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PAULA MCGOWAN, and RONELL FOSTER, SR.

15 **UNITED STATES DISTRICT COURT**

16 **EASTERN DISTRICT OF CALIFORNIA**

17  
18 I.F., by and through her guardian ad litem SHASTA )  
SKINNER, individually and as successor-in-interest to )  
19 Decedent RONELL FOSTER; R.F., by and through his )  
guardian ad litem SHENA BATTEN, individually and )  
20 as successor-in-interest to Decedent RONELL )  
FOSTER; PAULA MCGOWAN, individually; and )  
21 RONELL FOSTER, SR., individually. )

22 Plaintiffs, )

23 vs. )

24 CITY OF VALLEJO, a municipal corporation; RYAN )  
25 MCMAHON, individually and in his official capacity as )  
a Police Officer for the CITY OF VALLEJO; and )  
26 DOES 1-50, inclusive. )

27 Defendants. )  
28

No: 2:18-cv-00673-JAM-CKD

**STIPULATED PROTECTIVE  
ORDER PURSUANT TO CIVIL  
LOCAL RULE 141.1**

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, 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 141 sets 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" 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 for which public disclosure is likely to result in particularized harm and violate privacy interests recognized by law. This information may include:

- a. personnel file records of any peace officer;
- b. medical records;
- c. social security numbers and similar sensitive identifying information (unless redacted by order or by agreement of all parties).

~~Except by stipulation or order based on good cause, this information may not include records and information of foundational facts and investigation of the subject incident(s), specifically: the officer involved shooting of Ronell Foster Jr. on or about February 13, 2018.~~

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their  
2 support staff).

3 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in  
4 disclosures or in responses to discovery as “CONFIDENTIAL.”

5 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner  
6 in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,  
7 and tangible things), that are produced or generated in disclosures or responses to discovery in this  
8 matter.

9 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation  
10 who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this  
11 action.

12 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not  
13 include Outside Counsel of Record or any other outside counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not  
15 named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are  
17 retained to represent or advise a party to this action and have appeared in this action on behalf of that  
18 party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.10 Party: any party to this action, including all of its officers, directors, employees, consultants,  
20 retained experts, and Outside Counsel of Record (and their support staffs).

21 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this  
22 action.

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

26 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
27 “CONFIDENTIAL.”  
28

1 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
2 Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
5 defined above), but also (1) any information copied from Protected Material; (2) all copies, excerpts,  
6 summaries, or compilations of Protected Material that reveal the source of the Protected Material or that  
7 reveal specific information entitled to confidentiality as a matter of law; and (3) any testimony,  
8 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

9 However, the protections conferred by this Stipulation and Order do not cover the following  
10 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
11 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
12 publication not involving a violation of this Order, including becoming part of the public record  
13 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure  
14 or obtained by the Receiving Party after the disclosure from a source who obtained the information  
15 lawfully and under no obligation of confidentiality to the Designating Party; (c) any information  
16 mentioned or referenced in a deposition or in other pretrial or trial proceedings, unless such portions of  
17 testimony have been designated as confidential pursuant to section 5.2 (b) of this order. Any use of  
18 Protected Material at trial shall be governed by a separate agreement or order.

19 4. DURATION

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

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party  
28 that designates information or items for protection under this Order must take care to limit any such

1 designation to specific material that qualifies under the appropriate standards. The Designating Party  
2 must designate for protection only those parts of material, documents, items, or oral or written  
3 communications that qualify – so that other portions of the material, documents, items, or  
4 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
5 this Order.

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

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

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

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts  
19 of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
20 "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the  
21 material on a page qualifies for protection, the Producing Party also must clearly identify the protected  
22 portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party that makes  
23 original documents or materials available for inspection need not designate them for protection until  
24 after the inspecting Party has indicated which material it would like copied and produced. During the  
25 inspection and before the designation, all of the material made available for inspection shall be deemed  
26 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and  
27 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
28 protection under this Order. Then, before producing the specified documents, the Producing Party must

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

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

7 (c) for information produced in some form other than documentary and for any other tangible items,  
8 that the Producing Party affix in a prominent place on the exterior of the container or containers in  
9 which the information or item is stored the legend “CONFIDENTIAL.” If the information is produced  
10 electronically, then the term “CONFIDENTIAL” must appear in the name of each electronic file  
11 containing confidentially designated information. If only a portion or portions of the information or  
12 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
13 portion(s).

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

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

9       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
11 Local Rule 230 (and in compliance with Civil Local Rules 141 and 141.1, if applicable) within 21 days  
12 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
13 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
14 competent declaration affirming that the movant has complied with the meet and confer requirements  
15 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including  
16 the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
17 confidentiality designation for each challenged designation. In addition, the Challenging Party may file  
18 a motion challenging a confidentiality designation at any time if there is good cause for doing so,  
19 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion  
20 brought pursuant to this provision must be accompanied by a competent declaration affirming that the  
21 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

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

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by  
3 another Party or by a Non-Party in connection with this case only for prosecuting, defending, or  
4 attempting to settle this litigation. Such Protected Material may be disclosed by any party only to the  
5 categories of persons and under the conditions described in this Order. When the litigation has been  
6 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
7 DISPOSITION). Protected Material must be stored and maintained by all parties at a location and in a  
8 secure manner that ensures that access is limited to the persons authorized under this Order.

9 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court  
10 or permitted in writing by agreement of both Designating Party and Receiving Party, all partiesf may  
11 disclose any information or item designated "CONFIDENTIAL" only to:

- 12 (a) the Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel  
13 of Record to whom it is reasonably necessary to disclose the information for this litigation (counsel and  
14 law firms appearing in this action are deemed to have agreed to be bound by this Protective Order);  
15 (b) the officers, directors, and employees (including House Counsel) of the Party to whom disclosure is  
16 reasonably necessary for this litigation, including employees and agents of the designating party(ies) in  
17 the normal course of their business with due regard for the confidential nature of the information under  
18 this protective order;  
19 (c) Experts (as defined in this Order) of any Party to whom disclosure is reasonably necessary for this  
20 litigation;  
21 (d) the court and its personnel;  
22 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional  
23 Vendors to whom disclosure is reasonably necessary for this litigation;  
24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary, unless  
25 otherwise agreed by the Designating Party and any other parties present at the deposition or ordered by  
26 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
27 Material must be separately bound by the court reporter and may not be disclosed to anyone except as  
28 permitted under this Stipulated Protective Order or as agreed by all parties.



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

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER

4 LITIGATION. If a Party is served with a subpoena or a court order issued in other litigation that  
5 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
6 Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the  
8 subpoena or court order; (b) promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is subject  
10 to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and  
11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party  
12 whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the  
13 Party served with the subpoena or court order shall not produce any information designated in this  
14 action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
15 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall  
16 bear the burden and expense of seeking protection in that court of its confidential material – and  
17 nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this  
18 action to disobey a lawful directive from another court.

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

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

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

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

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

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

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

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or  
19 in any circumstance not authorized under this Stipulated Protective Order, the Party must immediately

20 (a) notify in writing all Parties of the unauthorized disclosures, (b) use its best efforts to retrieve all  
21 unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized  
22 disclosures were made of all the terms of this Order, and (d) request such person or persons to execute  
the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
24 MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material  
26 is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those  
27 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
28

1 whatever procedure may be established in an e-discovery order that provides for production without  
2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach  
3 an agreement on the effect of disclosure of a communication or information covered by the attorney-  
4 client privilege or work product protection, the parties may incorporate their agreement in the stipulated  
5 protective order submitted to the court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
8 modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party  
10 waives any right it otherwise would have to object to disclosing or producing any information or item  
11 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to  
12 object on any ground to use in evidence of any of the material covered by this Protective Order.

13 12.3 Filing Protected Material. Without written permission of all parties or a court order secured after  
14 appropriate notice to all interested persons, a Party may not file in the public record in this action any  
15 Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil  
16 Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing  
17 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order  
18 will issue only upon a request establishing that the Protected Material at issue is privileged, protectable  
19 as a trade secret, or otherwise entitled to protection under the law. If a Party's request to file Protected  
20 Material under seal pursuant to Civil Local Rule 141(b) is denied by the court, then the any Party may  
21 file the information in the public record pursuant to Civil Local Rule 141(e)(1) unless otherwise  
22 instructed by the court.

23 13. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in paragraph 4, upon written  
25 notification served by Producing or Designating Party, each Receiving Party must return all Protected  
26 Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected  
27 Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or  
28 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the

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

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12  
13  
14  
15 DATED: October 18, 2018

Respectfully submitted

16 /s/ Maya Sorensen  
17 Maya Sorensen  
18 Attorneys for Plaintiff, I.F., et al.  
Haddad & Sherwin LLP

19 DATED: October 18, 2018

20  
21 /s/ Patrick Buelna  
22 Patrick Buelna  
23 Attorneys for Plaintiffs, R.F., et al.  
24 Law Offices of John Burris

25 DATED: October 18, 2018

Respectfully submitted,

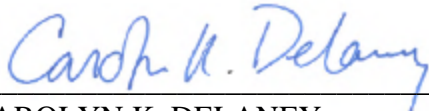
26  
27 /s/ Timothy Smyth  
28 TIMOTHY R. SMYTH  
Deputy City Attorney

Attorney for Defendants

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: February 27, 2019

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE