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

TATYANA HARGROVE,)	Case No.: 1:17-cv-01743 JLT
Plaintiff,)	PRETRIAL ORDER
v.)	
)	
CITY OF BAKERSFIELD, et al.,)	
Defendants.)	
)	
)	

Plaintiff seeks monetary damages for their injuries pursuant to the Federal Court Claims Act, 28 U.S.C. § 2671. (*See* Doc. 1)

A. JURISDICTION/ VENUE

This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345(b), and supplemental jurisdiction for Plaintiff’s claims arising under state law pursuant to 28 U.S.C. § 1367. In addition, the venue is proper in the United States District Court for the Eastern District of California. *See* 28 U.S.C. § 1391.

B. UNDISPUTED FACTS

1. Defendants admit that Plaintiff’s claims herein arise out of an incident that took place

1 in the City of Bakersfield, State of California, and within this judicial district.

2 2. The City of Bakersfield maintains, operates and controls the Bakersfield Police
3 Department. The City of Bakersfield is a duly organized public entity existing under the laws of the
4 State of California, it is a chartered subdivision of the State of California with the capacity to sue and
5 be sued it is responsible for the actions, omissions, policies, procedures, practices, and customs of its
6 various agents and agencies.

7 3. The City of Bakersfield employed Defendants Moore and Vasquez.

8 4. Defendants Moore and Vasquez were acting under color of law within the course and
9 scope of their duties as police officers in regard to this incident.

10 5. The incident giving rise to this litigation occurred on Sunday, June 18, 2017.

11 6. On June 18, 2017, at approximately 12:21 p.m., there was a report of an assault with a
12 deadly weapon at the Grocery Outlet located at 6421 Ming Avenue in Bakersfield, California.

13 **C. DISPUTED FACTS**

14 All remaining material facts are disputed, including, but not limited to:

15 1. Whether Defendants Moore or Vazquez had reasonable suspicion to detain Tatyana
16 Hargrove;

17 2. Whether Defendants Moore or Vazquez had probable cause to arrest Tatyana Hargrove;

18 3. Whether, as either a detention or an arrest, the seizure of Tatyana Hargrove was
19 justified;

20 4. Whether Defendants Moore and/or Vazquez used excessive or unreasonable force;

21 5. Whether Defendants Moore or Vazquez participated in or failed to intervene in the
22 wrongful conduct of the other;

23 6. Whether Defendants Moore and/or Vazquez retaliated against Tatyana Hargrove for
24 one or more statements she made during the encounter, such as asking for a warrant or stating that she
25 was being stopped on account of her race, or for attempting to record the encounter on her cellphone.

26 7. Whether Defendants Moore and/or Vazquez were negligent;

27 8. Whether Defendants Moore and/or Vazquez conspired to deprive Hargrove of her
28 rights, including the right to be free from arrest without probable cause and detention absent

1 reasonable suspicion, the right to be free from excessive and unreasonable force, her rights under the
2 First Amendment to free speech and freedom from retaliation, the right to be free from malicious
3 prosecution; the right to substantive due process, and the right to equal protection;

4 9. Whether the Defendant City of Bakersfield ratified the unconstitutional acts of
5 Defendants Moore and/or Vazquez;

6 10. Whether the Defendant City of Bakersfield failed to adequately train Defendants Moore
7 and/or Vazquez, and whether that failure to train was a cause of their unconstitutional acts;

8 11. Whether Defendants Moore and/or Vazquez acted pursuant to an unconstitutional
9 custom, practice, or policy within the police department;

10 12. Whether a substantial motivating reason for the conduct of Defendants Moore and/or
11 Vazquez was Hargrove's race;

12 13. The nature and extent of Plaintiff's damages, including economic and non-economic
13 damages, both past and future; and

14 14. Whether punitive damages should be imposed and, if so, the amount.

15 **Defendants submit that the following additional issues are in dispute:**

16 1. Whether the use of force by Defendant Christopher Moore was excessive;

17 2. Whether the use of force by Defendant George Vasquez was excessive;

18 3. Whether Tatyana Hargrove resisted detention and/or arrest;

19 4. Whether the detention of Plaintiff Hargrove by Defendant Christopher Moore was
20 unlawful;

21 5. Whether the detention of Plaintiff Hargrove by Defendant George Vasquez was
22 unlawful;

23 6. Whether the Defendant Officers had probable cause to stop and/or detail and/or arrest
24 Plaintiff;

25 7. Whether Defendant Christopher Moore violated the Plaintiff's Substantive Due
26 Process Claim (and if such claim can even be made under the Fourteenth Amendment);

27 8. Whether Defendant George Vasquez violated the Plaintiff's Substantive Due Process
28 Claim (and if such claim can even be made under the Fourteenth Amendment);

1 9. Whether Defendant Christopher Moore violated the Plaintiff's Fourteenth Amendment
2 Rights under the Equal Protection clause;

3 10. Whether Defendant George Vasquez violated the Plaintiff's Fourteenth Amendment
4 Rights under the Equal Protection clause;

5 11. Whether Defendants' actions were motivated by Plaintiff's race;

6 12. Whether Plaintiff was treated differently from those who are/were similarly situated;

7 13. Whether Defendant Christopher Moore retaliated against the Plaintiff thereby violating
8 her First Amendment Rights;

9 14. Whether Defendant George Vasquez retaliated against the Plaintiff thereby violating
10 her First Amendment Rights;

11 15. Whether Defendant Christopher Moore and Defendant George Vasquez conspired to
12 violate the Plaintiff's civil rights;

13 16. Whether Plaintiff's civil rights were violated;

14 17. Whether the Defendant Officers violated the Plaintiff's civil rights and whether the
15 City of Bakersfield ratified the conduct of the Defendant Officers;

16 18. Whether the Defendant Officers violated the Plaintiff's civil rights and whether the
17 City of Bakersfield had inadequate training which caused such violation;

18 19. Whether the Defendant Officers violated the Plaintiff's civil rights and whether the
19 City of Bakersfield maintained an Unconstitutional Custom, Practice or Policy which caused the
20 violation of Plaintiff's civil rights;

21 20. Whether the Defendants committed violent acts against the Plaintiff which were
22 motivated by the Plaintiff's race;

23 21. Whether the Defendants violated the Plaintiff's civil rights by use of threats,
24 intimidation or violence (or other Bane Act factors);

25 22. Whether Defendant Moore is liable to Plaintiff for Battery;

26 23. Whether Defendant Vasquez is liable to Plaintiff for Battery;

27 24. Whether the detention and/or arrest of Plaintiff was lawful;

28 25. Whether Defendant Christopher Moore was negligent;

- 1 26. Whether Defendant George Vasquez was negligent;
- 2 27. Whether Defendants Moore and Vasquez are entitled to Qualified Immunity;
- 3 28. Whether there is any evidence of racial animus;
- 4 29. Whether Ms. Hargrove mitigated her damages, if any;
- 5 30. Whether the use of force was justified based on Ms. Hargrove's resistance;
- 6 31. Whether Ms. Hargrove was comparatively negligent;
- 7 32. Whether Ms. Hargrove was resisting detention and/or arrest;
- 8 33. Whether Defendants are immune under the Government Code and/or Penal Code;
- 9 34. Whether Ms. Hargrove's claimed injuries are the result of her own intentional acts;
- 10 35. Whether Defendants had probable cause to stop;
- 11 36. Whether Defendants had probable cause to detain;
- 12 37. Whether Defendants had probable cause to arrest;
- 13 38. Whether Defendants are immune from liability pursuant to Cal. Civ. Code § 3342(b);
- 14 39. Whether Defendants are entitled to an award of attorneys fees and costs.

15 **D. DISPUTED LEGAL ISSUES**

16 None.

17 **E. DISPUTED EVIDENTIARY ISSUES**

18 **Plaintiffs:**

19 1. Plaintiff will move to exclude all information not known to the officers at the time of
20 the incident, to include without limitation all information about Tatyana Hargrove's background that
21 was not known to the officers at the time. In addition to being irrelevant because the officers did not
22 know it at the time of the incident, it is inadmissible character evidence to the extent that the
23 Defendants intend to argue that it makes it more likely that the incident transpired one way as opposed
24 to another. Finally, this evidence poses the danger of unfair prejudice. The information not known to
25 the officers at the time of the incident includes all information regarding Tatyana Hargrove's
26 background, school grades, disciplinary history at school, therapy for unrelated behavioral issues as a
27 juvenile, prior history of fighting, or other alleged prior bad acts.

28 2. Plaintiff will also move to exclude information subsequent to the incident relating to

1 the machete wielding-man, which was not known to the police at the time of the incident and is
2 therefore irrelevant.

3 3. Plaintiff will move to exclude any reference to gangs, drugs, or weapons other than the
4 machetes identified in the dispatch recordings.

5 4. Plaintiff will move to exclude the testimony of expert Kris Mohandie, on the grounds
6 that his opinions are irrelevant, character evidence, misleading, unreliable, lacking in foundation,
7 unhelpful to the jury, and pose the danger of unfair prejudice.

8 5. Plaintiff will move to preclude or limit testimony about the officers' subjective states of
9 mind, beliefs, or fears.

10 6. Plaintiff will move to exclude references to any other crime or incident other than the
11 one to which the officers were directed to respond. This motion would also comprehend references to
12 the area where the incident took place as a "gang neighborhood" or a "high-crime area."

13 7. Plaintiff will move to exclude certain opinions and testimony by Defendants' police
14 practices expert.

15 8. Plaintiff will move to exclude certain opinions and testimony by Defendants' medical
16 expert.

17 9. Plaintiff will file motions regarding the qualified immunity and comparative negligence
18 defenses, to establish how these defenses will (and will not) be handled at trial and in front of the jury.

19 **Defendant:**

20 1. Motion to Exclude the fact that Christopher Moore is no longer paired with his K9
21 partner.

22 2. Motion to Exclude Any alleged Statements Purportedly Given By The Chief of Police
23 Subsequent to this Incident.

24 3. Motion to Exclude Any Discipline of Either Officer.

25 4. Motion to Exclude other IA Reports Pertaining to Other Matters.

26 5. Motion to exclude reference to the Bakersfield Police Department or its officers as the
27 "deadliest police force in America" and/or the use of such other inflammatory terms.

28 6. Motion to exclude any reference to any settlement reached on behalf of any of the

1 Defendants in any other case.

2 7. Motion to exclude any alleged statistics regarding the use of force or deadly force by
3 the Bakersfield Police Department.

4 8. Motion to exclude any reference to the recent report issued by the ACLU.

5 9. Motion to exclude any reference to the Grismore/Hines matter;

6 10. Motion to exclude any reference to the 2004 DOJ Letter;

7 11. Motion to exclude any reference to allegedly wrongful acts by other law enforcement
8 officers or agencies (i.e., Ferguson, Tamir, Rice, etc).

9 12. Motion to exclude any evidence or argument that either the Department of Justice, the
10 FBI, or any other agency is investigating the City of Bakersfield Police Department.

11 13. Motion to exclude non- party witnesses from the courtroom.

12 14. Motion to exclude any golden rule argument.

13 15. Motion to exclude past economic damages.

14 16. Motion to exclude particular future economic damages.

15 17. Motion to exclude surveillance video of incident at the Grocery Outlet.

16 18. Motion to exclude description of suspect that was not known to Defendant officers at
17 time of contact with Ms. Hargrove including but not limited to fact that the suspect had a goatee or
18 was bald.

19 19. Motion to exclude recent arrest/placement on administrative leave of Evan Demestihias.

20 20. Motion to exclude particular exhibits identified by Plaintiff.

21 **F. RELIEF SOUGHT**

22 **Plaintiff**

23 The plaintiff seeks damages for non-economic compensatory damages under federal and state
24 law, including but not limited to physical pain, mental suffering, loss of enjoyment of life,
25 inconvenience, grief, anxiety, and humiliation – both past and future; Economic damages, including
26 both past and future medical expenses; Punitive damages; Statutory damages and civil penalties;
27 Attorneys' fees and costs; Injunctive relief against the Defendant City to prohibit racially-motivated
28 assaults and arrests in the future. In addition, plaintiffs seek a determination of zero comparative

1 negligence on the part of plaintiff Ray Ramone.

2 **Defendant**

3 Defendants contend that all actions taken were entirely lawful and reasonable. Defendants
4 seek dismissal of this case, costs, and attorneys' fees under 42 U.S.C. § 1988 and 42 U.S.C. § 1927,
5 Federal Rule of Civil Procedure 54, Local Rules 292 and 293, and all other applicable statutes and
6 rules.

7 **G. ABANDONED ISSUES**

8 None.

9 **H. WITNESSES**

10 1. The following is a list of witnesses that the parties expect to call at trial, including
11 rebuttal and impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN THIS
12 SECTION, MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR UPON A
13 SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST
14 INJUSTICE." Fed. R. Civ. P. 16(e); Local Rule 281(b)(10).

15 **Plaintiffs' Witnesses**

- 16 1. Chief Lyle Martin, who can be contacted through Defendants' counsel of record
- 17 2. Christopher Moore, who can be contacted through Defendants' counsel of record
- 18 3. George Vazquez, who can be contacted through Defendants' counsel of record
- 19 4. Brent Stratton, who can be contacted through Defendants' counsel of record
- 20 5. Evan Demestihias, who can be contacted through Defendants' counsel of record
- 21 6. Joseph Mullins, who can be contacted through Defendants' counsel of record
- 22 7. Robert Calvin, who can be contacted through Defendants' counsel of record
- 23 8. Trisha Wattree, who can be contacted through Defendants' counsel of record
- 24 9. William Snider, 3105 Sumer Creek Ct, Bakersfield California 93311
- 25 10. Tatyana Hargrove, who can be contacted through Plaintiff's counsel of record
- 26 11. Scott DeFoe (retained expert), 526 21st Street, Huntington Beach, CA 92648
- 27 12. Dr. Sanjog Pangarkar (retained expert), 100 UCLA Medical Plaza, Suite 760, Los
28 Angeles, CA 90095

- 1 13. Dr. Ashok Parmar (non-retained expert), 8325 Brimhall Road, Suite 100, Bakersfield,
2 CA 93312
- 3 14. Dr. Majid Rahimifar (non-retained expert), 2601 Oswell Street, Suite 101, Bakersfield,
4 CA 93306
- 5 15. Kanuele Martin (non-retained expert), 3628 Stockdale Highway, Bakersfield, CA
6 93309
- 7 16. Alecia Reese, who can be contacted through Plaintiff's counsel of record
- 8 17. Craig Reese, who can be contacted through Plaintiff's counsel of record
- 9 18. Elizabeth Lopez, Little Caesars Pizza (Admin. Assistant)
- 10 19. Jerry Lee, 5607 Wilson Rd, Bakersfield, California 93009
- 11 20. Timothy Grismore, who can be contacted through Plaintiff's counsel of record (as to
12 the Monell claim only)
- 13 21. Xavier Hines, who can be contacted through Plaintiff's counsel of record (as to the
14 Monell claim only)
- 15 22. Arturo Gonzalez, 4800 Chinta Drive, Bakersfield, CA 93313 (as to the Monell claim
16 only)
- 17 23. Jesus Trevino, 8200 Kroll Way #252, Bakersfield, CA 93311 (as to the Monell claim
18 only)
- 19 24. Monte Wilson, c/o NAACP Bakersfield, 1317 California Ave.
20 Bakersfield, CA. 93304 (as to the Monell claim only)

21 **Defendants' Witnesses**

- 22 1. Christopher Moore, who can be contacted through Defendants' counsel of record.
- 23 2. George Vasquez, who can be contacted through Defendants' counsel of record.
- 24 3. Brent Stratton, who can be contacted through Defendants' counsel of record.
- 25 4. Evan Demestihias, who can be contacted through Defendants' counsel of record.
- 26 5. Joseph Mullins, who can be contacted through Defendants' counsel of record.
- 27 6. Robert Calvin, who can be contacted through Defendants' counsel of record.
- 28 7. Trisha Wattree, who can be contacted through Defendants' counsel of record.

- 1 8. William Snider, who can be contacted through Defendants' counsel of record.
- 2 9. Clarence Chapman (expert), who can be contacted through Defendants' counsel of record.
- 3 10. Harvey Edmonds M.D. (expert), who can be contacted through Defendants' counsel of
- 4 record.
- 5 11. Kris Mohandie Ph.D. (expert), who can be contacted through Defendants' counsel of record.
- 6 12. Lyle Martin, who can be contacted through Defendants' counsel of record.
- 7 13. Karen Moniz-Smith MFT (non retained expert), Henrietta Weill Memorial Child Guidance
- 8 Clinic, 3828 Stockdale Highway, Bakersfield, CA 93309.
- 9 14. Donna Grays, BA, (non retained expert) Henrietta Weill Memorial Child Guidance Clinic,
- 10 3828 Stockdale Highway, Bakersfield, CA 93309.
- 11 15. Leann Kraetsch, MFT, (non retained expert) Henrietta Weill Memorial Child Guidance
- 12 Clinic, 3828 Stockdale Highway, Bakersfield, CA 93309.
- 13 16. Susan Wooten, MFT, (non retained expert) Henrietta Weill Memorial Child Guidance Clinic,
- 14 3828 Stockdale Highway, Bakersfield, CA 93309.
- 15 17. Frederick Rowe, M.D, (non retained expert) Henrietta Weill Memorial Child Guidance
- 16 Clinic, 3828 Stockdale Highway, Bakersfield, CA 93309.
- 17 18. Custodian of Records for Kern County Superintendent of Schools (Including Sillect
- 18 Community Schools).
- 19 19. Karen Loucks, Kern Community School, 1300 17th Street City Centre, Bakersfield, CA
- 20 93301.
- 21 20. Custodian of Records/Fed. R. Civ. Pro 30(b)(6) witness re Plaintiff's disciplinary history
- 22 while at Tevis Junior High School, 3901 Pin Oak Blvd, Bakersfield, CA 93311.
- 23 21. Kent Williams, Tevis Junior High School, 3901 Pin Oak Blvd, Bakersfield, CA 93311.
- 24 22. Custodian of Records/Fed. R. Civ. Pro 30(b)(6) witness re Plaintiff's disciplinary history
- 25 while at Vista West High School, 7115 Rosedale Hwy, Bakersfield, CA 93308.
- 26 23. Custodian of Records/Fed. R. Civ. Pro 30(b)(6) witness re Plaintiff's disciplinary history
- 27 while at Stockdale High School, 2800 Buena Vista Road, Bakersfield, CA 93311.
- 28 24. Officer Danni Melendez, who can be contacted through Defendants' counsel of record.

- 1 25. Officer Santos Luevano, who can be contacted through Defendants' counsel of record.
- 2 26. Officer Nathan Poteete, who can be contacted through Defendants' counsel of record.
- 3 27. Officer Ryan Clark, who can be contacted through Defendants' counsel of record.
- 4 28. Officer James Montgomery, who can be contacted through Defendants' counsel of record.
- 5 29. Ryan Miller, who can be contacted through Defendants' counsel of record.
- 6 30. Charles Sherman, who can be contacted through Defendants' counsel of record.
- 7 31. Curtis Cope, who can be contacted through Defendants' counsel of record.
- 8 32. Doug Barrier, who can be contacted through Defendants' counsel of record.
- 9 33. Juan Orozco, who can be contacted through Defendants' counsel of record.
- 10 34. Kasey Knott, who can be contacted through Defendants' counsel of record.
- 11 35. Joseph Whittington, Law Office of Rodriguez & Associates, 1128 Truxtun Avenue
- 12 Bakersfield, CA 93301.

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

- a. 15 The party offering the witness demonstrates that the witness is for the purpose of rebutting evidence that
16 could not be reasonably anticipated at the pretrial conference, or
- b. 17 The witness was discovered after the pretrial conference and the proffering party makes the showing
18 required in paragraph B, below.

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

- 23 a. The witness could not reasonably have been discovered prior to the discovery cutoff;
- 24 b. The court and opposing parties were promptly notified upon discovery of the witness;

25 c. If time permitted, the party proffered the witness for deposition; and

26 If time did not permit, a reasonable summary of the witness's testimony was provided to opposing
27 parties.

28 **I. EXHIBITS, SCHEDULES AND SUMMARIES**

1 The following is a list of documents or other exhibits that the parties expect to offer at trial.
2 NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE ADMITTED
3 UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD
4 BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule
5 281(b)(11).

6 1. For a party to use an undisclosed exhibit for any purpose, they must meet the
7 following criteria:

8. The party proffering the exhibit demonstrates that the exhibit is for the purpose of rebutting evidence
9 that could not have been reasonably anticipated, or
10. The exhibit was discovered after the issuance of this order and the proffering party makes the showing
11 required in paragraph 2, below.

12 2. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly inform
13 the court and opposing parties of the existence of such exhibits so that the court may consider their
14 admissibility at trial. The exhibits will not be received unless the proffering party demonstrates:

- 15 a. The exhibits could not reasonably have been discovered earlier;
16 b. The court and the opposing parties were promptly informed of their existence; and
17. The proffering party forwarded a copy of the exhibits (if physically possible) to the opposing party. If
18 the exhibits may not be copied the proffering party must show that it has made the exhibits reasonably
19 available for inspection by the opposing parties.

20 **Plaintiffs’ Exhibits**

- 21 1. BPD Photographs (H6K73354-H6K73409)
22 2. BPD General Offense Hardcopy (Police Report)
23 3. Recorded and Transcribed IA Interviews
24 4. CAD Call Hardcopy
25 5. Dispatch Tape / Radio Traffic
26 6. Use of Force Report
27 7. Select BPD Policies
28 8. Select POST learning domains

- 1 9. Bakersfield Californian article containing Lyle Martin statements
- 2 10. Channel 23 news article containing Lyle Martin statements
- 3 11. Bakersfield Police Memorandum and Citizen Complaint, Case Number CC2015-025.
- 4 12. Citizen Complaint/Internal Affairs Investigation Case Number IA2016-025
- 5 13. Citizen Complaint/Internal Affairs Investigation Case Number CC2015-0017
- 6 14. Citizen Complaint/Internal Affairs Investigation Case Number IA2017-008
- 7 15. NAACP Video
- 8 16. Written record of phone call with Lyle Martin
- 9 17. Bakersfield Police Department Internal Affairs Division Year End Report 2015
- 10 18. Bakersfield Police Department Internal Affairs Year End Report 2016
- 11 19. Internal Affairs 2017 Annual Report

Defendant's Exhibits

- 13 1. Use of Force Interview (Audio and Transcribed)
- 14 2. Select Photographs of the Scene, Plaintiff, Defendant Officers, and Plaintiff's
- 15 belongings
- 16 3. Select Henrietta Weill Records
- 17 4. Select Kern Medical Center Records
- 18 5. Select records from Tevis Junior High School
- 19 6. Select records from Vista High School
- 20 7. Select Records from Kern County Superintendent of Schools
- 21 8. Photograph of Suspect arrested for the crime
- 22 9. Hargrove NAACP video
- 23 10. Voluntary Dismissal with Prejudice executed by Monte Wilson
- 24 11. Audi interview of Timothy Grismore
- 25 12. Video Deposition of Timothy Grismore
- 26 13. Grismore/Hines NAACP video
- 27 14. Kern Community College District (Bakersfield College) Records for Timothy
- 28 Grismore

- 1 15. Kern Community College District (Bakersfield College) Records for Timothy
- 2 Grismore
- 3 16. Discovery Responses from Timothy Grismore refusing to produce information
- 4 pertaining to his alleged Medical Marijuana Card
- 5 17. Kern County Artietis pertaining to Timothy Grismore
- 6 18. Kern County Artietis pertaining to Xavier Hines
- 7 19. Music Videos produced by Monte Wilson
- 8 20. Email from Joseph Whittington re agreement to voluntarily dismiss *Wilson v. COB*, in
- 9 exchange for a waiver of costs.
- 10 21. Photographs of Trevino incident/scene
- 11 22. Photographs of Wilson incident/scene
- 12 23. Photographs of Gonzalez incident/scene

13 On or before **September 19, 2019** counsel **SHALL** meet and confer to discuss any disputes
14 related to the above listed exhibits and to pre-mark and examining each other's exhibits. Any exhibits
15 not previously disclosed in discovery **SHALL** be provided via e-mail or overnight delivery so that it is
16 received by **September 17, 2019**.

17 1. At the exhibit conference, counsel will determine whether there are objections to the
18 admission of each of the exhibits and will prepare separate indexes; one listing joint exhibits, one
19 listing Plaintiffs' exhibits and one listing Defendant's exhibits. In advance of the conference, counsel
20 must have a complete set of their proposed exhibits in order to be able to fully discuss whether
21 evidentiary objections exist. Thus, any exhibit not previously provided in discovery **SHALL** be
22 provided at least five court days in advance of the exhibit conference.

23 2. At the conference, counsel shall identify any duplicate exhibits, i.e., any document
24 which both sides desire to introduce into evidence. These exhibits **SHALL** be marked as a joint
25 exhibit and numbered as directed above. Joint exhibits **SHALL** be admitted into without further
26 foundation.

27 All Joint exhibits will be pre-marked with numbers preceded by the designation "JT" (e.g.
28 JT/1, JT/2, etc.). Plaintiffs' exhibits will be pre-marked with numbers beginning with 1 by the

1 designation PX (e.g. PX1, PX2, etc.). Defendant’s exhibits will be pre-marked with numbers
2 beginning with 501 preceded by the designation DX (e.g. DX501, DX502, etc.). The parties SHALL
3 number each page of any exhibit exceeding one page in length (e.g. PX1-1, PX1-2, PX1-3, etc.).

4 If originals of exhibits are unavailable, the parties may substitute legible copies. If any
5 document is offered that is not fully legible, the Court may exclude it from evidence.

6 Each joint exhibit binder shall contain an index which is placed in the binder before the
7 exhibits. The index shall consist of a column for the exhibit number, one for a description of the
8 exhibit and one column entitled “Admitted in Evidence” (as shown in the example below).

9 **INDEX OF EXHIBITS**

10 **ADMITTED**

11 **EXHIBIT# DESCRIPTION IN EVIDENCE**

12 3. As to any exhibit which is not a joint exhibit but to which there is no objection to its
13 introduction, the exhibit will likewise be appropriately marked, i.e., as PX1, or as DX501 and will be
14 indexed as such on the index of the offering party. Such exhibits will be admitted upon introduction
15 and motion of the party, without further foundation.

16 4. Each exhibit binder shall contain an index which is placed in the binder before the
17 exhibits. Each index shall consist of the exhibit number, the description of the exhibit and the three
18 columns as shown in the example below.

19 **INDEX OF EXHIBITS**

20 **ADMITTED OBJECTION OTHER**

21 **EXHIBIT# DESCRIPTION IN EVIDENCE FOUNDATION OBJECTION**

22 5. On the index, as to exhibits to which the only objection is a lack of foundation, counsel
23 will place a mark under the column heading entitled “Admissible but for Foundation.”

24 6. On the index, as to exhibits to which there are objections to admissibility that are not
25 based solely on a lack of foundation, counsel will place a mark under the column heading entitled
26 “Other Objections.”

27 After the exhibit conference, Plaintiff and counsel for the defendants **SHALL** develop four
28 complete, legible sets of exhibits. The parties **SHALL** deliver three sets of their exhibit binders to the

1 Courtroom Clerk and provide one set to their opponent, no later than 4:00 p.m., on **October 11, 2019**.
2 Counsel **SHALL** determine which of them will also provide three sets of the joint exhibits to the
3 Courtroom Clerk.

4 7. The Parties **SHALL** number each page of any exhibit exceeding one page in length.

5 **J. POST-TRIAL EXHIBIT RETENTION**

6 Counsel who introduced exhibits at trial **SHALL** retrieve the original exhibits from the
7 courtroom deputy following the verdict in the case. The parties' counsel **SHALL** retain possession of
8 and keep safe all exhibits until final judgment and all appeals are exhausted.

9 **K. DISCOVERY DOCUMENTS**

10 The following is a list of discovery documents – portions of depositions, answers to
11 interrogatories, and responses to requests for admissions – that the parties expect to offer at trial.
12 **NO DISCOVERY DOCUMENT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE**
13 **ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER**
14 **SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.”** Fed. R. Civ. P. 16(e); Local
15 Rule 281(b)(12).

16 **Plaintiffs' Documents**

- 17 1. Defendants' Initial Disclosures (4/18/2018)
- 18 2. Defendants' Supplemental Disclosure (10/4/2018)
- 19 3. Defendant City of Bakersfield's Responses to Plaintiff's RFPD, Set One
- 20 4. Defendant City of Bakersfield's Responses to Plaintiff's RFPD, Set Two

21 **Defendant's Documents**

- 22 1. Plaintiff's Initial Rule 26 Disclosure
- 23 2. Plaintiff's Responses to Interrogatories Propounded by Defendant City of Bakersfield
- 24 3. Plaintiff's Supplemental Responses to Interrogatories Propounded by Defendant City of
25 Bakersfield
- 26 4. Plaintiff's Responses to Interrogatories Propounded by Defendant Christopher Moore
- 27 5. Plaintiff's Supplemental Responses to Interrogatories Propounded by Defendant
28 Christopher Moore

1 6. Plaintiff's Responses to Interrogatories Propounded by Defendant George Vasquez

2

3 7. Plaintiff's Supplemental Responses to Interrogatories Propounded by Defendant
4 George Vasquez

5 **L. MOTIONS IN LIMINE**

6 Any party may file motions in limine. The purpose of a motion in limine is to establish in
7 advance of the trial that certain evidence should not be offered at trial. "Although the Federal Rules of
8 Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the
9 district court's inherent authority to manage the course of trials." Luce v. United States, 469 U.S. 38,
10 40 n. 2 (1984); Jonasson v. Lutheran Child and Family Services, 115 F. 3d 436, 440 (7th Cir. 1997).
11 The Court will grant a motion in limine, and thereby bar use of the evidence in question, only if the
12 moving party establishes that the evidence clearly is not admissible for any valid purpose. Id.

13 **In advance of filing any motion in limine, counsel SHALL meet and confer to determine**
14 **whether they can resolve any disputes and avoid filing motions in limine. The conference should**
15 **be in person but, if this is not possible, SHALL, at a minimum, be telephonic. Written meet-**
16 **and-confer conferences are unacceptable. Along with their motions in limine, the parties**
17 **SHALL file a certification detailing the conference such to demonstrate counsel have in good**
18 **faith met and conferred and attempted to resolve the dispute. Failure to provide the**
19 **certification may result in the Court refusing to entertain the motion.**

20 Any motions in limine must be filed with the Court by **September 23, 2019**. The motion must
21 clearly identify the nature of the evidence that the moving party seeks to prohibit the other side from
22 offering at trial. Any opposition to the motion must be served on the other party and filed with the
23 Court by **September 30, 2019**. The Court sets a hearing on the motions in limine on **October 7, 2019**,
24 at 9:00 a.m. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access
25 Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of
26 the intent to appear telephonically no later than five court days before the noticed hearing date.

27 The parties are reminded they may still object to the introduction of evidence during trial.

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1 **M. FURTHER DISCOVERY OR MOTIONS**

2 Plaintiff intends to file the motions in limine described above. Plaintiff also expects to make
3 motions under Rule 50 during trial as to any affirmative defenses asserted by Defendants as to which a
4 reasonable jury would not have a legally sufficient evidentiary basis to find for the Defendants after
5 Defendants have been fully heard.

6 Defendants intend to file various Motions in Limine. The Motions in Limine that are currently
7 contemplated are set forth in Section E of this Joint Pretrial Statement. Defendants also intend to file a
8 Motion to Bifurcate both the *Monell* claims and the amount of punitive damages from liability issue of
9 the named officers. Defendants intend to file a Motion to substitute a witness in place of Evan
10 Demestihias, who had been offered previously as a Fed. Civ. Pro. 30(b)(6) witness. Defendants reserve
11 the right to supplement and/or amend those Motions, which are specifically identified. Defendants will
12 file a Motion pursuant to both Fed. R. Civ. P 50(a) and Fed. R. Civ. Pro 50(b).

13 **N. STIPULATIONS**

14 None.

15 **O. AMENDMENTS/ DISMISSALS**

16 The parties agree to the dismissal of the “Doe Defendants” from the Plaintiff’s’ Complaint.
17 This request is **GRANTED**.

