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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KAREN K. FRYE,  
  
Plaintiff,  
  
v.  
  
COUNTY OF KERN; KERN COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
DONNY YOUNGFLOOD; ANTHONY LAVIS;  
VICTOR MARTINEZ; JOSE SANCHEZ;  
D.M. WODS; MATTHEW ETCHEVERY;  
STEPHEN PEDERSON;  
  
Defendants.

) 1:10-cv-1619 OWW DLB  
)  
) SCHEDULING CONFERENCE ORDER  
)  
) Discovery Cut-Off: 5/7/12  
)  
) Non-Dispositive Motion  
) Filing Deadline: 5/22/12  
)  
) Non-Dispositive Motion  
) Hearing Date: 6/22/12 9:00  
) Ctrm. 9  
)  
) Dispositive Motion Filing  
) Deadline: 6/7/12  
)  
) Dispositive Motion Hearing  
) Date: 7/9/12 10:00 Ctrm. 3  
)  
) Settlement Conference Date:  
) 5/15/12 10:00 Ctrm. 9  
)  
) Pre-Trial Conference Date:  
) 8/20/12 11:00 Ctrm. 3  
)  
) Trial Date: 9/25/12 9:00  
) Ctrm. 3 (JT-12 days)

I. Date of Scheduling Conference.  
January 26, 2011.  
II. Appearances Of Counsel.  
Chain Cohn Stiles by David K. Cohn, Esq., and Matthew C.  
Clark, Esq., appeared on behalf of Plaintiff. Mr. Cohn also

1 specially appeared on behalf of his co-counsel, John C. Hall,  
2 Esq.

3 Mark L. Nations, Esq., Assistant County Counsel, appeared  
4 on behalf of Defendants County of Kern (Kern County Sheriff's  
5 Department), Sheriff Donny Youngblood, Jose Sanchez, D.M. Woods,  
6 Matthew Etchevery and Stephen Pederson.

7 Robinson & Kellar by Oliver U. Robinson, Esq., appeared on  
8 behalf of Defendant Anthony Lavis.

9 Wall, Wall & Peake by Larry F. Peake, Esq., appeared on  
10 behalf of Defendant Victor Martinez.

11 III. Summary of Pleadings.

12 1. This case arises from a series of alleged sexual  
13 assaults that took place in the Lerdo Detention Facility in Kern  
14 County, California, during the month of October, 2009.  
15 Plaintiff, Karen K. Frye, contends that Defendant, Anthony Lavis,  
16 an employee of the Kern County Sheriff's Department, sexually  
17 assaulted her during the month of October, 2009, while Plaintiff  
18 was being held in the infirmary at the Lerdo Detention Center.  
19 Plaintiff further contends that Defendants conspired to deprive  
20 her of her Constitutional rights, and that Defendants  
21 fraudulently attempted to secure Plaintiff's signature on what  
22 was purported to be a receipt, but what was actually a release,  
23 which purported to release Defendants of their conduct.

24 Plaintiff's Summary:

25 1. In or about the month of August, 2009, Plaintiff was  
26 incarcerated at Defendant Kern County Sheriff's Department's  
27 Lerdo Detention Center. Thereafter, on or about the month of  
28 September, 2009, Plaintiff began to experience abdominal pain

1 while incarcerated at the Lerdo Detention Center. Plaintiff was  
2 transported to Kern Medical Center for treatment, where she  
3 ultimately underwent surgery to remove her gall bladder.  
4 Thereafter, Plaintiff was returned to the Lerdo Detention Center.  
5 At all times relevant herein, Plaintiff was in the custody of  
6 Defendant, Kern County Sheriff's Department.

7 2. When Plaintiff was returned to the Lerdo Detention  
8 Center, she was housed in the facility's infirmary for ongoing  
9 observation and treatment. While in the infirmary, Plaintiff was  
10 administered medications for pain and discomfort, including, but  
11 not limited to, Vicodin and Klonopin. Plaintiff remained on  
12 these medications for all relevant times mentioned herein and  
13 Plaintiff alleges that Defendants, and each of them, had  
14 knowledge of the medications and their effect(s), as they were  
15 being administered by employees of Defendant, Kern County  
16 Sheriff's Department.

