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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

M.C.F., by and through his Guardian ad Litem ELIZABETH CASAS BAUTISTA, individually and as successor-in-interest to Decedent COLBY FRIDAY; K.S.F., by and through her Guardian ad Litem, ELIZABETH CASAS BAUTISTA, individually and as successor-in-interest to Decedent COLBY FRIDAY; THE ESTATE OF COLBY FRIDAY, by and through its personal representative DENISE FRIDAY HALL,
Plaintiffs,
vs.
CITY OF STOCKTON, a municipal corporation; STOCKTON POLICE DEPARTMENT; a public entity; POLICE

**No. 2:17-CV-02038-MCE-KJN
STIPULATION AND PROTECTIVE ORDER**

1 **CHIEF ERIC JONES; individually and in)**
2 **his official capacity as Chief of the)**
3 **Stockton Police Department; DAVID)**
4 **WELLS, individually and in his capacity)**
5 **as an Officer for the Stockton Police)**
6 **Department, et al.,)**

7 **Defendants.**

8 1. PURPOSES AND LIMITATIONS

9 Disclosure and discovery activity in this action are likely to involve production of
10 confidential, proprietary, or private information for which special protection from public
11 disclosure and from use for any purpose other than prosecuting this litigation may be
12 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
13 following Stipulated Protective Order. The parties acknowledge that this Order does not
14 confer blanket protections on all disclosures or responses to discovery and that the
15 protection it affords from public disclosure and use extends only to the limited information
16 or items that are entitled to confidential treatment under the applicable legal principles. The
17 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
18 Protective Order does not entitle them to file confidential information under seal; Local Rule
19 141 sets forth the procedures that must be followed and the standards that will be applied
20 when a party seeks permission from the court to file material under seal.

21 2. DEFINITIONS

22 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
23 information or items under this Order.

24 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
25 generated, stored or maintained) or tangible things that qualify for protection under Federal
26 Rule of Civil Procedure 26(c).

27 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
28 (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items
that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including, among other
2 things, testimony, transcripts, and tangible things), that are produced or generated in
3 disclosures or responses to discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
6 expert witness or as a consultant in this action.

7 2.7 House Counsel: attorneys who are employees of a party to this action.
8 House Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or other
10 legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
12 this action but are retained to represent or advise a party to this action and have appeared
13 in this action on behalf of that party or are affiliated with a law firm which has appeared on
14 behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
22 and organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is designated
25 as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
27 a Producing Party.

28 //

1 3. SCOPE

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

15 4. DURATION

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

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
25 Party or Non-Party that designates information or items for protection under this Order must
26 take care to limit any such designation to specific material that qualifies under the
27 appropriate standards. The Designating Party must designate for protection only those
28 parts of material, documents, items, or oral or written communications that qualify – so that

1 other portions of the material, documents, items, or communications for which protection is
2 not warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or retard the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must
13 be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

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

21 A Party or Non-Party that makes original documents or materials available for inspection
22 need not designate them for protection until after the inspecting Party has indicated which
23 material it would like copied and produced. During the inspection and before the
24 designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied
26 and produced, the Producing Party must determine which documents, or portions thereof,
27 qualify for protection under this Order. Then, before producing the specified documents, the
28 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains

1 Protected Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
3 making appropriate markings in the margins).

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

7 (c) for information produced in some form other than documentary and for any
8 other tangible items, that the Producing Party affix in a prominent place on the exterior of
9 the container or containers in which the information or item is stored the legend
10 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
11 the Producing Party, to the extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the Designating
14 Party's right to secure protection under this Order for such material. Upon timely correction
15 of a designation, the Receiving Party must make reasonable efforts to assure that the
16 material is treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
19 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
20 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
21 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
22 does not waive its right to challenge a confidentiality designation by electing not to mount a
23 challenge promptly after the original designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
25 process by providing written notice of each designation it is challenging and describing the
26 basis for each challenge. To avoid ambiguity as to whether a challenge has been made,
27 the written notice must recite that the challenge to confidentiality is being made in
28 accordance with this specific paragraph of the Protective Order. The parties shall attempt to

1 resolve each challenge in good faith and must begin the process by conferring directly (in
2 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of
3 the date of service of notice. In conferring, the Challenging Party must explain the basis for
4 its belief that the confidentiality designation was not proper and must give the Designating
5 Party an opportunity to review the designated material, to reconsider the circumstances,
6 and, if no change in designation is offered, to explain the basis for the chosen designation.
7 A Challenging Party may proceed to the next stage of the challenge process only if it has
8 engaged in this meet and confer process first or establishes that the Designating Party is
9 unwilling to participate in the meet and confer process in a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality
12 under Local Rule 141, within 21 days of the initial notice of challenge or within 14 days of
13 the parties agreeing that the meet and confer process will not resolve their dispute,
14 whichever is earlier. Each such motion must be accompanied by a competent declaration
15 affirming that the movant has complied with the meet and confer requirements imposed in
16 the preceding paragraph. Failure by the Designating Party to make such a motion including
17 the required declaration within 21 days (or 14 days, if applicable) shall automatically waive
18 the confidentiality designation for each challenged designation. In addition, the Challenging
19 Party may file a motion challenging a confidentiality designation at any time if there is good
20 cause for doing so, including a challenge to the designation of a deposition transcript or any
21 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and confer
23 requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
26 harass or impose unnecessary expenses and burdens on other parties) may expose the
27 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
28 designation by failing to file a motion to retain confidentiality as described above, all parties

1 shall continue to afford the material in question the level of protection to which it is entitled
2 under the Producing Party's designation until the court rules on the challenge.

