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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 ERIC LOPEZ,) 1:08-cv-1475 OWW SMS
10 Plaintiff,) SCHEDULING CONFERENCE ORDER
11 v.) Discovery Cut-Off: 12/1/09
12 COUNTY OF MERCED, and DOES 1) Non-Dispositive Motion
13 through 10, inclusive,) Filing Deadline: 12/15/09
14 Defendants.) Dispositive Motion Filing
15) Deadline: 12/30/09
16) Settlement Conference Date:
17) 12/9/09 10:00 Ctrm. 7
18) Pre-Trial Conference Date:
19) 3/8/10 11:00 Ctrm. 3
20) Trial Date: 4/20/10 9:00
21) Ctrm. 3 (JT-5 days)

21 I. Date of Scheduling Conference.

22 January 15, 2009.

23 II. Appearances Of Counsel.

24 Williamson & Krauss by Todd B. Krauss, Esq., appeared on
25 behalf of Plaintiff.

26 County Counsel of Merced by James E. Stone, Esq., appeared
27 on behalf of Defendant.

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1 III. Summary of Pleadings.

2 1. This case involves the detention of the Plaintiff, Eric
3 Lopez, pursuant to a warrant issued for a person named Eric
4 *Heribeto Lopez*. Plaintiff was originally booked into the
5 Imperial County Jail until ultimately transferred to Merced
6 County. Plaintiff was released from Merced County's Jail when it
7 was shown to the court that he looked nothing like the person in
8 the warrant and was in fact not the person Merced County was
9 looking for.

10 2. On December 28, 2007, Plaintiff went to Calexico,
11 Mexico with two of his cousins. Upon re-entering the United
12 States, Plaintiff was stopped and held pursuant to a warrant for
13 the arrest of an *Eric Heribeto Lopez* regarding an assault of a
14 woman in Merced County. Plaintiff showed his California Driver's
15 License as well as his Social Security Card to prove his identity
16 and the fact that he did not have a middle *initial* and was a
17 different person than the person named in the warrant.

18 3. Plaintiff was booked and held in Imperial County Jail
19 for 10 days until he was transferred to the Los Angeles County
20 Jail. Plaintiff was held for one day until being transferred to
21 Merced County. Plaintiff was once again booked, all the while
22 professing his innocence and claiming he was the victim of
23 mistaken identity.

24 4. Each time Plaintiff was booked, he professed his
25 innocence, informed the jailers he had no middle name and was not
26 the person named in the warrant. Plaintiff further informed the
27 jailers that he was on probation and under the supervision of
28 Proposition 36 at "The Ark" and to contact "Robert" who would

1 verify his identity. This was never done. During his
2 incarceration, Plaintiff was told that his address and
3 fingerprints matched that of the alleged person they were
4 seeking. This information was completely false.

5 5. At no time did Defendant, County, ever fax, e-mail or
6 transmit any information to Imperial or Los Angeles County
7 regarding the alleged suspect. At all times, Defendant County
8 was in possession of video graphic and photographic evidence
9 depicting the true person that the warrant was issued for. That
10 evidence clearly showed that the individual being sought looked
11 nothing like the Plaintiff and, therefore, was not the person
12 (Lopez) that was being held in custody pursuant to their warrant.

13 6. While Plaintiff was in the custody of the Merced County
14 Jail, on or about January 16, 2008, an investigator from the
15 Public Defender's Office interviewed the Plaintiff. Plaintiff
16 was told that he was accused of physically assaulting a woman in
17 Merced County as alleged in a Merced County Sheriff's Department
18 Police Report, No. 070041961. Plaintiff was also told for the
19 first time that Merced County Sheriff's Department investigators
20 had possession of a videotaped interview of the alleged suspect
21 as well as a photograph of him. Plaintiff was shown a picture of
22 the alleged suspect and the person depicted looked nothing like
23 the Plaintiff. Plaintiff provided Sheila Cooks' name and
24 telephone number to the investigator and requested that he verify
25 Plaintiff's claim that he could not possibly be the same person
26 as the alleged suspect.

27 7. On January 17, 2008, Plaintiff was brought back to
28 court and the court was informed by Plaintiff's public defender

1 that he is not the person depicted in the photograph. Plaintiff
2 is held one additional day in custody and brought back to court
3 on January 18, 2008, at which time he is told there was a
4 misunderstanding and he was released after spending 21 days in
5 police custody.

6 8. At each jail facility location in Imperial, Los
7 Angeles, and Merced County, Plaintiff was booked and asked
8 questions about the alleged assault. Each time he told the same
9 story. At no time during this process did Defendant County or
10 Does 1 through 10 provide any information, which they had in
11 their possession, to the other police agencies to verify the true
12 identity of the alleged suspect or to compare Plaintiff's
13 likeness to that of the alleged suspect.

14 9. Pursuant to the holdings in *Farmer v. Brennan*, 511 U.S.
15 825, 835 (1994) and *Wilson v. Seiter*, 501 U.S. 294 (1991),
16 Plaintiff must establish Defendants acted recklessly, knowingly,
17 or with unnecessary and wanton behavior. Defendants maintain
18 that they at all times complied with the applicable standard of
19 care [*Monroe v. Regents of the University of California*, 215
20 Cal.App.3d 977, 983-84 (1989)]. Defendants maintain that
21 Plaintiff will be unable to establish a mere negligence case
22 against them pursuant to *Flowers v. Torrance Memorial Hospital*
23 *Medical Center*, 8 Cal.4th 992, 999 (1994), and will be unable to
24 establish *Monell* responsibility as against the County of Merced.
25 *Monell*, *supra*, 436 U.S. at 694.

26 10. Plaintiff demanded a jury trial in his Complaint dated
27 September 18, 2008, and Defendants demanded a jury trial in their
28 answer dated November 10, 2008.

1 11. Defendant asserts the following:

2 12. Plaintiff fails to state a claim upon which relief can
3 be granted.

4 13. Any and all acts or omissions of this Defendant and its
5 agents and employees, which allegedly caused the injury
6 complained of, was the result of an exercise of the discretion
7 vested in them.

8 14. The County of Merced is not liable for any of the acts
9 or omissions complained of in the complaint because the complaint
10 alleges that this Defendant is liable based on the acts or
11 omissions of others.

12 15. The County of Merced's officers and employees were at
13 all times duly qualified, appointed, and acting as peace officers
14 of the County of Merced and peace officers of the State of
15 California in accordance with the Constitutions of the State of
16 California and of the United States and the laws of the State of
17 California and United States; and at all times mentioned herein,
18 said officers and employees were engaged in the performance of
19 their regularly assigned duties within the scope of their duties
20 as peace officers. All acts of said employees were lawful and
21 privileged such that said employees and those employing these
22 defendants are immune from liability.

23 16. This answering Defendant acted in good faith and with a
24 reasonable belief that the actions were lawful and further did
25 not directly or indirectly perform any act whatsoever which would
26 constitute a breach of any duty owed to Plaintiff. The acts of
27 this Defendant were lawful and proper and in all respects
28 reasonable and legal.

1 17. Plaintiff was subject to restraint as was reasonably
2 necessary for his detention.

3 18. The acts of this Defendant, if any there were, occurred
4 in the proper exercise of police powers without malice or intent
5 to deprive any person of any right arising under the Constitution
6 or laws of the United States or to do any person any other
7 injury.

8 19. This Defendant is immune from liability pursuant to the
9 provisions of §§ 815, 815.2, 815.6, 818, 820.2, 820.4, 820.6,
10 820.9, 821.6, 844.6, and 845.6 of the Government Code, Civil Code
11 § 43.55 and Penal Code § 847.

12 20. The facts alleged in Plaintiff's complaint do not
13 involve any custom, practice, procedure or regulation of this
14 Defendant which causes a violation of a constitutional right
15 pursuant to *Monell v. New York City Department of Social*
16 *Services*, 436 U.S. 658 (1978).

17 21. This defendant acted at all times herein relevant, in
18 good faith, with due care, within the scope of discretion and
19 pursuant to laws, regulations, rules, and practices reasonably
20 believed to be in accordance with the Constitution and laws of
21 the United States. There is no liability pursuant to the Federal
22 Civil Rights Act where one acts in good faith and entertains an
23 honest belief that one's actions are in accord with clearly
24 established law. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

25 22. Should Plaintiff recover non-economic damages against
26 Defendant, the liability for non-economic damages is limited to
27 the degree of fault and several liability of any said Defendant
28 and a separate several judgment shall be rendered against said

1 Defendant based upon said Defendant's degree of fault and several
2 liability.

3 23. Plaintiff, by the exercise of reasonable effort and/or
4 care, could have mitigated the damages alleged to have been
5 suffered, but has failed to do so.

6 24. The complaint is barred, or any claimed recovery should
7 be reduced because of Plaintiff's own negligence and/or fault in
8 connection with the matters alleged.

9 25. The punitive damages sought by Plaintiff are a
10 violation of the due process and equal protection clause of the
11 United States and California Constitutions.

12 26. There was a good faith belief in the existence of
13 reasonable and/or probable cause to detain and/or arrest
14 Plaintiff in accordance with the laws of the State of California
15 and is therefore immune for the acts alleged in Plaintiff's
16 complaint.

17 IV. Orders Re Amendments To Pleadings.

18 1. Plaintiff will determine after discovery has been
19 conducted whether any individual should be added as a party. The
20 parties agree that the last date to amend the pleadings or add
21 additional parties will be July 1, 2009.

22 V. Factual Summary.

23 A. Admitted Facts Which Are Deemed Proven Without Further
24 Proceedings.

25 1. Plaintiff, Eric Lopez, was a citizen of the United
26 States and at the time of the alleged events, was a resident of
27 Orange County, City of Downey, State of California.

28 2. Defendant, County of Merced, is a public entity

1 under the laws of the State of California.

2 3. Plaintiff was detained at the United States-Mexico
3 border pursuant to a warrant for the arrest of Eric *Heribeto*
4 Lopez regarding the assault of a woman issued in Merced,
5 California.

6 4. Plaintiff was held in detention for approximately
7 11 days, was transferred to Merced County and was booked into the
8 Merced County Jail.

9 5. Plaintiff was released after approximately 21
10 days, approximately ten of which were spent in Merced County.

11 B. Contested Facts.

12 1. All remaining facts are disputed.

13 VI. Legal Issues.

14 A. Uncontested.

15 1. Jurisdiction exists under 28 U.S.C. §§ 1331,
16 1343(c) and 42 U.S.C. § 1983. Supplemental jurisdiction is also
17 invoked under 28 U.S.C. § 1367.

18 2. Venue is proper under 28 U.S.C. § 1391(b).

19 3. The parties agree that the substantive law of the
20 State of California provides the rule of decision for
21 supplemental claims.

22 B. Contested.

23 1. The key legal issues involve the following: (a)
24 whether it was objectively reasonable for the County of Merced
25 not to provide any information about the suspect that a warrant
26 had been issued according to the standards set forth in *Graham*;
27 and (b) whether County is entitled to qualified immunity because
28 it was not clearly established, in a more particularized sense,

1 that their actions at the time of this incident were violative of
2 Plaintiff's constitutional rights.

3 VII. Consent to Magistrate Judge Jurisdiction.

4 1. The parties have not consented to transfer the
5 case to the Magistrate Judge for all purposes, including trial.

6 VIII. Corporate Identification Statement.

7 1. Any nongovernmental corporate party to any action in
8 this court shall file a statement identifying all its parent
9 corporations and listing any entity that owns 10% or more of the
10 party's equity securities. A party shall file the statement with
11 its initial pleading filed in this court and shall supplement the
12 statement within a reasonable time of any change in the
13 information.

14 IX. Discovery Plan and Cut-Off Date.

15 1. The parties have made their initial disclosures.

16 2. The parties are ordered to complete all non expert
17 discovery on or before September 1, 2009.

18 3. The parties are directed to disclose all expert
19 witnesses, in writing, on or before October 1, 2009. Any
20 rebuttal or supplemental expert disclosures will be made on or
21 before October 30, 2009. The parties will comply with the
22 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding
23 their expert designations. Local Rule 16-240(a) notwithstanding,
24 the written designation of experts shall be made pursuant to F.
25 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
26 information required thereunder. Failure to designate experts in
27 compliance with this order may result in the Court excluding the
28 testimony or other evidence offered through such experts that are

1 not disclosed pursuant to this order.

2 4. The parties are ordered to complete all discovery,
3 including experts, on or before December 1, 2009.

4 5. The provisions of F. R. Civ. P. 26(b)(4) shall
5 apply to all discovery relating to experts and their opinions.
6 Experts may be fully prepared to be examined on all subjects and
7 opinions included in the designation. Failure to comply will
8 result in the imposition of sanctions.

9 X. Pre-Trial Motion Schedule.

10 1. All Non-Dispositive Pre-Trial Motions, including any
11 discovery motions, will be filed on or before December 15, 2009,
12 and heard on January 22, 2010, at 9:00 a.m. before Magistrate
13 Judge Sandra M. Snyder in Courtroom 7.

14 2. In scheduling such motions, the Magistrate
15 Judge may grant applications for an order shortening time
16 pursuant to Local Rule 142(d). However, if counsel does not
17 obtain an order shortening time, the notice of motion must comply
18 with Local Rule 251.

19 3. All Dispositive Pre-Trial Motions are to be
20 filed no later than December 30, 2009, and will be heard on
21 February 1, 2010, at 10:00 a.m. before the Honorable Oliver W.
22 Wanger, United States District Judge, in Courtroom 3, 7th Floor.
23 In scheduling such motions, counsel shall comply with Local Rule
24 230.

25 XI. Pre-Trial Conference Date.

26 1. March 8, 2010, at 11:00 a.m. in Courtroom 3, 7th Floor,
27 before the Honorable Oliver W. Wanger, United States District
28 Judge.

1 2. The parties are ordered to file a Joint Pre-
2 Trial Statement pursuant to Local Rule 281(a)(2).

3 3. Counsel's attention is directed to Rules 281
4 and 282 of the Local Rules of Practice for the Eastern District
5 of California, as to the obligations of counsel in preparing for
6 the pre-trial conference. The Court will insist upon strict
7 compliance with those rules.

8 XII. Motions - Hard Copy.

9 1. The parties shall submit one (1) courtesy paper copy to
10 the Court of any motions filed that exceed ten pages and any
11 motions that have exhibits attached. Exhibits shall be marked
12 with protruding numbered or lettered tabs so that the Court can
13 easily identify such exhibits.

14 XIII. Trial Date.

15 1. April 20, 2010, at the hour of 9:00 a.m. in Courtroom
16 3, 7th Floor, before the Honorable Oliver W. Wanger, United
17 States District Judge.

18 2. This is a jury trial.

19 3. Counsels' Estimate Of Trial Time:

20 a. 3-5 days.

21 4. Counsels' attention is directed to Local Rules
22 of Practice for the Eastern District of California, Rule 285.

23 XIV. Settlement Conference.

24 1. A Settlement Conference is scheduled for December 9,
25 2009, at 10:00 a.m. in Courtroom 7 before the Honorable Sandra M.
26 Snyder, United States Magistrate Judge.

27 2. Unless otherwise permitted in advance by the
28 Court, the attorneys who will try the case shall appear at the

1 Settlement Conference with the parties and the person or persons
2 having full authority to negotiate and settle the case on any
3 terms at the conference.

4 3. Permission for a party [not attorney] to attend
5 by telephone may be granted upon request, by letter, with a copy
6 to the other parties, if the party [not attorney] lives and works
7 outside the Eastern District of California, and attendance in
8 person would constitute a hardship. If telephone attendance is
9 allowed, the party must be immediately available throughout the
10 conference until excused regardless of time zone differences.
11 Any other special arrangements desired in cases where settlement
12 authority rests with a governing body, shall also be proposed in
13 advance by letter copied to all other parties.

14 4. Confidential Settlement Conference Statement.
15 At least five (5) days prior to the Settlement Conference the
16 parties shall submit, directly to the Magistrate Judge's
17 chambers, a confidential settlement conference statement. The
18 statement should not be filed with the Clerk of the Court nor
19 served on any other party. Each statement shall be clearly
20 marked "confidential" with the date and time of the Settlement
21 Conference indicated prominently thereon. Counsel are urged to
22 request the return of their statements if settlement is not
23 achieved and if such a request is not made the Court will dispose
24 of the statement.

25 5. The Confidential Settlement Conference
26 Statement shall include the following:

27 a. A brief statement of the facts of the
28 case.

1 b. A brief statement of the claims and
2 defenses, i.e., statutory or other grounds upon which the claims
3 are founded; a forthright evaluation of the parties' likelihood
4 of prevailing on the claims and defenses; and a description of
5 the major issues in dispute.

6 c. A summary of the proceedings to date.

7 d. An estimate of the cost and time to be
8 expended for further discovery, pre-trial and trial.

9 e. The relief sought.

10 f. The parties' position on settlement,
11 including present demands and offers and a history of past
12 settlement discussions, offers and demands.

13 XV. Request For Bifurcation, Appointment Of Special Master,
14 Or Other Techniques To Shorten Trial.

15 1. None.

16 XVI. Related Matters Pending.

17 1. There are no related matters.

18 XVII. Compliance With Federal Procedure.

19 1. The Court requires compliance with the Federal
20 Rules of Civil Procedure and the Local Rules of Practice for the
21 Eastern District of California. To aid the court in the
22 efficient administration of this case, all counsel are directed
23 to familiarize themselves with the Federal Rules of Civil
24 Procedure and the Local Rules of Practice of the Eastern District
25 of California, and keep abreast of any amendments thereto.

26 XVIII. Effect Of This Order.

27 1. The foregoing order represents the best
28 estimate of the court and counsel as to the agenda most suitable

1 to bring this case to resolution. The trial date reserved is
2 specifically reserved for this case. If the parties determine at
3 any time that the schedule outlined in this order cannot be met,
4 counsel are ordered to notify the court immediately of that fact
5 so that adjustments may be made, either by stipulation or by
6 subsequent scheduling conference.

7 2. Stipulations extending the deadlines contained
8 herein will not be considered unless they are accompanied by
9 affidavits or declarations, and where appropriate attached
10 exhibits, which establish good cause for granting the relief
11 requested.

12 3. Failure to comply with this order may result in
13 the imposition of sanctions.
14

15 IT IS SO ORDERED.

16 Dated: January 15, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE