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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CHERRY DIETZMANN, individually;  
MINOR J.A. II, by and through his mother  
and guardian, CHERRY DIETZMANN;  
and MINOR D.A. by and through her  
mother and guardian, CHERRY  
DIETZMANN,

Plaintiffs,

vs.

CITY OF HOMER, the HOMER POLICE  
DEPARTMENT; HOMER CHIEF OF  
POLICE MARK ROBL, individually and  
as an agent or employee of the Homer  
Police Department; SERGEANT  
LAWRENCE KUHNS, individually and as  
an agent or employee of the Homer Police  
Department; SERGEANT WILLIAM  
HUTT, individually and as an agent or  
employee of the Homer Police  
Department; OFFICER DAVID SHEALY,  
individually and as an agent or employee  
of the Homer Police Department;  
OFFICER STACY LUCK, individually  
and as an agent or employee of the Homer  
Police Department; UNITED STATES OF  
AMERICA; UNITED STATES  
MARSHAL'S SERVICE; KEVIN  
GUINN, in his official capacity as a  
United States Deputy Marshal, and in his  
individual capacity; and JOHN OLSON,  
JR., in his official capacity as a United  
States Deputy Marshal, and in his  
individual capacity,

Defendants.

Case No. 3:09-cv-00019-RJB

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
PROCEDURAL ORDER**

1 This matter comes before the Court on the Report and Recommendation of U.S. Magistrate  
2 Judge J. Richard Creatura. Dkt. 104. The Court has considered the Report and Recommendation (Dkt.  
3 104), objections, if any, and the remainder of the record.

4 The Report and Recommendation recommends a modification of the case schedule such that  
5 pretrial motions are to be filed no later than October 7, 2010; responses are due no later than October 21,  
6 2010; and replies are due no later than October 28, 2010. Dkt. 104. The Report and Recommendation  
7 does not recommend a change to the briefing schedule for the Plaintiffs' Partial Motion for Summary  
8 Judgment (Dkt. 101) which was pending at the time the Report and Recommendation was filed. *Id.*

9 Plaintiffs file two responses (Dkts. 105 and 122). They state that they generally agree with the  
10 recommendations, but request clarification regarding motions filed before the October 7, 2010 deadline.  
11 Dkt. 122. Plaintiffs request that motions filed before the October 7, 2010, deadline remain on the  
12 briefing schedule found in Fed. R. Civ. P. 56 (c). Plaintiffs note that the City of Homer Defendants and  
13 Federal Defendants both filed responses to Plaintiffs' pending motion, and cross motions for summary  
14 on September 15, 2010. *Id.* (The record indicates that the City of Homer Defendants filed a response  
15 and a cross motion for summary judgment in the same pleading, and docketed it once as a response to  
16 the Plaintiffs' partial motion for summary judgment (Dkt.106) and again as their motion for summary  
17 judgment (Dkt. 107). Those pleadings were filed September 14, 2010. Dkts. 106 and 107. The Federal  
18 Defendants likewise, filed a combined pleading, and docketed it once as a response to Plaintiffs' partial  
19 motion for summary judgment (Dkt. 118) and again as a cross motion for summary judgment (Dkt.  
20 126). The response was docketed on September 15, 2010 (Dkt. 118), and the cross motion for summary  
21 judgment on September 20, 2010. (Dkt. 126)). In any event, Plaintiffs propose filing a reply regarding  
22 their partial motion for summary judgment on October 4, 2010, and responses to the cross motions on  
23 October 12, 2010. Dkt. 122.

24 The City of Homer Defendants do not generally object to the Report and Recommendation. Dkt.  
25 124. They request that if the Court accepts Plaintiffs' suggestion that all motions filed before the  
26 adoption of the Report and Recommendation follow Rule 56 (c), that they be given an extra two days to  
27 file a reply to Plaintiffs' response to their motion for summary judgment due to a scheduled vacation.

1 *Id.* They propose filing their reply on October 28, 2010, the same date set out in the Report and  
2 Recommendation for replies. *Id.*

3 The Federal Defendants object to the Report and Recommendation's recommendation that the  
4 pretrial motions deadline be advanced two weeks to October 7, 2010. Dkt. 121. The Federal  
5 Defendants also object to having the response due date advanced from 21 to 14 days, and only the reply  
6 due date advanced from 14 to 7 days. *Id.* The Federal Defendants feel that they may not have adequate  
7 time to research and brief all the issues. *Id.*

#### 8 **A. REPORT AND RECOMMENDATION**

9 The Report and Recommendation (Dkt. 104) should be adopted. This litigation has been  
10 ongoing for several years. Parties should be able to brief their issues and raise their defenses in the time  
11 allotted.

12 Further, motions filed before adoption of the Report and Recommendation should follow Fed. R.  
13 Civ. P. 56 (c). Under Fed. R. Civ. P. 56 (c), unless otherwise set by local rule or court order, responses  
14 to motions for summary judgment are due 21 days after the motion is filed and served, and a reply is due  
15 within 14 days after the response, except that, as stated in the Report and Recommendation, no  
16 responses should be filed after October 21, 2010, and no replies should be filed after October 28, 2010.

#### 17 18 **B. MOTIONS FOR EXTENSIONS OF TIME AND BRIEFING SCHEDULE**

19 Plaintiffs appear to be moving for an extension of time to file both their reply regarding their  
20 partial motion for summary judgment and their responses to Defendants' motions for summary  
21 judgment, and the pleading is construed as such. Dkt. 122. Defendants' responses to Plaintiffs' partial  
22 motion for summary judgment were filed on September 14, 15, and 20, 2010. Dkts. 106, 107, 118, and  
23 126. Accordingly, Plaintiffs' reply, due within 14 days under Rule 56 is due no later than September 29,  
24 2010, rather than the requested October 4, 2010. Moreover, Plaintiffs move to file their responses to the  
25 Defendants' cross motions for summary judgment on October 12, 2010, rather than the October 6, 2010,  
26 deadline contemplated by the rule. The City of Homer Defendants also move for an extension of time to  
27 file a reply (regarding their cross motion for summary judgment) to October 28, 2010. Dkt. 124.

1 Plaintiffs' motion and the City of Homer's motion for extensions of time should be granted. The  
2 Court notes that Plaintiffs' partial motion for summary judgment seeks the following relief: 1) the  
3 actions of Defendants Guinn, Olson, Hutt, Shealy, and Luck constituted a seizure of the children within  
4 the meaning of the Fourth Amendment, 2) Alaska's caps on non-economic and punitive damages (AS  
5 09.17.010 and AS 9.17.020) do not limit recovery for federal constitutional claims, and 3) any defendant  
6 found liable for violations of Plaintiffs' constitutional rights under § 1983 or *Bivens* is jointly and  
7 severally liable and not subject to Alaska's rule of apportionment - AS 09.17.080. Dkt. 101. All  
8 Defendants' cross motions for summary judgment seek the dismissal of Plaintiffs' Fourth Amendment  
9 claim. Dkts. 106, 107, 118, and 126. Because these motions are all related, a combined briefing  
10 schedule is warranted. Plaintiffs' reply, if any, regarding their partial motion for summary judgment  
11 (Dkt. 101) and Plaintiffs' response, if any, to Defendants' cross motions for summary judgment (Dkts.  
12 106, 107, 118, and 126) should be combined and filed no later than October 12, 2010. Defendants  
13 replies, if any, regarding their motions for summary judgment (Dkts. 106, 107, 118, and 126) should be  
14 filed no later than October 28, 2010.

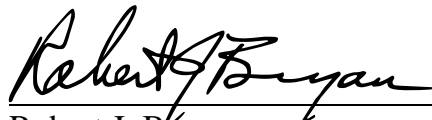
15 Therefore, it is hereby, **ORDERED** that:

- 16 • The Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura (Dkt. 104) is  
17 **ADOPTED**;
- 18 • Motions filed before the adoption of the Report and Recommendation shall follow Fed. R. Civ.  
19 P. 56 (c), except that, as stated in the Report and Recommendation, no responses shall be filed  
20 after **October 21, 2010**, and no replies shall be filed after **October 28, 2010**;
- 21 • Plaintiffs' motion for extension of time (Dkt. 122) and the City of Homer's motion for an  
22 extension of time (Dkt. 124) are **GRANTED**:
  - 23 • Plaintiffs' reply, if any, regarding their partial motion for summary judgment (Dkt. 101)  
24 and Plaintiffs' responses, if any, to Defendants' now pending summary judgment motions  
25 (Dkts. 106, 107, 118, and 126), shall be combined and are to be filed on or before  
26 **October 12, 2010**;

- 1 • Defendants' replies, if any, regarding their now pending summary judgment motions  
2 (Dkts. 106, 107, 118, and 126) are to be filed on or before **October 28, 2010**.

3 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
4 record and to any party appearing *pro se* at said party's last known address.

5 DATED this 23<sup>rd</sup> day of September, 2010.

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8 Robert J. Bryan  
9 United States District Judge  
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