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

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this case only
6 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
7 may be disclosed only to the categories of persons and under the conditions described in
8 this Order. When the litigation has been terminated, a Receiving Party must comply with
9 the provisions of section 13 below (FINAL DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
15 may disclose any information or item designated "CONFIDENTIAL" only to:

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

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
22 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, mock
28 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this

1 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
2 A);

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
5 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
6 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
7 Protected Material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this Stipulated Protective Order.

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
12 LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that Party must:

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action as
26 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
27 issued, unless the Party has obtained the Designating Party’s permission. The Designating
28 Party shall bear the burden and expense of seeking protection in that court of its

1 confidential material – and nothing in these provisions should be construed as authorizing
2 or encouraging a Receiving Party in this action to disobey a lawful directive from another
3 court.

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

6 (a) The terms of this Order are applicable to information produced by a Non-
7 Party in this action and designated as “CONFIDENTIAL.” Such information produced by
8 Non-Parties in connection with this litigation is protected by the remedies and relief
9 provided by this Order. Nothing in these provisions should be construed as prohibiting a
10 Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce
12 a Non-Party’s confidential information in its possession, and the Party is subject to an
13 agreement with the Non-Party not to produce the Non-Party’s confidential information, then
14 the Party shall:

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

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

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

22 (c) If the Non-Party fails to object or seek a protective order from this court within
23 14 days of receiving the notice and accompanying information, the Receiving Party may
24 produce the Non-Party’s confidential information responsive to the discovery request. If the
25 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
26 information in its possession or control that is subject to the confidentiality agreement with
27 the Non-Party before a determination by the court. Absent a court order to the contrary, the
28 Non-Party shall bear the burden and expense of seeking protection in this court of its

1 Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this
5 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the
6 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
7 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
8 unauthorized disclosures were made of all the terms of this Order, and (d) request such
9 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
10 attached hereto as Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
24 to seek its modification by the court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
26 Order no Party waives any right it otherwise would have to object to disclosing or producing
27 any information or item on any ground not addressed in this Stipulated Protective Order.
28

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

3 12.3 Filing Protected Material. Without written permission from the Designating
4 Party or a court order secured after appropriate notice to all interested persons, a Party
5 may not file in the public record in this action any Protected Material. A Party that seeks to
6 file under seal any Protected Material must comply with Local Rule 141. Protected Material
7 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
8 Protected Material at issue. Pursuant to Local Rule 141, a sealing order will issue only
9 upon a request establishing that the Protected Material at issue is privileged, protectable as
10 a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's
11 request to file Protected Material under seal pursuant to Local Rule 141 is denied by the
12 court, then the Receiving Party may file the information in the public record pursuant to
13 Local Rule 141 unless otherwise instructed by the court.

14 13. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in paragraph 4,
16 each Receiving Party must return all Protected Material to the Producing Party or destroy
17 such material. As used in this subdivision, "all Protected Material" includes all copies,
18 abstracts, compilations, summaries, and any other format reproducing or capturing any of
19 the Protected Material. Whether the Protected Material is returned or destroyed, the
20 Receiving Party must submit a written certification to the Producing Party (and, if not the
21 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
22 (by category, where appropriate) all the Protected Material that was returned or destroyed
23 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
24 compilations, summaries or any other format reproducing or capturing any of the Protected
25 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
26 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
27 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
28 consultant and expert work product, even if such materials contain Protected Material. Any

1 such archival copies that contain or constitute Protected Material remain subject to this
2 Protective Order as set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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LAW OFFICE OF JOHN BURRIS

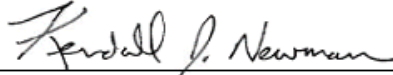
DATED: 12/18/17 _____ s/s Lateef H. Gray _____
JOHN L. BURRIS
LATEEF H. GRAY
Attorneys for PLAINTIFFS

MAYALL HURLEY PC

DATED: 12/18/17 _____ s/s Mark E. Berry _____
MARK E. BERRY
Attorneys for Defendants CITY OF
STOCKTON, STOCKTON POLICE
DEPARTMENT, ERIC T. JONES, and DAVID
WELLS

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: December 20, 2017



KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Eastern
6 District of California on [date] in the case of _____ **[insert formal name of the case and the
7 number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the
8 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
9 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
10 will not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____