17 3. While Plaintiff was being housed in the facility's  
18 infirmary, and while she was being administered the  
19 aforementioned medications, Plaintiff was subjected to continual  
20 sexual assaults and harassment by Defendant, Anthony Lavis. More  
21 specifically, and without limitation, these acts included, but  
22 were not limited to:

23 a. Defendant, Anthony Lavis, while giving Plaintiff  
24 medication, including pain medication, repeatedly told Plaintiff  
25 that he had dreams about having sex with her;

26 b. Defendant, Anthony Lavis, on at least two  
27 occasions, entered the shower facility and fondled and/or touched  
28 Plaintiff against her protests;

1           c. Defendant, Anthony Lavis, on other occasions  
2 pushed Plaintiff against the wall of her cell and fondled her  
3 while he rubbed himself against her body with his pants unzipped;

4           d. Defendant, Anthony Lavis, on at least two  
5 occasions penetrated Plaintiff's vagina with his finger.

6           4. On or about mid-October, 2009, Plaintiff returned to  
7 Kern Medical Center for follow-up care. After the acts mentioned  
8 above, Plaintiff told Defendant, Victor Martinez, an employee of  
9 the Kern County Sheriff's Department what Defendant, Anthony  
10 Lavis, had done to her as more specifically described above.  
11 Thereafter, Defendants Victor Martinez, Jose Sanchez and Dona  
12 Wood, all employees of the Kern County Sheriff's Department,  
13 requested that Plaintiff assist them in a sting operation against  
14 Defendant, Anthony Lavis. Plaintiff was told that the "sting"  
15 operation was to take place in her cell, which was located within  
16 the infirmary at the Lerdo Detention Center. Defendants, Victor  
17 Martinez, Jose Sanchez, and Dona Wood, requested that Plaintiff  
18 wear a wired audio recording device ("wire") during the "sting."  
19 Defendants, Victor Martinez, Jose Sanchez, and Dona Wood offered  
20 to pay Plaintiff \$1,500.00 in exchange for her agreement to wear  
21 the wire during the sting. Additionally Defendants, Victor  
22 Martinez, Jose Sanchez, and Dona Wood, told Plaintiff that a  
23 video camera would be present in her cell during the "sting." In  
24 addition, the above-mentioned employees of the Kern County  
25 Sheriff's Department told Plaintiff they would protect her from  
26 any further assaults by Defendant, Anthony Lavis, during the  
27 "sting" operation. Based on these representations made by  
28 Defendants and the promise to pay Plaintiff \$1,500 in exchange

1 for wearing the wire, Plaintiff agreed to participate in the  
2 "sting."

3 5. At the time of the sting, Defendant, Dona Wood, placed  
4 the wire on Plaintiff, while Defendant, Victor Martinez, placed a  
5 video camera in Plaintiff's cell within a hollowed out Bible.  
6 Thereafter, Defendant, Anthony Lavis, entered Plaintiff's cell  
7 and demanded that Plaintiff come over to him. Defendant, Anthony  
8 Lavis, then put his hands down Plaintiff's pants and penetrated  
9 Plaintiff's vagina with his finger. Defendant, Anthony Lavis,  
10 also stated to Plaintiff that he wanted to have sex with her.  
11 After this sexual assault, Defendant, Anthony Lavis, left  
12 Plaintiff's cell. Plaintiff is informed, believes and thereon  
13 alleges that during the "sting" operation Defendants, Victor  
14 Martinez, Jose Sanchez, and Dona Wood, had knowledge of then  
15 occurring events and acts taking place in Plaintiff's cell,  
16 including the unlawful touching, assault and molestation by  
17 Defendant, Anthony Lavis, via the wire and video camera, and  
18 failed to intercede and stop Defendant, Anthony Lavis' sexual  
19 assault on Plaintiff.

20 6. Later on the same day of the "sting" operation,  
21 Plaintiff was taken to Kern Medical Center, and then Memorial  
22 Hospital, to undergo a "rape kit." While at the hospital,  
23 Plaintiff was also given medication(s). Thereafter, Plaintiff  
24 was driven to the Defendant, Kern County Sheriff's Department's  
25 headquarters. While Plaintiff was at the Sheriff's Department  
26 headquarters, she was under the influence of the medications that  
27 had been administered to her at the Lerdo Detention Center, and  
28 the hospital. In addition, Plaintiff was suffering from

1 emotional distress as a result of the sexual assault upon her  
2 that had occurred during the "sting" operation. While under the  
3 influence of the administered medications and emotionally  
4 distressed, Defendants, Matthew Etchevery and Stephen Pederson,  
5 placed a document before Plaintiff that they explained was a  
6 receipt for the \$1,500.00 that had been promised to Plaintiff in  
7 exchange for her participation in the "sting" operations.

8 Defendants, Matthew Etchevery and Stephen Pederson, then demanded  
9 that Plaintiff sign the document that they represented was a  
10 receipt. Plaintiff then signed the document, believing that it  
11 was a receipt for the \$1,500.00 that had been promised to her.

12 7. After signing the document purporting to be a receipt,  
13 Plaintiff was transported to the County of Kern's downtown jail  
14 facility where she was placed in a "keep away" program that  
15 consisted of solitary confinement. Plaintiff was placed in this  
16 program for two (2) months, during which time she was not allowed  
17 to associate with other inmates.

18 8. Plaintiff alleges that she was put in isolation to keep  
19 her from discussing the assaults with others, and that there was  
20 no other legitimate reason for her to be placed in confinement.

21 9. Plaintiff is informed and believes, and upon such  
22 information and belief alleges, that Defendants, and each of  
23 them, are responsible for implementing, maintaining, sanctioning,  
24 and/or condoning a policy, custom or practice under which the  
25 Sheriff's Deputies, and the Defendants' agents, officers and/or  
26 their employees, committed the aforementioned illegal or wrongful  
27 acts. Plaintiff is informed and believes that the conduct of  
28 said Deputies, Officers, agents and/or employees of Defendant

1 Kern County Sheriff's Department is/was consistent with the  
2 training and the policies set forth by the Defendants, County of  
3 Kern, Kern County Sheriff's Department, and Donny Youngblood  
4 and/or that such conduct of unwanted touching is/was ratified by  
5 Defendants Donny Youngblood, Kern County Sheriff's Department,  
6 and the County of Kern.

7 10. Each of the Defendants is responsible for  
8 implementing, maintaining, sanctioning and/or condoning a policy,  
9 custom or practice under which the Defendants' agents, officers  
10 and/or their employees and other Defendants committed the  
11 aforementioned illegal or wrongful acts. Defendants, and each of  
12 them, maintained or permitted an official policy or custom of  
13 knowingly permitting the occurrence of the type of wrong set  
14 forth above, and based upon the principles set forth herein.

15 Defendants' Summary:

16 1. Plaintiff was an inmate at the Lerdo Pretrial Facility.  
17 While there, she alleges she was subjected to sexual touching and  
18 improper verbal comments by a detentions deputy named Anthony  
19 Lavis. If sexual touching did occur, it was consensual and was  
20 engaged in by Plaintiff to secure contraband. After complaining  
21 about Lavis' conduct to jail authorities, Plaintiff voluntarily  
22 cooperated with Sheriff's Department personnel by wearing a wire  
23 as part of an investigation to determine whether Lavis would  
24 admit his involvement in inappropriate conduct with Plaintiff.  
25 Plaintiff was instructed multiple times not to allow Lavis to  
26 touch her and was also instructed to call for help if Lavis did  
27 attempt to touch her. During the investigation, Plaintiff  
28 engaged in touching with Lavis and allowed Lavis to touch her.

1 She did not call for help. Following Lavis' removal from the  
2 jail facility, Plaintiff entered into an agreement with County of  
3 Kern to release County and its agents from liability for Lavis'  
4 conduct in exchange for a payment of \$1,500.00, which was applied  
5 to her inmate account and which she spent while in custody.  
6 Prior to entering into the agreement, the terms of the agreement  
7 and their effect were explained to Plaintiff and she expressed  
8 her understanding of the terms and agreed to them.

9 IV. Orders Re Amendments To Pleadings.

10 1. The parties do not anticipate amending the pleadings at  
11 this time. The Court proposes to dismiss the Kern County  
12 Sheriff's Department as a defendant from this suit. Mr. Cohn  
13 will notify the Courtroom Deputy within five days next following  
14 this conference, by February 3, 2011, whether he has any legal  
15 authority to prevent the dismissal without prejudice of the  
16 Sheriff's Department.

17 2. The Defendants, Does 1 through 100, inclusive, are  
18 ORDERED DISMISSED without prejudice.

19 3. Any party shall have through and including October 25,  
20 2011, to amend their pleadings.

21 4. Any joinder of parties within that time period shall be  
22 accomplished by stipulation and without the necessity of a Rule  
23 15 motion.

24 V. Factual Summary.

25 A. Admitted Facts Which Are Deemed Proven Without Further  
26 Proceedings.

27 1. Plaintiff, Karen K. Frye, is a citizen of the  
28 United States and at times relevant was incarcerated at the Lerdo



1 Pretrial Facility and incarcerated in the infirmary at said  
2 facility.

3           2. Anthony Lavis was at all times an employee of the  
4 County of Kern, acting as a detention deputy for the Kern County  
5 Sheriff.

6           3. Defendant Lavis was at all times acting under  
7 color of law and in the course and scope of his employment as a  
8 Deputy Sheriff.

9           4. Individual Defendants Jose Sanchez, D.M. Woods,  
10 and Stephen Pederson, were employed as Deputy Sheriffs employed  
11 by the County of Kern.

12           5. Matthew Etchevery is the litigation coordinator  
13 for the County of Kern.

14           6. All Kern County individual Defendants were acting  
15 within the course and scope of their employment and were acting  
16 under color of law.

17           7. Plaintiff and Anthony Lavis participated in  
18 physical touching.

19           8. On October 19, 2008, Plaintiff signed a document  
20 entitled "Release of All Claims."

21           9. Plaintiff signed a claim form dated October 19,  
22 2009.

23           10. Plaintiff was paid and received \$1,500.00 by and  
24 from the County of Kern, which was placed in her inmate account  
25 and which she spent while in custody.

26           B. Contested Facts.

27           1. Whether the touching between Plaintiff and Lavis  
28 was voluntary and consensual or involuntary and not consensual.

1           2.    Whether Plaintiff engaged in touching for purposes  
2 of obtaining contraband.

3           3.    Whether Plaintiff's agreement to release  
4 Defendants was voluntary and enforceable.

5           4.    Plaintiff's injuries and damages, if any.

6           5.    Whether Defendants engaged in fraudulent conduct.

7           6.    Whether Defendants engaged in a conspiracy.

8           7.    The terms of the agreement with Plaintiff and  
9 whether Defendants breached the agreement.

10 VI.   Legal Issues.

11       A.    Uncontested.

12           1.    Jurisdiction exists under 28 U.S.C. § 1331 and 42  
13 U.S.C. § 1983.   Supplemental jurisdiction is invoked under 28  
14 U.S.C. § 1367.

15           2.    Venue is proper under 28 U.S.C. § 1391.

16           3.    As to Federal question claims, the law of the  
17 United States applies.

18           4.    The substantive law of the State of California  
19 applies to the supplemental claims.

20       B.    Contested.

21           1.    Whether Plaintiff's civil rights were violated.

