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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**KEVIN TYLER,**  
  
Plaintiff,  
  
v.  
  
**OFFICER F. SALAS, et al.,**  
  
Defendants.

Case No.: 20cv888-MMA (MSB)  
**ORDER GRANTING JOINT  
MOTION FOR ENTRY OF  
PROTECTIVE ORDER**  
**[ECF NO. 14]**

Pursuant to the parties’ November 12, 2020 “Joint Motion for Entry of Protective Order” [ECF No. 14] and finding good cause therefore, the Court **GRANTS** the Joint Motion and enters the parties’ Stipulated Protective Order, as follows.

The Court recognizes that at least some of the documents and information ("materials") that may be sought through discovery in the above-captioned action are protected under the privacy privilege and the official information privilege, (including information within the personnel files of California Department of Corrections and Rehabilitation [CDCR] employees) and are normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

1 The materials to be exchanged throughout the course of the litigation between  
2 the parties may contain information that has been deemed confidential research,  
3 technical, cost, price, marketing or other commercial information under the federal  
4 privacy privilege and the official information privilege [as is contemplated by Federal  
5 Rule of Civil Procedure 26(c)(1)(G)] information protected by the privacy rights of  
6 the parties or third parties, or otherwise be protected by the official information  
7 privilege. The purpose of this Order is to protect the confidentiality of such materials  
8 as much as practical during the litigation. THEREFORE:

9 DEFINITIONS

10 1. The term "Confidential Information," throughout this Order, will mean  
11 and include information contained or disclosed in any materials, including  
12 documents, portions of documents, answers to interrogatories, responses to requests  
13 for admissions, trial testimony, deposition testimony, and transcripts of trial  
14 testimony and depositions, including data, summaries, and compilations derived  
15 therefrom that is deemed to be Confidential Information by any party to which it  
16 belongs.

17 2. The term "materials" will include, but is not be limited to: any document  
18 within any CDCR employee's personnel files; other documents; correspondence;  
19 memoranda; bulletins; blueprints; specifications; worksheets; notes of conversations;  
20 desk diaries; appointment books; expense accounts; recordings; photographs; motion  
21 pictures; compilations from which information can be obtained and translated into  
22 reasonably usable form through detection devices; sketches; drawings; notes; reports;  
23 instructions; disclosures; other writings; models and prototypes and other physical  
24 objects.

25 3. The term "counsel" will mean outside counsel of record, and other  
26 attorneys, paralegals, secretaries, and other support staff employed in the law firms  
27 identified below:

28 ///

1 XAVIER BECERRA  
2 Attorney General of California  
3 MICHELLE DES JARDINS  
4 Supervising Deputy Attorney General  
5 ALICE M. SEGAL  
6 Deputy Attorney General  
7 State Bar No. 288108  
8 1300 Street, Suite 125  
9 P.O. Box 944255  
10 Sacramento, CA 94244-2550  
11 Telephone: (619)738-9640  
12 Fax: (619) 645-2581  
13 E-mail: [Alice.Segal@doj.ca.gov](mailto:Alice.Segal@doj.ca.gov)

14 BENJAMIN RUDIN, ESQ. (SBN 292341)  
15 3830 Valley Centre Drive, Suite 705, No. 231  
16 San Diego, CA 92130  
17 Telephone: (858) 256-4429  
18 E-mail: [ben@benrudin.law](mailto:ben@benrudin.law)

19 DAVID W. TYRA (SBN 116218)  
20 CECILIA L. MARTIN (SBN 301027)  
21 Kronick, Moskovitz, Tiedemann & Girard  
22 400 Capitol Mall, 27th Floor  
23 Sacramento, CA 95814  
24 Telephone: (916) 321-4500  
25 Fax: (916) 321-4555  
26 E-mail: [dtyra@kmtg](mailto:dtyra@kmtg)

#### 27 GENERAL RULES

28 4. Each party to this litigation that produces or discloses any materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY."

(a) Designation as "CONFIDENTIAL": Any party may designate information as "CONFIDENTIAL" only if, in the good faith belief of such party and its counsel, the unrestricted disclosure of such information could be potentially prejudicial to the operations of such party, place the safety of non-parties at risk, or

1 result in the disclosure of confidential, personal information concerning non-parties  
2 or of the personnel files of parties.

3 (b) Designation as "CONFIDENTIAL - FOR COUNSEL ONLY":  
4 Any party may designate information as "CONFIDENTIAL - FOR COUNSEL  
5 ONLY" only if, in the good faith belief of such party and its counsel, the information  
6 is among that considered to be most sensitive by the party, including but not limited  
7 to operations and safety directives of such parties, information that potentially places  
8 the safety of non-parties at risk, or results in the disclosure of confidential, personal  
9 information concerning nonparties or of the personnel files of parties.

10 5. In the event the producing party elects to produce materials for  
11 inspection, no marking need be made by the producing party in advance of the initial  
12 inspection. For purposes of the initial inspection, all materials produced will be  
13 considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as  
14 such pursuant to the terms of this Order. Thereafter, upon selection of specified  
15 materials for copying by the inspecting party, the producing party must, within a  
16 reasonable time prior to producing those materials to the inspecting party, mark the  
17 copies of those materials that contain Confidential Information with the appropriate  
18 confidentiality marking.

19 6. Whenever a deposition taken on behalf of any party involves a  
20 disclosure of Confidential Information of any party:

21 (a) the deposition or portions of the deposition must be designated as  
22 containing Confidential Information subject to the provisions of this Order; such  
23 designation must be made on the record whenever possible, but a party may designate  
24 portions of depositions as containing Confidential Information after transcription of  
25 the proceedings; A party will have until fourteen (14) days after receipt of the  
26 deposition transcript to inform the other party or parties to the action of the portions  
27 of the transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR  
28 COUNSEL ONLY."

1 (b) the disclosing party will have the right to exclude from attendance  
2 at the deposition, during such time as the Confidential Information is to be disclosed,  
3 any person other than the deponent, counsel (including their staff and associates), the  
4 court reporter, and the person(s) agreed upon pursuant to paragraphs 8 and 9 below;  
5 and

6 (c) the originals of the deposition transcripts and all copies of the  
7 deposition must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR  
8 COUNSEL ONLY," as appropriate, and the original or any copy ultimately presented  
9 to a court for filing must not be filed unless it can be accomplished under seal,  
10 identified as being subject to this Order, and protected from being opened except by  
11 order of this Court.

12 7. All Confidential Information designated as "CONFIDENTIAL" or  
13 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving  
14 party to anyone other than those persons designated within this order and must be  
15 handled in the manner set forth below and, in any event, must not be used for any  
16 purpose other than in connection with this litigation, unless and until such designation  
17 is removed either by agreement of the parties, or by order of the Court.

18 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY"  
19 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,  
20 and by independent experts under the conditions set forth in this Paragraph. The right  
21 of any independent expert to receive any Confidential Information will be subject to  
22 the advance approval of such expert by the producing party or by permission of the  
23 Court. The party seeking approval of an independent expert must provide the  
24 producing party with the name and curriculum vitae of the proposed independent  
25 expert, and an executed copy of the form attached hereto as Exhibit A, in advance of  
26 providing any Confidential Information of the producing party to the expert. Any  
27 objection by the producing party to an independent expert receiving Confidential  
28 Information must be made in writing within fourteen (14) days following receipt of

1 the identification of the proposed expert. Confidential Information may be disclosed  
2 to an independent expert if the fourteen (14) day period has passed and no objection  
3 has been made. The approval of independent experts must not be unreasonably  
4 withheld.

5 9. Information designated "confidential" must be viewed only by counsel  
6 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant  
7 to the terms of paragraph 8), by court personnel, and by the additional individuals  
8 listed below, provided each such individual has read this Order in advance of  
9 disclosure and has agreed in writing to be bound by its terms:

10 (a) Executives who are required to participate in policy decisions  
11 with reference to this action;

12 (b) Technical personnel of the parties with whom Counsel for the  
13 parties find it necessary to consult, in the discretion of such counsel, in preparation  
14 for trial of this action; and

15 (c) Stenographic and clerical employees associated with the  
16 individuals identified above.

17 10. With respect to material designated "CONFIDENTIAL" or  
18 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of  
19 the document to be its originator, author or a recipient of a copy of the document,  
20 may be shown the same.

21 11. All information which has been designated as "CONFIDENTIAL" or  
22 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party,  
23 and any and all reproductions of that information, must be retained in the custody of  
24 the counsel for the receiving party identified in paragraph 3, except that independent  
25 experts authorized to view such information under the terms of this Order may retain  
26 custody of copies such as are necessary for their participation in this litigation.

27 12. Before any materials produced in discovery, answers to interrogatories,  
28 responses to requests for admissions, deposition transcripts, or other documents

1 which are designated as Confidential Information are filed with the Court for any  
2 purpose, the party seeking to file such material must seek permission of the Court to  
3 file the material under seal.

4 13. At any stage of these proceedings, any party may object to a designation  
5 of the materials as Confidential Information. The party objecting to confidentiality  
6 must notify, in writing, counsel for the designating party of the objected-to materials  
7 and the grounds for the objection. If the dispute is not resolved consensually between  
8 the parties within seven (7) days of receipt of such a notice of objections, the  
9 objecting or designating party may move the Court for a ruling on the objection. The  
10 materials at issue must be treated as Confidential Information, as designated by the  
11 designating party, until the Court has ruled on the objection or the matter has been  
12 otherwise resolved.

13 14. All Confidential Information must be held in confidence by those  
14 inspecting or receiving it, and must be used only for purposes of this action. Counsel  
15 for each party, and each person receiving Confidential Information must take  
16 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such  
17 information. If Confidential Information is disclosed to any person other than a  
18 person authorized by this Order, the party responsible for the unauthorized disclosure  
19 must immediately bring all pertinent facts relating to the unauthorized disclosure to  
20 the attention of the other parties and, without prejudice to any rights and remedies of  
21 the other parties, make every effort to prevent further disclosure by the party and by  
22 the person(s) receiving the unauthorized disclosure.

23 15. No party will be responsible to another party for disclosure of  
24 Confidential Information under this Order if the information in question is not labeled  
25 or otherwise identified as such in accordance with this Order.

26 16. If a party, through inadvertence, produces any Confidential Information  
27 without labeling or marking or otherwise designating it as such in accordance with  
28 this Order, the designating party may give written notice to the receiving party that

1 the document or thing produced is deemed Confidential Information, and that the  
2 document or thing produced should be treated as such in accordance with that  
3 designation under this Order. The receiving party must treat the materials as  
4 confidential, once the designating party so notifies the receiving party. If the  
5 receiving party has disclosed the materials before receiving the designation, the  
6 receiving party must notify the designating party in writing of each such disclosure.  
7 Counsel for the parties will agree on a mutually acceptable manner of labeling or  
8 marking the inadvertently produced materials as "CONFIDENTIAL" or  
9 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE  
10 ORDER.

11 17. Nothing within this order will prejudice the right of any party to object  
12 to the production of any discovery material on the grounds that the material is  
13 protected as privileged or as attorney work product.

14 18. Nothing in this Order will bar counsel from rendering advice to their  
15 clients with respect to this litigation and, in the course thereof, relying upon any  
16 information designated as Confidential Information, provided that the contents of the  
17 information must not be disclosed.

18 19. This Order will be without prejudice to the right of any party to oppose  
19 production of any information for lack of relevance or any other ground other than  
20 the mere presence of Confidential Information. The existence of this Order must not  
21 be used by either party as a basis for discovery that is otherwise improper under the  
22 Federal Rules of Civil Procedure.

23 20. Nothing within this order will be construed to prevent disclosure of  
24 Confidential Information if such disclosure is required by law or by order of the  
25 Court. If counsel is called upon to disclose Confidential Information in this manner,  
26 disclosing counsel shall provide reasonable advance notice of the same to counsel  
27 who previously produced the Confidential Information.  
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1           21. Upon final termination of this action, including any and all appeals,  
2 counsel for each party must, upon request of the producing party, return all  
3 Confidential Information to the party that produced the information, including any  
4 copies, excerpts, and summaries of that information, or must destroy same at the  
5 option of the receiving party, and must purge all such information from all machine-  
6 readable media on which it resides. Notwithstanding the foregoing, counsel for each  
7 party may retain all pleadings, briefs, memoranda, motions, and other documents  
8 filed with the Court that refer to or incorporate Confidential Information, and will  
9 continue to be bound by this Order with respect to all such retained information.  
10 Further, attorney-work-product materials that contain Confidential Information need  
11 not be destroyed, but, if they are not destroyed, the person in possession of the  
12 attorney work product will continue to be bound by this Order with respect to all such  
13 retained information.

14           22. The restrictions and obligations set forth within this order will not apply  
15 to any information that: (a) the parties agree should not be designated Confidential  
16 Information; (b) the parties agree, or the Court rules, is already public knowledge;  
17 (c) the parties agree, or the Court rules, has become public knowledge other than as  
18 a result of disclosure by the receiving party, its employees, or its agents in violation  
19 of this Order; or (d) has come or will come into the receiving party's legitimate  
20 knowledge independently of the production by the designating party. Prior  
21 knowledge must be established by pre-production documentation.

22           23. The restrictions and obligations within this order will not be deemed to  
23 prohibit discussions of any Confidential Information with anyone if that person  
24 already has or obtains legitimate possession of that information.

25           24. Transmission by email or some other currently utilized method of  
26 transmission is acceptable for all notification purposes within this Order.

27           25. This Order may be modified by agreement of the parties, subject to  
28 approval by the Court.

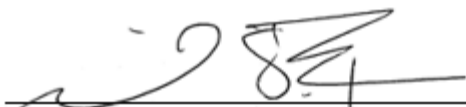
1           26. The Court may modify the terms and conditions of this Order for good  
2 cause, or in the interest of justice, or on its own order at any time in these proceedings.  
3 The parties prefer that the Court provide them with notice of the Court's intent to  
4 modify the Order and the content of those modifications, prior to entry of such an  
5 order.

6           27. No document may be filed under seal, except pursuant to a court order  
7 that authorizes the sealing of the particular document, or portion of the document. A  
8 sealing order may issue only upon a showing that the information is privileged or  
9 protectable under the law. **The request must be narrowly tailored to seek sealing**  
10 **only of the confidential or privileged material.**

11           28. To file a document under seal, the parties must comply with the  
12 procedures explained in Section 2.j of the Electronic Case Filing Administrative  
13 Policies and Procedures Manual for the United States District Court for the Southern  
14 District of California and Civil Local Rule 79.2. In addition, a party must file a  
15 redacted version of any document that it seeks to file under seal. The document must  
16 be titled to show that it corresponds to an item filed under seal, e.g., 'Redacted Copy  
17 of Sealed Declaration of John Smith in Support of Motion for Summary Judgment.'  
18 The party should file the redacted document(s) simultaneously with a joint motion or  
19 ex parte application requesting that the confidential portions of the document(s) be  
20 filed under seal and setting forth good cause for the request.

21           29. Without a separate court order, the Protective Order and the parties'  
22 stipulation does not change, amend, or circumvent any court rule or local rule.

23 Dated: November 13, 2020

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26 \_\_\_\_\_  
27 Honorable Michael S. Berg  
28 United States Magistrate Judge

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**EXHIBIT A**  
**NON-DISCLOSURE AGREEMENT**

I, the undersigned, hereby declare that I have read the attached Stipulated Protective Order (“Order”) entered in the above-captioned case. I understand the terms of the Order. I also understand that my execution of this Non-Disclosure Agreement, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY" pursuant to the Order.

I will comply with and agree to be bound by all of the provisions of the Order. I agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Southern District of California, for the purposes of any proceedings relating to the enforcement of the Order and this Non-Disclosure Agreement.

DATED: \_\_\_\_\_  
Signature \_\_\_\_\_  
Print Name \_\_\_\_\_