

1 objections to the tentative pretrial order, the court now issues a final pretrial order.

2 Plaintiff brings this action under 42 U.S.C. § 1983 against defendants, alleging that they
3 violated his Fourth Amendment rights and maliciously prosecuted him for murder in 2014.
4 Plaintiff alleges defendants presented false information in an affidavit in support of a warrant for
5 his arrest in order to cause the reviewing magistrate to issue that warrant, and that they did so
6 either deliberately, or with reckless disregard for the truth of the affidavit. According to plaintiff,
7 defendants' actions caused him to be arrested, charged with, and detained in jail on murder
8 charges until a preliminary hearing took place some four months later in the Merced County
9 Superior Court, at which time he was not held to answer on any criminal charge.

10 I. JURISDICTION/VENUE

11 Jurisdiction is predicated on 28 U.S.C. §§ 1331 and 1441(a). Jurisdiction is not contested.
12 Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2). Venue is not contested.

13 II. JURY

14 Both parties have demanded a jury trial. The jury will consist of eight jurors.

15 III. UNDISPUTED FACTS

16 1. On March 30, 2013 (the night before Easter) at approximately 11:00 p.m., a
17 shooting occurred during a large party at a residence located at 9258 Westside Boulevard in
18 Atwater, California (hereinafter referred to as the "Westside Party").

19 2. As a result of the shooting, three persons were killed (collectively hereinafter
20 referred to as the "Easter Homicides").

21 3. The Merced County Sheriff's Department ("Sheriff's Department") responded to
22 the scene and thereafter investigated the Easter Homicides.

23 4. Sheriff's Department Detective Duane Pavelski was initially assigned as the lead
24 investigator of the Easter Homicides.

25 5. Sheriff's Department Detectives Jose Sam Sanchez and Erick Macias assisted in
26 the investigation.

27 6. The Sheriff's Department investigation revealed that two persons were shot in the
28 backyard of the house. Those victims were Matthew Fisher and Samantha Parreira.

1 7. The body of a third victim, Bernabed Hernandez, was found west of the house,
2 alongside Westside Boulevard.

3 8. Two other victims were also injured as a result of the shootings. They were later
4 identified as Anthony Wiggins and Orasio Fierro.

5 9. The Sheriff's Department identified Jacob Tellez as a suspect in the shooting of
6 Bernabed Hernandez based upon an accidental 9-1-1 call made from Tellez's cell phone on the
7 night of the Easter Homicides.

8 10. On March 30, 2013, the Sheriff's Department obtained an arrest warrant for Jacob
9 Tellez. The Affidavit for Probable Cause submitted in support of the arrest warrant was authored
10 by Sheriff's Deputy Orozco.

11 11. On April 15, 2013, Jacob Tellez was arrested and transported to the Merced
12 County Sheriff's Office where he was interviewed by Detective Pavelski.

13 12. Jacob Tellez's April 15, 2013 interview with Detective Pavelski was summarized
14 in Supplemental Police Report No. 47 by Detective Pavelski.

15 13. In May 2013, Detective Macias was assigned as the lead investigator on the Easter
16 Homicide investigation.

17 14. In May 2014, Sergeant Hale was assigned to the Sheriff's Department Major
18 Crimes Detectives Unit.

19 15. On June 18, 2014, Detectives Ruiz and Macias interviewed Marcus Whittaker
20 about two homicides—the Easter Homicides and another unrelated homicide (the Olin Bates
21 homicide)—at the Merced Police Department. After Whittaker's interview, the Police
22 Department gave the Sheriff's Department a copy of the audio recording of the interview. That
23 interview was not memorialized in the Sheriff's Department police reports regarding the Easter
24 Homicides investigation until July 2015.

25 16. Multiple witnesses interviewed by the Sheriff's Department identified Jose
26 Carballido and Jose Botello as the shooters of victims Samantha Parreira and Matthew Fisher.
27 Jose Carballido and Jose Botello were arrested on July 15, 2014, and have been charged with
28 murder. They are currently awaiting trial.

1 17. On July 15, 2014, the Sheriff's Department obtained a second arrest warrant for
2 Jacob Tellez. The Affidavit for Probable Cause submitted in support of that arrest warrant was
3 authored by Detective Macias.

4 18. On July 17, 2014, Jacob Tellez was re-arrested and transported to the Sheriff's
5 Office where he was interviewed by Detectives Sanchez and Macias.

6 19. The July 17, 2014 interview of Jacob Tellez by Detectives Sanchez and Macias
7 was summarized in Supplemental Police Report No. 72 by Detective Sanchez. That report was
8 reviewed and approved by Sergeant Hale.

9 20. On July 20, 2014, Ethan Morse provided a voluntary statement to the Sheriff's
10 Department regarding the Easter Homicides. He was interviewed by Detective Macias. Sergeant
11 Hale was also present during the interview.

12 21. The July 20, 2014 interview of Ethan Morse by Detective Macias was summarized
13 in Supplemental Police Report No. 74, authored by Detective Macias. The report was reviewed
14 and approved by Sergeant Hale. The interview date listed in Report No. 74 is incorrect.

15 22. On July 22, 2014, Detectives Macias and Mike Ruiz interviewed Cameron
16 Johnson regarding the Easter Homicides.

17 23. The July 22, 2014 interview of Cameron Johnson by Detectives Macias and Ruiz
18 was summarized in Supplemental Police Report No. 79, authored by Detective Macias. That
19 report was reviewed and approved by Sergeant Hale.

20 24. On July 22, 2014, Detectives Macias and Ruiz interviewed Sabrina Ceccoli
21 regarding the Easter Homicides.

22 25. The July 22, 2014 interview of Sabrina Ceccoli by Detectives Macias and Ruiz
23 was summarized in Supplemental Police Report No. 80, authored by Detective Ruiz. The report
24 was reviewed and approved by Sergeant Hale.

25 26. On July 22, 2014, Detectives Macias and Sanchez interviewed Robert Tern
26 regarding the Easter Homicides.

27 27. The July 22, 2014 interview of Robert Tern by Detectives Macias and Sanchez
28 was summarized in Supplemental Police Report No. 82, authored by Detective Sanchez. The

1 report was reviewed and approved by Sergeant Hale.

2 28. On July 24, 2014, Detectives Macias and Ruiz interviewed Jacob Delgadillo
3 regarding the Easter Homicides.

4 29. The July 24, 2014 interview of Jacob Delgadillo by Detectives Macias and Ruiz
5 was summarized in Supplemental Police Report No. 84, authored by Detective Macias. The
6 report was reviewed and approved by Sergeant Hale.

7 30. On July 24, 2014, Detectives Sanchez and Justin Ussery interviewed Tony Gomes
8 regarding the Easter Homicides.

9 31. The July 24, 2014 interview of Tony Gomes by Detectives Sanchez and Ussery
10 was summarized in Supplemental Police Report No. 85, authored by Detective Ussery. The
11 report was reviewed and approved by Sergeant Hale.

12 32. On July 24, 2014, the California Attorney General's Office filed a Felony
13 Complaint against Jacob Tellez in Merced County Superior Court, Case No. CRM034519A,
14 charging him with one count of violating Penal Code § 187(a) (murder), one count of violating
15 Penal Code § 26100(c) (shooting from a motor vehicle), one count of violating Penal Code §
16 29610 (possession of firearm by a minor), and one count of violating Penal Code § 186.22(a)
17 (street terrorism).

18 33. On July 25, 2014, the Sheriff's Department obtained an arrest warrant for Ethan
19 Morse. The Affidavit for Probable Cause submitted in support of that arrest warrant was
20 authored by Detective Macias.

21 34. On July 29, 2014, the California Attorney General's Office filed a Felony
22 Complaint against Ethan Morse in Merced County Superior Court, Case No. CRM034519B,
23 charging him with one count of violating Penal Code § 187(a) (murder) and one count of
24 violating Penal Code § 26100(b) (permitting another to shoot from a vehicle).

25 35. Jacob Tellez's criminal case (Case No. CRM034519A) and Ethan Morse's
26 criminal case (Case No. CRM034519B) were consolidated for purposes of the preliminary
27 hearing.

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1 36. The preliminary hearing was conducted on November 10, 12, 13, and 14, 2014.

2 37. All criminal charges brought against Ethan Morse were dismissed by the
3 California Superior Court Judge who presided at the preliminary hearing.

4 **IV. DISPUTED FACTUAL ISSUES**

5 1. Whether defendant Macias recklessly or deliberately misstated material facts in his
6 affidavit in support of the warrant for plaintiff's arrest.

7 2. Whether defendant Hale knew of defendant Macias' misstatements in the affidavit
8 in support of the arrest warrant and approved of the affidavit or failed to prevent the
9 misstatements from being presented to the reviewing magistrate.

10 3. Whether defendants' Macias and Hale acted maliciously or with reckless disregard
11 for the truth in their investigation of the Hernandez murder which led to the prosecution of
12 plaintiff.

13 4. Whether the California Attorney General Office's decision to prosecute plaintiff
14 broke the chain of causation stemming from the actions or failures to act of the defendants.

15 5. Whether defendants Hale, Sanchez and Macias' actions were outrageous and
16 intended to cause plaintiff severe emotional distress.

17 6. Whether, separate and apart from the affidavit in support of the issuance of the
18 arrest warrant for plaintiff, the facts established probable cause for plaintiff's arrest.

19 7. Whether there was an intentional interference or attempted interference with the
20 plaintiff's state or federal constitutional or legal rights and whether the interference or attempted
21 interference was undertaken by threats, intimidation, or coercion.

22 **V. DISPUTED EVIDENTIARY ISSUES/MOTIONS IN LIMINE**

23 The parties have not yet filed motions in limine. The court does not encourage the filing
24 of motions in limine unless they are addressed to issues that can realistically be resolved by the
25 court prior to trial and without reference to the other evidence which will be introduced by the
26 parties at trial. The parties anticipate filing motions in limine on the subjects identified below.

27 Any motions in limine counsel elects to file shall be filed no later than **March 27, 2018**.

28 Opposition shall be filed no later than **April 3, 2018** and any replies shall be filed no later than

1 **April 6, 2018.** Upon receipt of any opposition briefs, the court will notify the parties if it will
2 hear argument on any motions in limine prior to the first day of trial.

3 Plaintiff's Anticipated Motions in Limine

- 4 1. The admissibility of the prior factual findings made by the court at plaintiff's
5 preliminary hearing before the Merced County Superior Court.
- 6 2. The admissibility of evidence that plaintiff or any other occupant of the vehicle
7 driven by plaintiff was drinking alcohol or smoking marijuana on the night of the Easter
8 Homicides.
- 9 3. The admissibility of evidence that plaintiff initially told his parents he had not
10 attended the party.
- 11 4. The admissibility of evidence of the arrest or conviction of Dylan Morse.
- 12 5. The admissibility of Facebook photos or text messages obtained from plaintiff's
13 cell phone or social media accounts.

14 Defendants' Motions in Limine

- 15 1. The admissibility of evidence that this court denied defendants' motion for
16 summary judgment in part.
- 17 2. The admissibility of evidence that defendant Macias was "admonished" for not
18 documenting the interview of Marcus Whittaker.
- 19 3. The admissibility of Roger Clark's expert opinions.
- 20 4. The admissibility of James Hammer's expert opinions.
- 21 5. The admissibility of the prior factual findings made by the court at plaintiff's
22 preliminary hearing before the Merced County Superior Court.
- 23 6. The admissibility of any factual findings made by the state court during the
24 preliminary hearing before the Merced County Superior Court regarding the credibility of
25 witnesses, the weight of evidence, or the inferences to be drawn from certain evidence.
- 26 7. The admissibility of evidence concerning the Hernandez homicide investigation
27 that was conducted after plaintiff's state court preliminary hearing.

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1 8. The admissibility of evidence regarding Sheriff Vern Warnke’s report and follow-
2 up letter to California Attorney General’s Office suggesting that Larry Morse be investigated by
3 that office for potential misconduct.

4 9. The admissibility of Larry Morse’s opinion testimony regarding the California
5 Attorney General’s Office.

6 10. Whether plaintiff’s counsel should be precluded from questioning the Sheriff’s
7 Department detectives in the following manner: “As you sit here today, do you believe/have any
8 doubt that Ethan Morse was guilty/innocent?” or “As you sit here today, do you believe/have any
9 doubt that Anthony Wiggins or Marcus Whittaker had anything to do with Bernabed Hernandez’s
10 murder?”

11 11. The admissibility of Larry Morse’s and Cindy Morse’s opinions regarding
12 plaintiff’s damages.

13 12. Whether Andrew Masengale should be precluded from testifying at trial, and
14 whether his preliminary hearing testimony before the Merced County Superior Court is
15 admissible at trial.

16 13. The admissibility of evidence of Tern’s detention.

17 14. The admissibility of plaintiff’s offer to take a polygraph test.

18 15. The admissibility of any prior unrelated investigations, including, but not limited
19 to, the Anna Diaz case.

20 16. The admissibility of evidence regarding a warrant for and the obtaining of Larry
21 Morse’s gun.

22 17. The admissibility of any information about former Sheriff Pazin, including a
23 voicemail message from Pazin to Larry Morse.

24 18. Whether any reference to the County Board of Supervisors Meeting in January
25 2014 in which Larry Morse criticized the Sheriff’s Department for its handling gang related
26 investigations is admissible.

27 19. Whether any alleged constitutional violations or deficiencies associated with the
28 murder investigation of Jacob Tellez are admissible.

1 20. Whether Larry Morse’s alleged knowledge that defendant Hale was involved in
2 insurance fraud is admissible.

3 21. Whether Robert Tern’s statements regarding Ethan Morse’s character are
4 admissible.

5 22. Whether Sheriff Warnke’s statement he did not think Larry Morse engaged in
6 witness tampering is admissible.

7 23. Whether plaintiff’s opinion that the Merced County detectives “weren’t looking
8 for the truth” or were “trying to make money” is admissible.

9 24. Whether payment by plaintiff’s parents of his criminal attorney’s fees is an
10 admissible element of plaintiff’s damages.

11 25. The admissibility of evidence regarding defendant Macias’s involvement in other,
12 unrelated civil lawsuits.

13 26. The admissibility of evidence regarding defendant Macias’s voluntary transfer out
14 of the detectives unit of the Sheriff’s Department.

15 **VI. RELIEF SOUGHT**

16 1. Plaintiff seeks economic damages of \$72,966.25 in attorneys’ fees and costs
17 related to his state court criminal proceedings.

18 2. Plaintiff seeks economic damages in the amount of \$6,000.00 for the scholarship
19 from Ouachita Baptist University he lost as a result of his arrest, prosecution, and incarceration.

20 3. Plaintiff seeks non-economic damages for damage to his reputation and emotional
21 distress suffered as a result of his arrest, prosecution, and incarceration.

22 4. Plaintiff seeks attorneys’ fees and punitive damages.

23 **VII. POINTS OF LAW**

24 Trial briefs addressing the points of law set forth below shall be filed with this court no
25 later than **7 days before trial** in accordance with Local Rule 285.

- 26 1. The elements of, standards for, and burden of proof applicable to a Fourth Amendment
27 judicial deception claim brought under 42 U.S.C. § 1983 alleging false statements in and
28 material omissions from an arrest warrant affidavit with knowledge and participation by a

- 1 supervisor.
- 2 2. The elements of, standards for, and burden of proof applicable to a Fourth Amendment
- 3 judicial deception claim brought under state law.
- 4 3. The elements of, standards for, and burden of proof applicable to a Fourth Amendment
- 5 malicious prosecution claim brought under 42 U.S.C. § 1983 alleging defendants' bad
- 6 faith conduct that caused the initiation of criminal proceedings against plaintiff, including
- 7 false statements in an affidavit in support of an arrest warrant and the misrepresenting and
- 8 withholding of evidence from the prosecuting Deputy Attorney General.
- 9 4. The elements of, standards for, and burden of proof applicable to plaintiff's claim for
- 10 violations of his constitutional rights under California law (the Bane Civil Rights Act,
- 11 codified at Civil Code § 52.1) and his common law claims for false arrest against
- 12 defendants Macias, Hale and the County of Merced and for intentional infliction of
- 13 emotional distress against defendants Macias, Hale, Sanchez and the County of Merced.
- 14 5. The elements of, standards for, and burden of proof applicable in raising a qualified
- 15 immunity defense at trial.
- 16 6. The law with respect to probable cause and whether an affiant may, in keeping with the
- 17 law, intentionally omit facts material to a probable cause determination from an affidavit
- 18 submitted in support of the issuance of a warrant.
- 19 7. The law governing whether a prosecutor's decision to file charges against plaintiff cuts off
- 20 the chain of causation for purposes of determining liability on the part of defendants
- 21 Macias and Hale.
- 22 8. The law governing mitigation of damages.

23 **VIII. ABANDONED ISSUES**

- 24 1. Plaintiff previously dismissed his defamation claim by stipulation.
- 25 2. Plaintiff has abandoned any aspect of his claim premised on a wrongful search of
- 26 his apartment.

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1 IX. WITNESSES

2 The parties have prepared a joint witness list comprised of the following witnesses:

- 3 1. Plaintiff Ethan Morse
- 4 2. Sergeant Ray Alvarez
- 5 3. Dr. Paul Berg (plaintiff's expert)
- 6 4. Deputy Attorney General Barton Bowers
- 7 5. Tom Cavallero
- 8 6. Roger Clark (plaintiff's expert)
- 9 7. Sabrina Ceccoli
- 10 8. Custodian of Records, Merced Union High School District
- 11 9. Custodian of Records, Merced College
- 12 10. Custodian of Records, Ouachita Baptist University
- 13 11. Jacob Delgadillo
- 14 12. Undersheriff Jason Goins
- 15 13. Tony Gomes
- 16 14. Defendant Charles Hale
- 17 15. James Hammer (plaintiff's expert)
- 18 16. Scott Hardman
- 19 17. Cameron Johnson Valenzuela
- 20 18. Owen Paul Johnson
- 21 19. Defendant Erick Macias
- 22 20. Andrew Masengale
- 23 21. Kirk McAllister
- 24 22. Cindy Morse
- 25 23. Larry Morse
- 26 24. Deputy Ruben Orozco
- 27 25. Detective Duane Pavelski
- 28 26. Michael Piper

- 1 27. Robert Rojas
- 2 28. Detective Mike Ruiz
- 3 29. Defendant Jose Sam Sanchez
- 4 30. Andrew Schriever
- 5 31. Sergeant Scott Skinner
- 6 32. Mark Super, Ph.D. (defendants' expert)
- 7 33. John J. Tefft (defendants' expert)
- 8 34. Jacob Tellez
- 9 35. Robert Tern
- 10 36. Detective Justin Ussery
- 11 37. Katrina Valenti
- 12 38. Vern Warnke

13 Each party may call any of the witnesses listed above.

14 A. **The court does not allow undisclosed witnesses to be called for any purpose,**
15 **including impeachment or rebuttal, unless they meet the following criteria:**

- 16 (1) The party offering the witness demonstrates that the witness is for the
17 purpose of rebutting evidence that could not be reasonably anticipated at
18 the pretrial conference, or
- 19 (2) The witness was discovered after the pretrial conference and the proffering
20 party makes the showing required in paragraph B, below.

21 B. Upon the post pretrial discovery of any witness a party wishes to present at trial,
22 the party shall promptly inform the court and opposing parties of the existence of
23 the unlisted witnesses so the court may consider whether the witnesses shall be
24 permitted to testify at trial. The witnesses will not be permitted unless:

- 25 (1) The witness could not reasonably have been discovered prior to the
26 discovery cutoff;
- 27 (2) The court and opposing parties were promptly notified upon discovery of
28 the witness;

1 (3) If time permitted, the party proffered the witness for deposition; and

2 (4) If time did not permit, a reasonable summary of the witness's testimony
3 was provided to opposing parties.

4 X. EXHIBITS, SCHEDULES, AND SUMMARIES

5 The parties' joint exhibits are listed in **Docket Number 104**. At trial, joint exhibits shall
6 be identified as JX and listed numerically, e.g., JX-1, JX-2. Plaintiff's exhibits are listed in
7 **Docket Number 106**. At trial, plaintiff's exhibits shall be listed numerically. Defendant's
8 exhibits are listed in **Docket Number 105**. At trial, defendant's exhibits shall be listed
9 alphabetically. All exhibits must be pre-marked. No exhibit shall be marked with or entered into
10 evidence under multiple exhibit numbers.

11 The parties must prepare exhibit binders for use by the court at trial, with a side tab
12 identifying each exhibit in accordance with the specifications above. **The court requires three**
13 **separate binders for its own use**. Each binder shall have an identification label on the front and
14 spine.