22           2.    Whether Plaintiff has waived her causes of action.

23           3.    Whether Plaintiff has released Defendants from  
24 liability and is, therefore, barred from suing Defendants.

25           4.    Whether Plaintiff is barred by the doctrine of  
26 equitable estoppel.

27           5.    The defense of qualified immunity.

28           6.    All state immunities raised by Defendants.

1           7.    Any comparative negligence on the part of  
2 Plaintiff.

3           8.    Whether there is Monell liability on the part of  
4 Kern County.

5           9.    Whether Defendants breached their contract with  
6 Plaintiff.

7           10. To the extent issues of course and scope of  
8 employment and actions under color of law are mixed questions of  
9 fact and law, those issues as to all Kern County employees is  
10 undisputed.

11 VII. Consent to Magistrate Judge Jurisdiction.

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

14 VIII.    Corporate Identification Statement.

15           1.    Any nongovernmental corporate party to any action in  
16 this court shall file a statement identifying all its parent  
17 corporations and listing any entity that owns 10% or more of the  
18 party's equity securities. A party shall file the statement with  
19 its initial pleading filed in this court and shall supplement the  
20 statement within a reasonable time of any change in the  
21 information.

22 IX.   Discovery Plan and Cut-Off Date.

23       Plaintiff's Discovery Plan.

24           1.    Written discovery to each named Defendant.

25           2.    Depositions of each individual Defendant.

26           3.    Plaintiff is willing to increase the number of allowed  
27 depositions to exceed the statutory limit of 10.

28           4.    Depositions of witnesses with knowledge pertinent.

1           Defendants' Discovery Plan.

2           1.    Written discovery to Plaintiff.

3           2.    Deposition of Plaintiff.

4           3.    Defendants are willing to increase the number of  
5 allowed depositions to exceed the statutory limit of 10.

6           4.    Depositions of witnesses with knowledge pertinent to  
7 case.

8           The Court adopts the following schedule for the case:

9           1.    The parties are ordered to complete all non-expert  
10 discovery on or before January 6, 2012.

11          2.    The parties are directed to disclose all expert  
12 witnesses, in writing, on or before February 3, 2012. Any  
13 rebuttal or supplemental expert disclosures will be made on or  
14 before April 6, 2012. The parties will comply with the  
15 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding  
16 their expert designations. Local Rule 16-240(a) notwithstanding,  
17 the written designation of experts shall be made pursuant to F.  
18 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all  
19 information required thereunder. Failure to designate experts in  
20 compliance with this order may result in the Court excluding the  
21 testimony or other evidence offered through such experts that are  
22 not disclosed pursuant to this order.

23          3.    The parties are ordered to complete all discovery,  
24 including experts, on or before May 7, 2012.

25          4.    The provisions of F. R. Civ. P. 26(b)(4) shall  
26 apply to all discovery relating to experts and their opinions.  
27 Experts shall be fully prepared to be examined on all subjects  
28 and opinions included in the designation and their reports, which

1 shall include every opinion to be rendered and all reasons for  
2 each opinion. Failure to comply will result in the imposition of  
3 sanctions.

4 X. Pre-Trial Motion Schedule.

5 1. All Non-Dispositive Pre-Trial Motions, including any  
6 discovery motions, shall be filed on or before May 22, 2012, and  
7 heard on June 22, 2012, at 9:00 a.m. before Magistrate Judge  
8 Dennis L. Beck in Courtroom 9.

9 2. In scheduling such motions, the Magistrate  
10 Judge may grant applications for an order shortening time  
11 pursuant to Local Rule 142(d). However, if counsel does not  
12 obtain an order shortening time, the notice of motion must comply  
13 with Local Rule 251 and this schedule.

14 3. All Dispositive Pre-Trial Motions are to be  
15 filed no later than June 7, 2012, and will be heard on July 9,  
16 2012, at 10:00 a.m. before the Honorable Oliver W. Wanger, in  
17 Courtroom 3, 7th Floor. In scheduling such motions, counsel  
18 shall comply with Local Rule 230.

