

1 Leslie M. Dillahunty, Esq. Bar No. 195262

2 WEAKLEY, ARENDT & McGUIRE

1630 East Shaw Avenue, Suite 176

3 Fresno, California 93710

Telephone: (559) 221-5256

4 Facsimile: (559) 221-5262

5 Attorneys for Defendants, County of Kings, Mark Sherman, Sandy R. Roper
6 and William R. Zumwalt

7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 DANIEL E. RUFF,

11 Plaintiff

12 vs.

13 COUNTY OF KINGS, MARK SHERMAN,
14 SANDY R. ROPER, WILLIAM R.
ZUMWALT, and DOES 1-100, et al.

15 Defendants.

) CASE NO. 1:05-CV-00631-OWW-GSA

) ORDER ON DEFENDANTS' MOTIONS IN
LIMINE

) Date: September 4, 2009

) Time: 12 noon

) Courtroom: Three

) Honorable Oliver W. Wanger

) Trial: September 15, 2009

16
17 On September 4, 2009, the matter of defendants' motions in limine (Document no. 127)
18 came before this Court for hearing. After considering the parties pleadings and documents filed
19 with the court, and receiving oral argument from counsel, the court hereby rules as follows:

20 Motion in limine number -

21 1. Granted in whole with the exception that expenditures or other damage that was
22 suffered because of plaintiff's financial inability to maintain his property or comply with
23 ordinances or to do anything else that caused him out-of-pocket loss, can be offered as
24 consequential damages.

25 2. Granted whole with the exception that expenditures or other damage that was
26 suffered because of plaintiff's financial inability to maintain his property or comply with
27 ordinances or to do anything else that caused him out-of-pocket loss, can be offered as
28 consequential damages. Evidence is limited to the fact that there was a violation and plaintiff

1 had to pay money because of it.

2 3. Granted as requested.

3 4. Denied subject to the condition that specific instructions will address Monell liability.

4 5. Denied subject to the conditions that Dr. Kays not offer testimony in the form of
5 arguments, legal conclusions or conclusions of law. No testimony may be elicited without
6 sufficient legal foundation first being laid, and he is to offer no opinions of any alleged
7 conspiracy.

8 6. Denied subject to the conditions that Mr. Bettencourt's opinions be based on
9 recycling businesses and that sufficient foundation first be laid for his opinion testimony.
10 Defendants have also reserved the right to have a *Daubert* hearing, which will be held during
11 the noon hour prior to Mr. Bettencourt testifying.

12 7. Granted as requested.

13 8. Denied.

14 9. Denied without prejudice. However, such evidence is limited to admissible evidence.

15 10. Denied without prejudice.

16 11. Plaintiff's claim based on racial discrimination has been previously dismissed.

17 12. Denied subject to condition that other recycling operations that are not roughly
18 comparable but are truly dissimilar are irrelevant to show that the denial of plaintiff's
19 application was arbitrary, capricious or unlawful. On the issue of damages, evidence of other
20 recycling operations is not admissible unless the operation is comparable to plaintiff's business
21 to show feasibility or the zoning issues or the wrongful denial of the change of use permit.

22 13. Granted without exception if plaintiff cannot provide a foundation. If he can
23 provide the necessary foundation, he will be permitted to testify as an owner as to his opinion of
24 the value of his business.

25 14. Granted in whole with the exception that expenditures or other damage that was
26 suffered because of plaintiff's financial inability to maintain his property or comply with
27 ordinances or to do anything else that caused him out-of-pocket loss, can be offered as
28 consequential damages.

1 15. Denied without prejudice. However, an adequate foundation must first be laid and
2 the evidence must be admissible.

3 16. Granted as requested.

4 17. Granted as requested.

5 19. Granted as requested.

6 20. Granted as requested.

7 21. Granted as requested.

8 22. Granted as requested.

9 23. Granted as requested.

10 24. Grant in part and deny in part. Denial is conditioned on plaintiff's experts being
11 produced so that defendants' counsel can examine them on any supplemental materials.

12 25. Deny on the condition that a foundation be laid that the County controls Kings
13 Waste and Recycling Authority and directors its operations.

14 26. Granted with the condition that relevant portions of the recording may be played for
15 purposes of impeachment or to refresh a witness's recollection.

16 27. Granted with the condition that such evidence may be admissible on the issue of
17 damages only. Evidence is limited to the fact that there was a violation and plaintiff had to pay
18 money because of it.

19 28. Granted as requested.

20
21
22 IT IS SO ORDERED.

23 **Dated: September 13, 2009**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE