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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALFRED JAMES FOY,
Plaintiff,
v.
VALLEJO POLICE DEPT., ET AL.,
Defendants.

No. 2:11-cv-03262-MCE-CMK-P

SUPPLEMENTAL PRETRIAL ORDER

The Court makes the following findings and orders which supplements the Court's Pretrial Order of January 4, 2017 ("Pretrial Order"). ECF No. 106. To the extent this order conflicts with prior orders, this order shall govern:

I. EXHIBITS - SCHEDULES AND SUMMARIES

The parties are ordered to follow the below guidelines when filing their exhibits listed in the Pretrial Order.

Plaintiff failed to designate exhibits to be used at trial. Defendants' exhibits shall be listed alphabetically. The parties shall use the standard exhibit stickers provided by the Court Clerk's Office. All multi-page exhibits shall be stapled or otherwise fastened together and each page within the exhibit shall be numbered. All photographs shall be marked individually. The list of exhibits shall not include excerpts of depositions which may be used to impeach witnesses.

- 1 A. No other exhibits will be permitted to be introduced unless:
- 2 (1) The party proffering the exhibit demonstrates that the exhibit is for
- 3 the purpose of rebutting evidence, or
- 4 (2) The exhibit was discovered after the pretrial statements were filed
- 5 and the proffering party makes the showing required in paragraph “B”, below.

6 B. Upon the post-pretrial discovery of exhibits, the parties shall promptly

7 inform the Court and opposing party of the existence of such exhibits so that the Court

8 may consider at trial their admissibility. The exhibits will not be received unless the

9 proffering party demonstrates:

- 10 (1) The exhibits could not reasonably have been discovered earlier;
- 11 (2) The Court and opposing parties were promptly informed of their
- 12 existence;
- 13 (3) The proffering party forwarded a copy of the exhibit(s) (if physically
- 14 possible) to opposing parties. If the exhibit(s) may not be copied, the proffering party
- 15 must show that the exhibit(s) were made reasonably available for inspection by opposing
- 16 party.

17 C. Defendants are ordered to provide Plaintiff with hard copies of all exhibits

18 and a copy of their exhibit list on the first day of trial. Defendants are further ordered to

19 provide an electronic version of all exhibits and their exhibit list to the Courtroom Deputy

20 not later than **January 17, 2017**. The exhibit list should be in Microsoft Word and shall

21 be emailed to mceorders@caed.uscourts.gov not later than **January 17, 2017**. Exhibits

22 shall be emailed to the same address. The Court does not require paper copies of

23 exhibits. Exhibits will be offered at trial and will be ruled on at that time.

24 **II. DISCOVERY DOCUMENTS**

25 **A. Filing Depositions**

26 It is the duty of the parties to ensure that any deposition which is to be used at

27 trial has been provided to the Courtroom Deputy. Defendants are ordered to submit

28 electronic copies of all deposition excerpts to the Courtroom Deputy as provided in

1 Section I.C (above). Portions of depositions intended to be offered or read into
2 evidence—except for portions to be used only for impeachment or rebuttal—shall be
3 transmitted to the Courtroom Deputy as provided in Section I.C not later than **January**
4 **17, 2017**. Defendants are further ordered to provide Plaintiff with copies of such
5 deposition excerpts on the first day of trial.

6 **B. Interrogatories**

7 Defendants are ordered to provide portions of Answers to Interrogatories intended
8 to be offered or read into evidence at the trial to the Courtroom Deputy as provided in
9 Section I.C not later than **January 17, 2017**. Defendants are further ordered to provide
10 copies of such Answers to Plaintiff on the first day of trial.

11 **III. FURTHER DISCOVERY OR DISCOVERY MOTIONS**

12 Pursuant to the Court's Scheduling Order, all discovery and law and motion was
13 to have been completed. The parties are free to engage in informal agreements
14 regarding discovery and law and motion matters. However, any such agreements will
15 not be enforceable in this Court.

16 **IV. AGREED STATEMENTS - JOINT STATEMENT OF CASE**

17 It is mandatory that the parties shall file a short, jointly-prepared statement
18 concerning the nature of this case that will be read to the jury at the commencement of
19 trial (NO EXCEPTIONS). The joint statement of the case shall include in plain concise
20 language Plaintiff's claims and the corresponding defenses to those claims. The
21 purpose of the joint statement of the case is to inform the jury, at the outset, what the
22 case is about. The statement must be filed with the Court on or before **January 17,**
23 **2017**.

24 **V. PROPOSED JURY INSTRUCTIONS, VOIR DIRE, VERDICT FORM**

25 **A. Jury Instructions**

26 The parties are directed to meet and confer and to attempt to agree upon a joint
27 set of jury instructions. The parties shall use the Ninth Circuit Model Jury Instructions
28 and any revisions. Alternate instruction or authority may only be used if a Ninth Circuit

1 Model Jury Instruction is unavailable. Attached for the parties' review are the opening
2 and closing instructions for your use. The joint set of instructions must be filed by
3 **January 17, 2017**, and shall be identified as the "Jury Instructions Without Objection."

4 All instructions shall be, to the extent possible, concise, understandable, and free
5 from argument. See Local Rule 163(c). Parties shall also note that any modifications of
6 instructions from statutory authority, case law, or from any form of pattern instructions
7 must specifically state the modification by underlining additions and bracketing deletions.

8 **B. Verdict Form**

9 The parties must file a joint verdict form(s) concurrently with proposed jury
10 instructions by **January 17, 2017**. If necessary, a special verdict or interrogatories shall
11 be included for all factual disputes submitted to the jury that must be resolved before
12 questions of law can be decided, and for any other issue on which specific responses
13 are desired. See Local Rule 163(e).

14 **C. Voir Dire**

15 The parties shall submit proposed voir dire questions to the Court. The Court
16 reserves the right to conduct all examination of prospective jurors. Notwithstanding this
17 reservation, the Court will permit each side up to ten (10) minutes to conduct voir dire, if
18 desired. The voir dire questions shall be filed with the Court by **January 17, 2017**.

19 **D. Submission of Documents to the Court**

20 If available to the party, at the time of filing their respective proposed jury
21 instructions, verdict form(s), and voir dire questions, the parties shall also electronically
22 mail to the Court in digital format and compatible with Microsoft Word, the proposed jury
23 instructions and verdict form(s). These documents should be sent to
24 mceorders@caed.uscourts.gov.

25 **VI. AUDIO/VISUAL EQUIPMENT**

26 Defendants are required to file electronically a request to the Courtroom Deputy
27 Clerk, Stephanie Deutsch, by **January 17, 2017**, if they wish to reserve and arrange for
28 orientation on the Court's mobile audio/visual equipment for presentation of evidence.

1 Orientation is unavailable to Plaintiff because he is in custody.

2 **VII. TRIAL BRIEFS**

3 As stated in the Pretrial Order, the parties shall file trial briefs not later than
4 **January 17, 2017**. The parties are directed to Local Rule 285 regarding the content of
5 trial briefs.

6 **VIII. EVIDENTIARY AND/OR PROCEDURAL MOTIONS**

7 As stated in the Pretrial Order, any evidentiary or procedural motions (“motions in
8 limine”) are to be filed by **January 13, 2017**, and Oppositions must be filed by **January**
9 **18, 2017**. The motions will be heard by the Court on the first day of trial.

10 **IX. DATE AND LENGTH OF TRIAL**

11 A jury trial is scheduled for **January 23, 2017**, and is confirmed for two (2) days.
12 The trial will consist of seven (7) jurors.

13 The Court will permit each side up to one (1) hour for closing arguments. Plaintiff
14 will be permitted to reserve time for rebuttal purposes but will be required to monitor any
15 time so reserved.

16 IT IS SO ORDERED.

17 Dated: January 4, 2017

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19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE
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