18 **P. SETTLEMENT NEGOTIATIONS**

19 The parties recently engaged in a settlement conference, but the matter has not settled.

20 **Q. AGREED STATEMENT**

21 The parties do not believe that any part of this action can be or should be presented based upon
22 an Agreed Statement of Facts. However, the parties will attempt to reach an agreement regarding an
23 acceptable Neutral Statement to be read to the jury pool.

24 **R. SEPARATE TRIAL OF ISSUES**

25 **Plaintiff**

26 Plaintiff agrees to the bifurcation of the amount of punitive damages but otherwise opposes
27 bifurcation.

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Defendants

Defendants seek bifurcation of the *Monell* claims as well as the amount of punitive damages, if any, that should be awarded.

The Court **ORDERS** that the issue of *Monell* liability and the amount of punitive damages will be bifurcated and/or trifurcated. The Court declines to engage the jury in determinations of other claimed instances of constitutional violations based upon custom and policy until there is a determination of individual liability. The Court finds that the risk of jury confusion and unfair prejudice is overwhelming and, if there is no individual liability, presentation of this evidence would represent an undue waste of time.

In the event the trial proceeds to the *Monell* phase, the plaintiff is cautioned that she will be permitted to present only evidence that proves the unconstitutional custom or policy she contends caused the civil rights violations she suffered. This evidence must demonstrate sufficiently similar conduct such that the entity was alerted or should have been, that the plaintiff was at risk of suffering a constitutional violation.¹

S. APPOINTMENT OF IMPARTIAL EXPERTS

None requested.

T. ATTORNEYS' FEES

The parties will seek an award of attorneys' fees as appropriate as a post-trial motion.

U. TRIAL DATE/ ESTIMATED LENGTH OF TRIAL

A jury trial is set for **October 15, 2019** at 8:30 a.m. before the Honorable Jennifer L. Thurston at the United States Courthouse, 510 19th Street, Bakersfield, California. Trial is expected to last 5-10 days.

V. TRIAL PREPARATION AND SUBMISSIONS

1. Trial Briefs

The parties are relieved of their obligation under Local Rule 285 to file trial briefs. If any party wishes to file a trial brief, they must do so in accordance with Local Rule 285 and be filed on or before

¹ The Court observes that, based upon what it knows as of now, the Trevino and Gonzalez matters seem to be significantly different factually.

1 **October 7, 2019.**

2 **2. Jury Voir Dire**

3 The parties are required to file their proposed voir dire questions, in accordance with Local
4 Rule 162.1, on or before **October 7, 2019.**

5 **3. Jury Instructions & Verdict Form**

6 The parties shall serve, via e-mail or fax, their proposed jury instructions in accordance with
7 Local Rule 163 and their proposed verdict form on one another no later than **September 23, 2019.** The
8 parties shall conduct a conference to address their proposed jury instructions and verdict form no later
9 than **September 26, 2019.** At the conference, the parties SHALL attempt to reach agreement on jury
10 instructions and verdict form for use at trial. The parties shall file all agreed-upon jury instructions and
11 verdict form no later than **October 7, 2019** and identify such as the agreed-upon jury instructions and
12 verdict forms. At the same time, the parties SHALL lodge via e-mail a copy of the joint jury
13 instructions and joint verdict form (in Word format) to JLTOOrders@caed.uscourts.gov.

14 If and only if, the parties after a genuine, reasonable and good faith effort, cannot agree upon
15 certain specific jury instructions and verdict form, the parties shall file their respective proposed
16 (disputed) jury instructions and proposed (disputed) verdict form no later than **October 7, 2019** and
17 identify such as the disputed jury instructions and verdict forms. At the same time, the parties SHALL
18 lodge via e-mail, a copy of his/their own (disputed) jury instructions and proposed (disputed) verdict
19 form (in Word format) to JLTOOrders@caed.uscourts.gov.

20 In selecting proposed instructions, the parties shall use Ninth Circuit Model Civil Jury
21 Instructions or California's CACI instructions to the extent possible. All jury instructions and verdict
22 forms shall indicate the party submitting the instruction or verdict form (i.e., joint, plaintiff's,
23 defendant's, etc.), the number of the proposed instruction in sequence, a brief title for the instruction
24 describing the subject matter, the complete text of the instruction, and the legal authority supporting
25 the instruction. Each instruction SHALL be numbered.

26 **W. OBJECTIONS TO PRETRIAL ORDER**

27 Any party may, within 10 days after the date of service of this order, file and serve written
28 objections to any of the provisions set forth in this order. Such objections shall clearly specify the

1 requested modifications, corrections, additions or deletions.

2 **X. MISCELLANEOUS MATTERS**

3 None.

4 **Y. COMPLIANCE**

5 Strict compliance with this order and its requirements is mandatory. All parties and their
6 counsel are subject to sanctions, including dismissal or entry of default, for failure to fully comply
7 with this order and its requirements.

8
9 IT IS SO ORDERED.

10 Dated: September 16, 2019

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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