19 XI. Pre-Trial Conference Date.

20 1. August 20, 2012, at 11:00 a.m. in Courtroom 3, 7th  
21 Floor, before the Honorable Oliver W. Wanger.

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

24 3. Counsel's attention is directed to Rules 281  
25 and 282 of the Local Rules of Practice for the Eastern District  
26 of California, as to the obligations of counsel in preparing for  
27 the pre-trial conference. The Court insists upon strict  
28 compliance with those rules.

1 XII. Motions - Hard Copy.

2 1. The parties shall submit one (1) courtesy paper copy to  
3 the Court of any motions filed. Exhibits shall be marked with  
4 protruding numbered or lettered tabs so that the Court can easily  
5 identify such exhibits.

6 XIII. Trial Date.

7 1. September 25, 2012, at the hour of 9:00 a.m. in  
8 Courtroom 3, 7th Floor, before the Honorable Oliver W. Wanger,  
9 United States District Judge.

10 2. This is a jury trial.

11 3. Counsels' Estimate Of Trial Time:

12 a. Twelve days.

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

15 XIV. Settlement Conference.

16 1. A Settlement Conference is scheduled for May 15, 2012,  
17 at 10:00 a.m. in Courtroom 9 before the Honorable Dennis L. Beck,  
18 United States Magistrate Judge.

19 2. Unless otherwise permitted in advance by the  
20 Court, the attorneys who will try the case shall appear at the  
21 Settlement Conference with the parties and the person or persons  
22 having full authority to negotiate and settle the case on any  
23 terms at the conference.

24 3. Permission for a party [not attorney] to attend  
25 by telephone may be granted upon request, by letter, with a copy  
26 to the other parties, if the party [not attorney] lives and works  
27 outside the Eastern District of California, and attendance in  
28 person would constitute a hardship. If telephone attendance is

1 allowed, the party must be immediately available throughout the  
2 conference until excused regardless of time zone differences.  
3 Any other special arrangements desired in cases where settlement  
4 authority rests with a governing body, shall also be proposed in  
5 advance by letter copied to all other parties.

6 4. Confidential Settlement Conference Statement.

7 At least five (5) days prior to the Settlement Conference the  
8 parties shall submit, directly to the Magistrate Judge's  
9 chambers, a confidential settlement conference statement. The  
10 statement should not be filed with the Clerk of the Court nor  
11 served on any other party. Each statement shall be clearly  
12 marked "confidential" with the date and time of the Settlement  
13 Conference indicated prominently thereon. Counsel are urged to  
14 request the return of their statements if settlement is not  
15 achieved and if such a request is not made the Court will dispose  
16 of the statement.

17 5. The Confidential Settlement Conference

18 Statement shall include the following:

19 a. A brief statement of the facts of the  
20 case.

21 b. A brief statement of the claims and  
22 defenses, i.e., statutory or other grounds upon which the claims  
23 are founded; a forthright evaluation of the parties' likelihood  
24 of prevailing on the claims and defenses; and a description of  
25 the major issues in dispute.

26 c. A summary of the proceedings to date.

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

1 e. The relief sought.

2 f. The parties' position on settlement,  
3 including present demands and offers and a history of past  
4 settlement discussions, offers and demands.

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

7 1. The amount of punitive damages, if any, shall be tried  
8 in a second phase of a continuous trial after a finding of  
9 liability for punitive damages in the first phase, without regard  
10 to amount.

11 2. Defendants will seek to bifurcate Monell issues from  
12 liability as to the individual Defendants and County of Kern.

13 XVI. Related Matters Pending.

14 1. A related case exists entitled *People of the State of*  
15 *California v. Anthony Michael Lavis*, which is pending in the  
16 Superior Court of California, County of Kern, case number  
17 BF130937A.

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 IT IS SO ORDERED.

15 Dated: February 1, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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