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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**

7 **RICHARD DEAN JOHNSON, and**
8 **LORI JOHNSON**

9 **Plaintiffs**

10 **v.**

11 **CITY OF ATWATER; and**
12 **FRANK PIETRO; DAVID WALKER;**
13 **ROBERT VARGAS; DALTON SNYDER;**
14 **and FABIAN VELASQUEZ,**
15 **Each in his official and individual**
16 **capacities;**

17 **Defendants**

CASE NO. 1:16-CV-1636 AWI SAB

SUPPLEMENTAL PRETRIAL ORDER

Motions In Limine Hearing and Trial
Confirmation:

January 14, 2019
1:30 PM, Courtroom 2

Trial: January 29, 2019
8:30 AM, Courtroom 2

18 On September 25, 2018, the Court issued its pretrial order, setting forth the rules of
19 conduct and schedule for all issues leading up to trial. *See* Doc. No. 77. Included in this pretrial
20 order was a briefing schedule for motions in limine, as follows:

21 The hearing for motions in limine will be held at 1:30 PM on January 14, 2019.
22 In addition to addressing any filed motions in limine, at that time the court will
23 also settle, to the extent possible, any other matter pertaining to the conduct of the
24 trial.

25 The parties are expected to be fully cognizant of the legal issues involved in the
26 case by the date of the hearing for motions in limine.

27 By 4:00 PM on December 10, 2018, all motions in limine, with supporting points
28 and authorities, shall be filed and served either personally or by facsimile upon
opposing parties.

By 4:00 PM on December 21, 2018, opposition to any motion in limine shall be
filed and served either personally or by facsimile upon opposing parties. If a
party does not oppose a motion in limine, that party shall file and serve in the
same manner a Statement of Non-Opposition to that motion in limine.

By 4:00 PM on January 4, 2019, any reply to an opposition shall be filed and
served either personally or by facsimile upon opposing parties.

See Id. at p. 21.

1 The Court noted in its pretrial order that the parties had identified the following issues as potential
2 subjects for limine motions:

3 **D. Plaintiffs’ Disputed Evidentiary Issues**

- 4 1. Requesting evidence of Code Enforcement Officer Velazquez’s continued
5 visits to the Johnson residence after the November 30, 2015 incident and after the
6 ruling of the Administrative Hearing Officer;
7 2. Allowing evidence of Plaintiff Richard Johnson’s mental illness;
8 3. Allowing evidence of Defendants’ knowledge of Plaintiff Richard Johnson’s
9 mental illness prior to the incidents of October 6, 2015 and November 30, 2015;
10 4. Exclusion of impeachment evidence of either Plaintiff based upon prior acts or
11 conduct;
12 5. Allowing evidence of damages to Plaintiff Lori Johnson who was also deprived
13 of her First Amendment rights with the taking of the signs, and required medical
14 assistance on November 30, 2015;
15 6. Allowing the testimony of Plaintiff Richard Johnson’s mental health care
16 provider.

17 **E. Defendants’ Disputed Evidentiary Issues**

- 18 1. Excluding any evidence of any medical billing without proper foundation
19 2. Excluding any evidence of Plaintiffs’ prior or subsequent disputes with the City
20 and its employees as irrelevant to the causes of action alleged in the Complaint;
21 3. A request to admonish Plaintiffs to not testify to obvious hearsay from
22 unnamed sources (e.g. “I’ve heard people say...”), as they frequently did during
23 their depositions;
24 4. Excluding any evidence of Plaintiff Richard Johnson’s alleged “mental illness”
25 as irrelevant;
26 5. Should the Court deem any evidence of Plaintiff Richard Johnson’s mental
27 illness relevant, excluding that evidence without proper foundation from a
28 qualified witness;
29 6. Excluding any evidence of any medical diagnosis, conditions, and treatment
30 sought or received by Plaintiffs without proper foundation from a qualified
31 witness as hearsay;
32 7. Excluding all medical records of either Plaintiff without appropriate
33 foundation;
34 8. Admission of impeachment evidence of Plaintiffs based upon prior acts or
35 conduct;
36 9. Excluding all medical records not timely disclosed in discovery;
37 10. Excluding any reference to damages relating to any injury caused to Plaintiff
38 Lori Johnson as she is only a named Plaintiff in the Fourth Cause of Action in
39 Plaintiff’s Second Amended Complaint and there is no evidence nor allegation of
40 how any alleged First Amendment Violation caused any injury to Plaintiff Lori
41 Johnson.

42 *See Id.* at p. 6-7, see also Doc. No. 45 (Joint Pretrial Statement). However, counsel for both
43 parties have since informed the Court that they do not intend to submit motions in limine.

1 The Court is concerned that some of these issues require resolution prior to the start of
2 trial. Particularly, the Court is concerned about the numerous disputes over evidence of Mr.
3 Johnson's mental health and its relevance to Plaintiffs' claims. If the parties have reached an
4 agreement to exclude each of these issues, they should inform the Court as much. If, however,
5 there is no agreement on any of the issues, the Court will require briefing. An expedited briefing
6 schedule is set in the order section below, and is designed to both accommodate the holiday
7 schedule as well as maintain the trial schedule, as set forth in the Pretrial Order.

8 **ORDER**

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The parties shall jointly inform the Court, by December 21, 2018, 2:00p.m., of any
11 issues previously identified as "disputed evidentiary issues" that are no longer in
12 dispute because the propounding party no longer intends to rely upon this evidence at
13 trial;
- 14 2. For any previously-identified "disputed evidentiary issues" that a party still intends to
15 rely upon at trial, the opposing party will submit a motion in limine (with
16 corresponding points and authorities) to the Court by December 28, 2018, with
17 opposition from the propounding party due January 4, 2019 and any opposition reply
18 due January 9, 2019.

19 IT IS SO ORDERED.

20 Dated: December 18, 2018

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22 SENIOR DISTRICT JUDGE