15 The parties must exchange exhibits no later than **28 days before trial**. Any objections to
16 exhibits are due no later than **14 days before trial**. The final exhibits are to be submitted to the
17 court by **April 12, 2018**. In making any objection to an exhibit, the party is to set forth the
18 grounds for the objection. As to each exhibit which is not objected to, it shall be marked and will
19 be received into evidence when moved without the need for further foundation.

20 A. **The court does not allow the use of undisclosed exhibits for any purpose,**
21 **including impeachment or rebuttal, unless they meet the following criteria:**

22 (1) The party proffering the exhibit demonstrates that the exhibit is for the
23 purpose of rebutting evidence that could not have been reasonably
24 anticipated, or

25 (2) The exhibit was discovered after the issuance of this order and the
26 proffering party makes the showing required in paragraph B, below.

27 B. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly
28 inform the court and opposing parties of the existence of such exhibits so that the

1 court may consider their admissibility at trial. The exhibits will not be received
2 unless the proffering party demonstrates:

- 3 (1) The exhibits could not reasonably have been discovered earlier;
- 4 (2) The court and the opposing parties were promptly informed of their
5 existence;
- 6 (3) The proffering party forwarded a copy of the exhibits (if physically
7 possible) to the opposing party. If the exhibits may not be copied the
8 proffering party must show that it has made the exhibits reasonably
9 available for inspection by the opposing parties.

10 **XI. DISCOVERY DOCUMENTS**

11 Counsel must lodge the sealed original copy of any deposition transcript to be used at trial
12 with the Clerk of the Court no later than **14 days before trial**.

13 Plaintiff may use the following discovery documents at trial:

- 14 1. Defendant Merced County's Responses to Special Interrogatories Set No. 1 and 2.
- 15 2. Defendant Merced County's Responses to Requests for Admissions.

16 Defendants may use the following discovery documents at trial:

- 17 1. Defendant Deputy Erick Macias's Interrogatories to Plaintiff (Set One)
- 18 2. Plaintiff's Responses to Defendant Deputy Erick Macias's Interrogatories (Set
19 One)
- 20 3. Defendant Deputy Erick Macias's Request for Production of Documents to
21 Plaintiff (Set One)
- 22 4. Plaintiff's Responses to Defendant Deputy Erick Macias's Request for Production
23 of Documents (Set One) (including supplemental productions)
- 24 5. Defendant County of Merced's Special Interrogatories to Plaintiff (Set One)
- 25 6. Plaintiff's Responses to Defendant County of Merced's Special Interrogatories
26 (Set One)
- 27 7. Defendant County of Merced's Request for Production of Documents to Plaintiff
28 (Set One)

1 8. Plaintiff's Responses to Defendant County of Merced's Request for Production of
2 Documents (Set One) (including supplemental productions)

3 Either party may use deposition testimony at trial for impeachment purposes. See Fed. R.
4 Civ. P. 32(a)(2).

5 **XII. FURTHER DISCOVERY OR MOTIONS**

6 None.

7 **XIII. STIPULATIONS**

8 None.

9 **XIV. AMENDMENTS/DISMISSALS**

10 None.

11 **XV. SETTLEMENT**

12 The parties attended a settlement conference with United States Magistrate Judge Stanley
13 A. Boone on May 16, 2017, at which time no settlement was reached. No further settlement
14 negotiations or discussions have taken place. As noted at the final pretrial conference, the court
15 will not require a further mandatory settlement conference in this case. However, if desired by
16 the parties prior to trial, the undersigned is willing to schedule a further settlement conferences
17 before Magistrate Judge Boone or before the undersigned in the event all parties were to elect to
18 file a written stipulation waiving any claim of disqualification to the undersigned presiding over
19 the trial of this matter after presiding over such a settlement conference. See L.R. 270(b).

20 **XVI. JOINT STATEMENT OF THE CASE**

21 The parties have agreed to the following joint statement of the case:

22 This is a civil lawsuit that arises out of the Merced County Sheriff's
23 Department's investigation of a gang-related triple homicide that
24 occurred on March 30, 2013 at approximately 11:00 p.m., at a large
house party in Atwater, California.

25 The plaintiff who brought this lawsuit is Ethan Morse. He is suing
26 the County of Merced and three Sheriff's Department detectives
27 that conducted the homicide investigation—Detective Sergeant
Charles Hale, Detective Sam Jose Sanchez, and Detective Erick
Macias.

28 In this lawsuit, the plaintiff contends that these detectives
wrongfully identified him as a suspect in the homicide, wrongfully

1 arrested him for the crime, and caused him to be wrongfully
2 prosecuted for murder. The defendants deny these allegations and
3 contend that they had sufficient evidence to arrest and prosecute
4 plaintiff for murder.

4 XVII. SEPARATE TRIAL OF ISSUES

5 Defendants indicate they believe bifurcation is appropriate, with Phase One consisting of
6 liability, compensatory damages, and the existence of punitive damages, and Phase Two
7 concerning the amount of punitive damages. The court agrees and intends to bifurcate the trial as
8 suggested by defendants.

9 XVIII. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

10 None.

11 XIX. ATTORNEYS' FEES

12 Plaintiff will seek an award of attorneys' fees, if successful. Defendants will also seek an
13 award of attorneys' fees, on the basis that this action is frivolous and without merit. See Legal
14 Servs. of N. Cal., Inc. v. Arnett, 114 F.3d 135, 141 (9th Cir. 1997) (prevailing defendants may be
15 awarded attorneys' fees under 42 U.S.C. § 1988 "only where the action is found to be
16 unreasonable, frivolous, meritless or vexatious") (internal quotations omitted).

17 XX. TRIAL PROTECTIVE ORDER AND REDACTION OF TRIAL EXHIBITS

18 In their submissions, the parties indicated a potential need for a trial protective order. At
19 the final pretrial conference, the parties indicated that these concerns pertained to the identity of
20 individuals whose names might be revealed during the testimony of other witnesses, though the
21 individuals themselves are not expected to testify. Moreover, the parties believed they may be
22 able to come to an agreement that would obviate the need for a trial protective order. Should
23 either party believe a trial protective order is necessary, any such request should be filed **no later**
24 **than 14 days before trial.**

25 XXI. ESTIMATED TIME OF TRIAL/TRIAL DATE

26 Jury trial is set for **April 17, 2018**, at 1:00 p.m. in Courtroom 5 before the Honorable Dale
27 A. Drozd. Trial is anticipated to last ten court days. The parties are directed to Judge Drozd's
28 standard procedures available on his webpage on the court's website.

1 Counsel are to call Renee Gaumnitz, courtroom deputy, at (559) 499-5652, one week prior
2 to trial to ascertain the status of the trial date.

3 **XXII. PROPOSED JURY VOIR DIRE AND PROPOSED JURY INSTRUCTIONS**

4 The parties shall file any proposed jury voir dire **7 days before trial**. Counsel for plaintiff
5 and defendants, respectively, will be limited to thirty minutes of supplemental jury voir dire.

6 The court directs counsel to meet and confer in an attempt to generate a joint set of jury
7 instructions and a verdict form. The court will supply the parties with a copy of its standard civil
8 jury instructions following the issuance of this order. The parties shall file any such joint set of
9 instructions **14 days before trial**, identified as “Joint Jury Instructions and Verdicts.” To the
10 extent the parties are unable to agree on all or some instructions and verdicts, their respective
11 proposed instructions are due **14 days before trial**. Further, if any party objects to the court’s
12 standard instructions or portions thereof, they should so note in these filings.

13 Counsel shall e-mail a copy of all proposed jury instructions and verdicts, whether agreed
14 or disputed, as a Word document to dadorders@caed.uscourts.gov no later than **14 days before**
15 **trial**; all blanks in form instructions should be completed and all brackets removed.

16 Objections to proposed jury instructions must be filed **7 days before trial**; each objection
17 shall identify the challenged instruction and shall provide a concise explanation of the basis for
18 the objection along with citation of authority. When applicable, the objecting party shall submit
19 an alternative proposed instruction on the issue or identify which of his or her own proposed
20 instructions covers the subject.


21 **XXIII. TRIAL BRIEFS**

22 As noted above, trial briefs are due **7 days before trial**.

23 The parties are reminded that pursuant to Rule 16(e) of the Federal Rules of Civil
24 Procedure and Local Rule 283 of this court, this order shall control the subsequent course of this
25 action and shall be modified only to prevent manifest injustice.

26 IT IS SO ORDERED.

27 Dated: September 20, 2017

28 
UNITED STATES DISTRICT JUDGE