Washington
19 ROPES & GRAY LLP
20 Sasha G. Rao
21 Brandon H. Stroy
22 Carolyn L. Redding
23 Matthew E. Prosen
24 Christopher M. Bonny

22 DATED: 4/8/2013 /s/D. Robert Duncan

23 Attorneys for Defendant
24 David Sandoval
25 STATE OF CALIFORNIA
26 ATTORNEY GENERAL'S OFFICE
27 DEPARTMENT OF JUSTICE
28 Kamala D. Harris
William C. Kwong
D. Robert Duncan
Scott J. Feudale

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 10, 2013



Paul S. Grewal
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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 *Jesse Washington v. D. Sandoval*, Case No. **10-CV-250-LHK (PSG)**. 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]