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6 FOUNDATION, INC., D/B/A OPEN VALLEJO

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SOLANO

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11 AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA,

12 Petitioner/Plaintiff,

13 v.

14 VALLEJO POLICE DEPARTMENT,

15 Respondent/Defendant.

16  
17 INFORMED CALIFORNIA FOUNDATION,  
INC., D/B/A OPEN VALLEJO,

18 Objector.  
19

Case No. FCS059257

**OPEN VALLEJO'S NOTICE OF  
OBJECTION AND OBJECTION TO  
PROPOSED CLOSURE AND SEALING  
ORDERS**

Date: October 2, 2024  
Time: 10:00 a.m.  
Dept.: 3  
Judge: The Hon. Stephen Gizzi

20  
21 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that on the above date and time, or as soon thereafter as the  
23 matter can be heard, Informed California Foundation, Inc., d/b/a Open Vallejo ("Open Vallejo"),  
24 through undersigned counsel, will and hereby does object to the Court's proposed order regarding  
25 closure of all court proceedings and sealing of all transcripts related to Petitioner's Motion for  
26 Judgment and Motion to Clarify the Scope of Discovery Protective Order.

27 This objection is made pursuant to California Rules of Court, rules 2.550 and 2.551, Code  
28 of Civil Procedure § 124, the First Amendment to the United States Constitution, and Article I,

1 section 2 of the California Constitution, and is based upon this notice, the accompanying  
2 memorandum of points and authorities, and such additional evidence and arguments as may be  
3 presented at the hearing.

4 Dated: October 1, 2024

Respectfully submitted,

5 FIRST AMENDMENT COALITION

6 By



7 \_\_\_\_\_  
8 DAVID LOY  
9 DAVID SNYDER  
10 Attorneys for Objector INFORMED  
11 CALIFORNIA FOUNDATION, INC.,  
12 D/B/A OPEN VALLEJO  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Open Vallejo is a community-supported media organization founded in February 2019 that  
4 provides news coverage of the activities and impact of local government, notably that of the  
5 Vallejo Police Department. Open Vallejo broke the news that for years, members of the Vallejo  
6 Police Department “commemorated fatal shootings with beers, backyard barbecues, and by  
7 bending the points of their badges each time they kill in the line of duty.” Geoffrey King, Vallejo  
8 police bend badges to mark fatal shootings, [https://openvallejo.org/2020/07/28/vallejo-police-](https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/)  
9 [bend-badge-tips-to-mark-fatal-shootings/](https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/) (July 28, 2020). The publication of that story led to the  
10 investigation that generated the documents at issue in this action.

11 In a tentative ruling posted today and attached hereto as **Exhibit A**, the Court indicated its  
12 intention to close to the press and public the entire hearing on all motions scheduled in this action  
13 for October 2, 2024, and to order all transcripts of said proceedings sealed. The motions at issue  
14 were filed by Petitioner ACLU of Northern California and include a Motion for Judgment on its  
15 petition for writ of mandate to enforce the California Public Records Act (“CPRA”), and a Motion  
16 to Clarify the Scope of Discovery Protective Order. These motions raise matters of substantial  
17 public concern involving the people’s right to know about badge-bending misconduct by Vallejo  
18 Police Department officers. Accordingly, Open Vallejo hereby objects to the proposed closure and  
19 sealing order.

20 **II. ARGUMENT**

21 Under California Code of Civil Procedure section 124 and the First Amendment to the  
22 U.S. Constitution, “substantive courtroom proceedings in ordinary civil cases are ‘presumptively  
23 open.’” (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.* (1999) 20 Cal.4th 1178, 1217 [“*NBC*  
24 *Subsidiary*”].) Before such proceedings can be closed, or transcripts ordered sealed, the court must  
25 hold a public hearing and find that:

- 26 (i) there exists an overriding interest supporting closure and/or sealing; (ii) there is  
27 a substantial probability that the interest will be prejudiced absent closure and/or  
28 sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the  
overriding interest; and (iv) there is no less restrictive means of achieving the  
overriding interest.

1 (*Id.* at p. 1218.) As the California Supreme Court made clear, even if there are “overriding  
2 interest[s]” justifying some form of closure, any closure order must be narrowly tailored to the  
3 interest at stake, and blanket closure and sealing of transcripts are highly disfavored. (*Id.* at pp.  
4 1223–25.) The court also held that “representatives of the press and general public must be given  
5 an opportunity to be heard on the question of their exclusion.” (*Id.* at p. 1217, fn. 36 [citation and  
6 quotation marks omitted].)

7 The ruling of *NBC Subsidiary* was embodied in California Rules of Court, rules 2.550 and  
8 2.551, which set forth detailed standards and procedures for sealing court records. For example,  
9 “The court may order that a record be filed under seal only if it expressly finds facts that establish:

- 10 (1) There exists an overriding interest that overcomes the right of public access to  
11 the record;
- 12 (2) The overriding interest supports sealing the record;
- 13 (3) A substantial probability exists that the overriding interest will be prejudiced  
14 if the record is not sealed;
- 15 (4) The proposed sealing is narrowly tailored; and
- 16 (5) No less restrictive means exist to achieve the overriding interest.”

17 (California Rules of Court, rule 2.550, subd. (d).) Although the above “rules do not apply to  
18 discovery motions and records filed or lodged in connection with discovery motions or  
19 proceedings,” they “do apply to discovery materials that are used at trial or submitted as a basis for  
20 adjudication of matters other than discovery motions or proceedings.” (California Rules of Court,  
21 rule 2.550, subd. (a)(3).)

22 To the extent there may be an overriding interest in protecting the contents of documents  
23 allegedly exempt from disclosure or currently subject to a protective order, that does not justify  
24 closing the entire hearing on both motions to the press and public. A sweeping closure of the entire  
25 hearing is far from narrowly tailored to protecting the contents of allegedly exempt or protected  
26 documents. The issues before the Court include the question whether the report of an investigation  
27 into the badge-bending scandal is subject to disclosure “pursuant to the California Public Records  
28 Act” as a “record relating to the report, investigation, or findings of ... [a]n incident involving the  
discharge of a firearm at a person by a peace officer” or a “record relating to an incident in which a

1 sustained finding was made ... involving dishonesty by a peace officer or custodial officer directly  
2 relating to the reporting, investigation, or prosecution of a crime, or directly relating to the  
3 reporting of, or investigation of misconduct by, another peace officer or custodial officer.”  
4 (Pen. Code, § 832.7, subd. (b)(1)(A)(i), (C).) There are also disputes whether certain withheld  
5 records are in fact “personnel records,” (Pen. Code, § 832.8, subd. (a)), whether attorney-client  
6 privilege or deliberative process doctrine covers any of the records at issue, and whether any  
7 allegedly exempt information contained in disputed records can be redacted with the remainder  
8 disclosed. As in any CPRA case, those issues must be heard and decided in open court. Judges  
9 routinely hear and decide disputes over disclosure of public records in open proceedings, and this  
10 case is no different.

11 Under the CPRA, agencies bear the burden to justify withholding public records, and they  
12 attempt to do so through “affidavits and descriptions of the documents” that are “specific enough  
13 to give the requester a meaningful opportunity to contest the withholding of the documents and the  
14 court to determine to determine whether the exemption applies” without revealing the contents of  
15 the documents themselves. (*American Civil Liberties Union of Northern California v. Superior  
16 Court* (2011) 202 Cal.App.4th 55, 83 [citations and quotation marks omitted].) Because agencies  
17 need not and do not reveal the contents of documents allegedly exempt from disclosure in  
18 opposing a CPRA claim, there is no legal basis to close the hearing to the extent it addresses  
19 whether the documents at issue are subject to disclosure under the CPRA.

20 The existence of a protective order over certain documents produced in discovery, which  
21 can be justified by mere “good cause,” (Code Civ. Proc., § 2033.080, subd. (b)), does not  
22 automatically justify closing the entire hearing and sealing the entire transcript, which must meet  
23 the more stringent requirements of the First Amendment and applicable court rules. (*See California  
24 Rules of Court*, rules 2.550, 2.551; *Pintos v. Pacific Creditors Ass’n* (9th Cir. 2010) 605 F.3d 665,  
25 679; *Kamakana v. City & County of Honolulu* (9th Cir. 2006) 447 F.3d 1172, 1178.) On  
26 Petitioner’s motion to clarify the protective order, the question before the Court is whether the  
27 order covers certain responses to requests for admission. As with any discovery or privilege  
28 dispute, that issue can be argued and decided in open court without revealing the contents of the

1 allegedly protected documents. To the extent that the court might need to conduct *in camera*  
2 review of the disputed documents, it can do so in chambers without depriving the press and public  
3 of their right to hear the issue debated in open court, as courts routinely do in discovery and  
4 privilege disputes. A court may not hold an entire hearing about a privilege dispute *in camera*  
5 unless it makes properly substantiated findings that it is impossible to decide the issue “in open  
6 court without betraying the privilege.” (*Torres v. Superior Court* (2000) 80 Cal. App. 4th 867,  
7 873.) No such basis appears in the record.


8 **III. CONCLUSION**

9 For the foregoing reasons, the Court is respectfully requested to hold its hearing in the  
10 above-captioned matter in open court.

11 Dated: October 1, 2024

Respectfully submitted,

FIRST AMENDMENT COALITION

13 By  \_\_\_\_\_  
14 DAVID LOY  
15 DAVID SNYDER  
16 Attorneys for Objector INFORMED  
17 CALIFORNIA FOUNDATION, INC.,  
18 D/B/A OPEN VALLEJO

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On October 1, 2024, I served true copies of the following document(s) described as **OPEN VALLEJO’S NOTICE OF OBJECTION AND OBJECTION TO PROPOSED CLOSURE AND SEALING ORDERS** on the interested parties in this action as follows:

Katelyn M. Knight  
Assistant City Attorney  
City of Vallejo, City Hall  
555 Santa Clara Street, 3rd Floor  
Vallejo, CA 94590  
Email: katelyn.knight@cityofvallejo.net

Emi Young  
ACLU of Northern California  
39 Drumm St  
San Francisco, CA 94111  
Email: eyoung@aclunc.org

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 1, 2024, at East Palo Alto, California.

  
\_\_\_\_\_  
Robin P. Regnier

# **Exhibit A**



**DEPARTMENT THREE  
JUDGE STEPHEN GIZZI  
707-207-7303  
TENTATIVE RULINGS SCHEDULED FOR  
WEDNESDAY, OCTOBER 2, 2024**

*The parties may appear via Zoom with the exception of trials, trial management conferences, order for examinations and mandatory settlement conferences. The information for the Zoom meeting is set forth below.*

The tentative ruling shall become the ruling of the court unless a party desiring to be heard contacts the judicial assistant of the department hearing the matter by 4:30 p.m. on the court day preceding the hearing, and further advises that such party has notified the other side of its intention to request a hearing. A party requesting a hearing must notify all parties of the request to be heard by 4:30.

**AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA v. CITY OF VALLEJO (VALLEJO POLICE DEPARTMENT)  
Case No. FCS059257**

- (1) Motion by Petitioner/Plaintiff to Clarify the Scope of Discovery Protective Order; and
- (2) Motion by Petitioner/Plaintiff for Judgment/Hearing on Writ Petition

**TENTATIVE RULING**

Parties and their counsel only are to appear, for a closed hearing, without any members of the press and members of the public permitted to attend, as this hearing involves documents and information subject to an existing protective order. The court will provide a court reporter, with any transcript of the hearing to remain sealed.

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Join ZoomGov Meeting

<https://www.zoomgov.com/j/1602210102?pwd=emlhR29SczExam56NFFqWHFvSitmZz09>

**Meeting ID: 160 221 0102  
Passcode: 650928**

One tap mobile

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