

1 **P O R T E R | S C O T T**

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DEPUTY SHERIFFS JAVIER BUSTAMANTE, V. CANDIDO, L. CULP

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 VALETTA McMURRAY,

Case No. 2:09-CV-02245-GEB-EFB

12 Plaintiff,

**STIPULATED PROTECTIVE ORDER
REGARDING CRIMINAL BACKGROUND
RECORDS OF PLAINTIFF AND
DECEDENT**

13 vs.

14 COUNTY OF SACRAMENTO, SHERIFF
JOHN McGINNESS, DEPUTY SHERIFFS
15 JAVIER BUSTAMANTE, V. CANDIDO, L.
CULP, and DOES 1 through 10, inclusive.

16 Defendants.

17 _____/
18 Counsel for Defendants COUNTY OF SACRAMENTO, JOHN McGINNESS, JAVIER
19 BUSTAMANTE, V. CANDIDO and L. CULP have sought the criminal history records of Plaintiff
20 VALETTA McMURRAY and decedent Damion McMurray via subpoenas to the California
21 Department of Justice (“DOJ”), a third party, pursuant to Fed. R. Civ. P. 45. DOJ is the custodian
22 of records and maintains the records Defendants seek. DOJ in good faith asserts that the subpoenaed
23 records contain information that is (a) confidential, sensitive, or potentially invasive of an
24 individual’s privacy interests; (b) not generally known; and, (c) not normally revealed to the public
25 or third parties or, if disclosed to third parties, would require such third parties to maintain the
26 information in confidence. Thus, DOJ intended to object to the subpoenas. However, as a showing
27 of good faith and cooperation, and to avoid bringing this matter before the Court in a motion to
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1 compel the production of the documents, counsel for DOJ has agreed to produce the requested
2 documents subject to a stipulated protective order based on Defendants' representation that the
3 sought documents are relevant and that good cause exists to obtain them. In accordance therewith,

4 IT IS HEREBY STIPULATED by, among and between counsel of record for Defendants
5 and DOJ that the documents described above may be designated as "Confidential" and produced
6 subject to the following Protective Order:

7 1. The disclosed documents shall be used solely in connection with the federal civil case
8 of *Valetta McMurray v. County of Sacramento, et al.*, Case No. 2:09-CV-02245-GEB-EFB, and in
9 the preparation and trial of this case. The parties are not waiving any objections to the admissibility
10 of the documents or portions of the documents in future proceedings, including the trial in this
11 matter.

12 2. A party producing the documents and materials described above may designate those
13 materials by affixing a mark labeling them as "Confidential Material Subject to Protective Order."
14 If any Confidential materials cannot be labeled with the aforementioned marking, those materials
15 shall be placed in a sealed envelope or other container that is, in turn, marked Confidential in a
16 manner agreed upon by the disclosing and requesting parties.

17 3. Documents or materials designated under this Protective Order as Confidential may
18 only be disclosed to the following persons:

- 19 a) Plaintiff Valetta McMurray;
- 20 b) Counsel for Defendants: Terence J. Cassidy and Kristina M. Hall of Porter
21 Scott on behalf of Defendants County of Sacramento, John McGinness,
22 Javier Bustamante, V. Candido and L. Culp. Counsel may in turn disclose
23 this information to the individual Defendants to the extent reasonably
24 necessary to assist their counsel in this litigation, or for this counsel to advise
25 them with respect to the litigation. Defendants are not to disclose
26 "Confidential" information or materials to any other persons without court
27 authorization;

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- 1 c) Attorneys, paralegals, clerical and secretarial personnel regularly employed
- 2 by counsel;
- 3 d) Court personnel, including stenographic reporters or videographers engaged
- 4 in proceedings as are necessarily incidental to the preparation for the trial of
- 5 the civil action;
- 6 e) Any expert or consultant retained in connection with this action;
- 7 f) The finder of fact at the time of trial, subject to the court's rulings on in
- 8 limine motions and objections of counsel.

9 4. Prior to the disclosure of any Confidential information to any person identified in
10 paragraph 3, each such recipient of Confidential information shall be provided with a copy of this
11 Protective Order, which he or she shall read. Such person also must consent to be subject to the
12 jurisdiction of the United States District Court, Eastern District of California, with respect to any
13 proceeding for contempt. Provisions of this Protective Order, insofar as they restrict disclosure and
14 use of the material, shall be in effect until further order of the Court. Plaintiff and counsel for
15 Defendants shall be responsible for internally tracking the identities of those individuals to whom
16 copies of documents marked "Confidential" are given. The parties will advise each other of the
17 names and addresses of all individual(s) to whom they wish to provide Confidential documents.

18 5. All documents or materials designated as Confidential pursuant to this Protective
19 Order, and all papers or documents containing information or materials designated as Confidential,
20 that are filed with the Court for any purpose shall be filed and served under seal pursuant to the
21 procedures outlined in Local Rules 140 and 141, with the following statement affixed to the
22 document or other information:

23 "This envelope is sealed pursuant to order of the Court and contains Confidential
24 Information filed in this case by [name of party] and is not to be opened or the
25 contents thereof to be displayed or revealed except by order of the Court."

26 6. The designation of information as Confidential, as the subsequent production thereof,
27 is without prejudice to the right of any party to oppose the admissibility of the designated
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1 information.

2 7. A party may apply to the Court for an order that information or materials labeled
3 Confidential are not, in fact, confidential. Prior to so applying, the party seeking to reclassify
4 Confidential Information shall meet and confer with the producing party. Until the matter is
5 resolved by the parties or the Court, the information in question shall continue to be treated
6 according to its designation under the terms of this Order. The producing party shall have the
7 burden of establishing the propriety of the Confidential designation. A party shall not be obligated
8 to challenge the propriety of a Confidential designation at the time made, and a failure to do so shall
9 not preclude a subsequent challenge thereto.

10 8. Copies of Confidential documents or materials will be handled in the following
11 manner:

- 12 a) The parties shall not copy, duplicate, furnish, disclose, or otherwise divulge
13 any information contained in these Confidential documents to anyone;
- 14 b) If, for a justifiable reason, the parties in good faith reasonably believe they
15 need an additional copy or copies for preparation of their case, including any
16 copies for court filing, they shall notify the other party's attorney of the
17 specific number of copies of documents marked "Confidential" that will be
18 reproduced;
- 19 c) The parties shall maintain Confidential information with a red marking
20 labeled, "CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE
21 ORDER";
- 22 d) If any document, information or material designated as Confidential pursuant
23 to this Protective Order is used or disclosed during the course of a deposition,
24 that portion of the deposition record reflecting such material shall be stamped
25 with the appropriate designation and access shall be limited pursuant to the
26 terms fo this Protective Order. The court reporter for the deposition shall
27 mark the deposition transcript cover pages and all appropriate pages or
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1 exhibits, and each copy thereof, in accordance with paragraph 5 of this
2 Protective Order. Only individuals who are authorized by this Protective
3 Order to see or receive such material may be present during the discussion
4 or disclosure of such material.

5 9. Notwithstanding the provisions of paragraph 3, Confidential information produced
6 pursuant to this Protective Order shall not be delivered, exhibited or otherwise disclosed to any
7 reporter, writer or employee of any trade publication, newspaper, magazine or other media
8 organization.

9 10. Should any information designated Confidential be disclosed, through inadvertence
10 or otherwise, to any person not authorized to receive it under this Protective Order, the disclosing
11 person(s) shall promptly:

- 12 a) inform the opposing party or its counsel regarding the recipient(s) and the
13 circumstances of the unauthorized disclosure to the relevant producing
14 persons(s); and,
- 15 b) use best efforts to bind the recipient(s) to the terms of this Protective Order.
16 No information shall lose its Confidential status because it was disclosed to
17 a person not authorized to receive it under this Protective Order.

18 11. At the conclusion of this litigation, all documents or materials, in whatever form they
19 may be stored, that have been designated Confidential shall remain Confidential and, if filed with
20 the Court, shall remain under seal. All parties shall also ensure that all persons to whom
21 Confidential documents were disclosed shall be returned to counsel for the producing party.
22 “Conclusion” means a termination of the case following applicable post-trial motions, appeal and/or
23 retrial. After the conclusion of this litigation, all Confidential documents received pursuant to the
24 provisions of this Protective Order, including all copies made, shall be returned to counsel for
25 Defendants for the oversight of destruction.

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Dated: July 18, 2011

PORTER SCOTT
A PROFESSIONAL CORPORATION

By /s/ Terence J. Cassidy
Terence J. Cassidy
Kristina M. Hall
Attorney for Defendants
COUNTY OF SACRAMENTO, JOHN
McGINNESS, JAVIER BUSTAMANTE, V.
CANDIDO and L. CULP

IT IS SO ORDERED.

Dated: July 26, 2011.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE