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19 **UNITED STATES DISTRICT COURT**
 20 **EASTERN DISTRICT OF CALIFORNIA**

21 DENAYA JENKINS,

22 Plaintiff,

23 vs.

24 CITY OF VALLEJO, et al.

25 Defendants.

) No: 2:19-cv-1896 TLN DB

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

26 1. PURPOSES AND LIMITATIONS

27 Disclosure and discovery activity in this action are likely to involve production of confidential,
 28 proprietary, or private information for which special protection from public disclosure and from use

1 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
2 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
3 parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
4 to discovery and that the protection it affords from public disclosure and use extends only to the
5 limited information or items that are entitled to confidential treatment under the applicable legal
6 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
7 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule
8 141 sets forth the procedures that must be followed and the standards that will be applied when a party
9 seeks permission from the court to file material under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
12 items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
14 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
15 Procedure 26(c), and for which public disclosure is likely to result in particularized harm and violate
16 privacy interests recognized by law. This information may include:

- 17 a. personnel file records of any peace officer;
 - 18 b. medical records;
 - 19 c. social security numbers and similar sensitive identifying information (unless
20 redacted by order, Local Rule or by agreement of all parties).
 - 21 d. Videos of subject incident which include non-parties.
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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
4 in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

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

12 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does
13 not 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.”
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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
7 that 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
14 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
15 information lawfully and under no obligation of confidentiality to the Designating Party. ; (c) any
16 information mentioned or referenced in a deposition or in other pretrial or trial proceedings, unless
17 such portions of testimony have been designated as confidential pursuant to section 5.2 (b) of this
18 order. Any use of Protected Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

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

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party
27 that designates information or items for protection under this Order must take care to limit any such
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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
9 parties) 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
19 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
20 legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions
21 of the material on a page qualifies for protection, the Producing Party also must clearly identify the
22 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party that
23 makes original documents or materials available for inspection need not designate them for protection
24 until after the inspecting Party has indicated which material it would like copied and produced. During
25 the inspection and before the designation, all of the material made available for inspection shall be
26 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied
27 and 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

1 must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
2 portion or portions of the material on a page qualifies for protection, the Producing Party also must
3 clearly identify 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
5 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
6 protected 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
22 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
23 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
24 designation by 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
3 date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that
4 the 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
9 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 under Civil
12 Local Rule 230 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the
13 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
14 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and confer requirements
16 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
17 including 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 Party
19 may file a motion challenging a confidentiality designation at any time if there is good cause for doing
20 so, including a challenge to the designation of a deposition transcript or any portions thereof. Any
21 motion brought pursuant to this provision must be accompanied by a competent declaration affirming
22 that the movant has complied with the meet and confer requirements imposed by the preceding
23 paragraph.
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1 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
2 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
3 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
4 Designating Party has waived the confidentiality designation by failing to file a motion to retain
5 confidentiality as described above, all parties shall continue to afford the material in question the level
6 of protection to which it is entitled under the Producing Party's designation until the court rules on the
7 challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced
10 by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or
11 attempting to settle this litigation. Such Protected Material may be disclosed by any party only to the
12 categories of persons and under the conditions described in this Order. When the litigation has been
13 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION). Protected Material must be stored and maintained by all parties at a location and in
15 a secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
17 court or permitted in writing by agreement of both Designating Party and Receiving Party, all partiesf
18 may disclose any information or item designated "CONFIDENTIAL" only to:

19 (a) the Party's Outside Counsel of Record in this action, as well as employees of said Outside
20 Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
21 (counsel and law firms appearing in this action are deemed to have agreed to be bound by this
22 Protective Order);

23 (b) the officers, directors, and employees (including House Counsel) of the Party to whom disclosure
24 is reasonably necessary for this litigation, including employees and agents of the designating
25 party(ies) in the normal course of their business with due regard for the confidential nature of the
26 information under this protective order;

27 (c) Experts (as defined in this Order) of any Party to whom disclosure is reasonably necessary for this
28 litigation;

1 (d) the court and its personnel;

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

4 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary,
5 unless otherwise agreed by the Designating Party and any other parties present at the deposition or
6 ordered by the 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 disclosed to anyone
8 except as permitted under this Stipulated Protective Order or as agreed by all parties.

9 (g) the author or recipient of a document containing the information or a custodian or other person
10 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 compels
14 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
15 Party must:

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

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

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

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

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

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

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

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

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person
25 or in any circumstance not authorized under this Stipulated Protective Order, the Party must
26 immediately (a) notify in writing all Parties of the unauthorized disclosures, (b) use its best efforts to
27 retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom
28 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or

1 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
2 Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
4 MATERIAL

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

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
15 modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party
17 waives any right it otherwise would have to object to disclosing or producing any information or item
18 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right
19 to object on any ground to use in evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. Without written permission of all parties or a court order secured
21 after appropriate notice to all interested persons, a Party may not file in the public record in this action
22 any Protected Material. A Party that seeks to file under seal any Protected Material must comply with
23 Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a court order
24 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 141, a
25 sealing order will issue only upon a request establishing that the Protected Material at issue is
26 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Party's
27 request to file Protected Material under seal pursuant to Civil Local Rule 141(b) is denied by the
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1 court, then the any Party may file the information in the public record pursuant to Civil Local Rule
2 141(e)(1) unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, upon written
5 notification served by Producing or Designating Party, each Receiving Party must return all Protected
6 Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected
7 Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or
8 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the
9 Receiving Party must submit a written certification to the Producing Party (and, if not the same person
10 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
12 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
13 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
14 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
16 work product, and consultant and expert work product, even if such materials contain Protected
17 Material. Any such archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: August 17, 2021

/s/ Patrick Buelna
PATRICK M. BUELNA
Attorneys for Plaintiff

DATED: August 17, 2021

Respectfully submitted,

/s/John Whitefleet (Auth. 8/17/21)
JOHN WHITEFLEET
Attorney for Defendants

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

1. Requests to seal documents shall be made by motion before the same judge who will decide the matter related to that request to seal.
2. The designation of documents (including transcripts of testimony) as confidential pursuant to this order does not automatically entitle the parties to file such a document with the court under seal. Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or other authority for sealing, the requested duration, the identity, by name or category, of persons to be permitted access to the document, and all relevant information." L.R. 141(b).

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