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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

V. W., a minor, by and  
through her Guardian Ad  
Litem, Tenaya Barber,  
Individually and as Successor  
in Interest of Decedent  
MICHAEL WHITE,

Plaintiffs,

v.

CITY OF VALLEJO, a municipal  
corporation; ROBERT  
NICHELINI, in his individual  
and official capacity as  
Chief of Police; Officers  
Does 1-25, individually,  
jointly and severally,

Defendants.

No. CIV 12-1629 LKK/AC

**STATUS (PRETRIAL SCHEDULING) CONFERENCE**

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES  
WHICH THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL  
AND PARTIES MUST COMPLY. A FAILURE TO COMPLY WITH THE TERMS OF  
THIS ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER  
SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR

1 AN ORDER OF JUDGMENT.

2 Pursuant to court order, a Status (Pretrial Scheduling)  
3 Conference was held in chambers on November 25, 2013. Benjamin  
4 Nisenbaum appeared telephonically as counsel for plaintiffs;  
5 Furah Z. Faruqui appeared telephonically as counsel for  
6 defendants. After hearing, the court makes the following  
7 findings and orders:

8 **SERVICE OF PROCESS**

9 All parties have been served and no further service is  
10 permitted except with leave of court, good cause having been  
11 shown.

12 **JOINDER OF PARTIES/AMENDMENTS**

13 No further joinder of parties or amendments to pleadings is  
14 permitted except with leave of court, good cause having been  
15 shown. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604  
16 (9th Cir. 1992).

17 **JURISDICTION/VENUE**

18 Jurisdiction is predicated upon 42 U.S.C. §§ 1331, 1343, is  
19 undisputed, and is hereby found to be proper, as is venue.

20 **FICTITIOUSLY-NAMED DEFENDANTS**

21 This action, including any counterclaims, cross-claims, and  
22 third-party complaints is hereby DISMISSED as to all DOE or other  
23 fictitiously-named defendants.

24 **MOTION HEARING SCHEDULES**

25 All law and motion except as to discovery is left open, save  
26 and except that it shall be conducted so as to be completed by  
27 **December 24, 2014.** The word "completed" in this context means  
28 that all law and motion matters must be **heard** by the above date.

1 Because this date is not necessarily a date previously set aside  
2 for law and motion hearings, it is incumbent upon counsel to  
3 contact this court's courtroom deputy, Ana Rivas at (916) 930-  
4 4133, sufficiently in advance so as to ascertain the dates upon  
5 which law and motion will be heard and to properly notice its  
6 motion for hearing before that date. Counsel are cautioned to  
7 refer to Local Rule 230 regarding the requirements for noticing  
8 such motions on the court's regularly scheduled law and motion  
9 calendar. **Opposition or statement of non-opposition to all**  
10 **motions shall be filed not later than 4:30 p.m. fourteen (14)**  
11 **days preceding the hearing date, or by proof of service by mail**  
12 **not less than seventeen (17) days preceding the hearing date.**  
13 This paragraph does not preclude motions for continuances,  
14 temporary restraining orders or other emergency applications, and  
15 is subject to any special scheduling set forth in the  
16 "MISCELLANEOUS PROVISIONS" paragraph below.

17 At the time of filing a motion, opposition, or reply,  
18 counsel are directed to email a copy in word processing format to  
19 lkk-pleadings@caed.uscourts.gov.

20 The parties should keep in mind that the purpose of law and  
21 motion is to narrow and refine the legal issues raised by the  
22 case, and to dispose of by pretrial motion those issues that are  
23 susceptible to resolution without trial. To accomplish that  
24 purpose, the parties need to identify and fully research the  
25 issues presented by the case, and then examine those issues in  
26 light of the evidence gleaned through discovery. If it appears  
27 to counsel after examining the legal issues and facts that an  
28 issue can be resolved by pretrial motion, counsel are to file the

1 appropriate motion by the law and motion cutoff set forth supra.

2 **Unless prior permission has been granted, memoranda of law**  
3 **in support of and in opposition to motions are limited to thirty**  
4 **(30) pages, and reply memoranda are limited to fifteen (15)**  
5 **pages. The parties are also cautioned against filing multiple**  
6 **briefs to circumvent this rule.**

7 Where the parties bring motions for summary judgment, the  
8 court will deem facts which are apparently undisputed as  
9 undisputed under Fed. R. Civ. P. 56(e), unless specifically  
10 reserved and that party tenders evidence to support the  
11 reservation.

12 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY  
13 PRETRIAL MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL  
14 ORDINARILY BE VIEWED AS A WAIVER AT THE TIME OF PRETRIAL.  
15 COUNSEL ARE CAUTIONED THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE  
16 BEEN TENDERED TO THE COURT BY PRETRIAL MOTION MUST BE RESOLVED BY  
17 THE COURT AFTER LAW AND MOTION CUTOFF, FOR INSTANCE WHERE THE  
18 ISSUE IS JURISDICTION, SUBSTANTIAL SANCTIONS WILL BE LEVIED  
19 AGAINST COUNSEL WHO FAIL TO TIMELY FILE AN APPROPRIATE MOTION.

20 Counsel are further reminded that motions in limine are  
21 procedural devices designed to address the admissibility of  
22 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH  
23 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF  
24 MOTIONS IN LIMINE AT THE TIME OF TRIAL.

25 **DISCOVERY**

26 No modifications of the discovery requirements found in the  
27 Federal Rules is ordered.

28 All discovery is left open, save and except that it shall be

1 so conducted as to be completed by **October 24, 2014**. The word  
2 "completed" means that all discovery shall have been conducted so  
3 that all depositions have been taken and any disputes relative to  
4 discovery shall have been resolved by appropriate order if  
5 necessary and, where discovery has been ordered, the order has  
6 been complied with. Motions to compel discovery must be noticed  
7 on the magistrate judge's calendar in accordance with the local  
8 rules of this court and so that such motions will be heard not  
9 later than **September 24, 2014**. In this regard, all counsel are  
10 to designate in writing and file with the court and serve upon  
11 all other parties a final list of the names of all experts that  
12 they propose to tender at trial not later than **60 (sixty)** days  
13 before the close of discovery herein established. All designated  
14 experts shall submit written reports which counsel shall exchange  
15 at the time of designation. The contents of the report must  
16 comply with Fed. R. Civ. P. 26 (a)(2)(B). All experts so  
17 designated are to be fully prepared to render an informed opinion  
18 at the time of designation so that they may fully participate in  
19 any deposition taken by the opposing party. Experts will not be  
20 permitted to testify at the trial as to any information gathered  
21 or evaluated, or opinion formed, after deposition taken  
22 subsequent to designation.

23 An expert witness not appearing on said lists will not be  
24 permitted to testify unless the party offering the witness  
25 demonstrates: (a) that the necessity of the witness could not  
26 have been reasonably anticipated at the time the lists were  
27 exchanged; (b) the court and opposing counsel were promptly  
28 notified upon discovery of the witness; and (c) that the witness

1 was promptly proffered for deposition.

2 **MID-LITIGATION STATEMENTS**

3 Not later than fourteen (14) days prior to the close of  
4 discovery, all parties shall file with the court and serve on all  
5 other parties a brief statement summarizing all law and motion  
6 practice heard by the court as of the date of the filing of the  
7 statement, whether the court has disposed of the motion at the  
8 time the statement is filed and served, and the likelihood that  
9 any further motions will be noticed prior to the close of law and  
10 motion. The filing of this statement shall not relieve the  
11 parties or counsel of their obligation to timely notice all  
12 appropriate motions as set forth above.

13 **FINAL PRETRIAL CONFERENCE**

14 The Final Pretrial Conference is **SET** for **March 30, 2015, at**  
15 **1:30 p.m.** Counsel are cautioned that counsel appearing for  
16 Pretrial will in fact try the matter.

17 Counsel for all parties are to be fully prepared for trial  
18 at the time of the Pretrial Conference, with no matters remaining  
19 to be accomplished except production of witnesses for oral  
20 testimony. Counsel are referred to Local Rules 280 and 281  
21 relating to the contents of and time for filing Pretrial  
22 Statements. In addition to those subjects listed in Local Rule  
23 281(b), the parties are to provide the court with a plain,  
24 concise statement which identifies every non-discovery motion  
25 tendered to the court, and its resolution. A FAILURE TO COMPLY  
26 WITH LOCAL RULES 280 AND 281 WILL BE GROUNDS FOR SANCTIONS.

27 The parties shall file Separate Pretrial Statements, the  
28 contents and timing of which are set forth in Local Rule 281,

1 except that the parties are to prepare a JOINT STATEMENT with  
2 respect to the undisputed facts and disputed factual issues of  
3 the case. See Local Rule 281(b)(3), (4), and (6). The parties  
4 are reminded to include in their joint statement all disputed and  
5 undisputed special factual information as required by Local Rule  
6 281(b)(6). Notwithstanding the provisions of Local Rule 281, the  
7 Joint Statement of Undisputed Facts and Disputed Factual Issues  
8 is to be filed with the court concurrently with the filing of  
9 plaintiffs' Pretrial Statement.

10 The undisputed facts and disputed factual issues are to be  
11 set forth in two separate sections. In each section, the parties  
12 should identify first the general facts relevant to all causes of  
13 action. After identifying the general facts, the parties should  
14 then identify those facts which are relevant to each separate  
15 cause of action. In this regard, the parties are to number each  
16 individual fact or factual issue. Where the parties are unable  
17 to agree as to what factual issues are properly before the court  
18 for trial, they should nevertheless list in the section on  
19 "DISPUTED FACTUAL ISSUES" all issues asserted by any of the  
20 parties and explain by parenthetical the controversy concerning  
21 each issue. Each individual disputed fact or factual issue shall  
22 include the following introductory language: "Whether or not . .  
23 . ." The parties should keep in mind that, in general, each fact  
24 should relate or correspond to an element of the relevant cause  
25 of action. If the case is tried to a jury, the undisputed facts  
26 will be read to the jury.

27 Pursuant to Local Rule 281(b)(10) and (11), the parties are  
28 required to provide in their Pretrial Statements a list of

1 witnesses and exhibits that they propose to proffer at trial, no  
2 matter for what purpose. These lists shall not be contained in  
3 the Pretrial Statement itself, but shall be attached as separate  
4 documents to be used as addenda to the Final Pretrial Order.  
5 Plaintiffs' exhibits shall be listed numerically; defendants'  
6 exhibits shall be listed alphabetically. In the event that the  
7 alphabet is exhausted, defendants' exhibits shall be marked "2A-  
8 2Z, 3A-3Z, etc." The Pretrial Order will contain a stringent  
9 standard for the proffering of witnesses and exhibits at trial  
10 not listed in the Pretrial Order. Counsel are cautioned that the  
11 standard will be strictly applied. On the other hand, the  
12 listing of exhibits or witnesses which counsel do not intend to  
13 call or use will be viewed as an abuse of the court's processes.

14 Pursuant to Local Rule 281(b)(12), a party is required to  
15 provide a list of all answers to interrogatories and responses to  
16 requests for admission that the party expects to offer at trial.  
17 This list should include only those documents or portions thereof  
18 which the party expects to offer in its case-in-chief. Unless  
19 otherwise barred by a rule of evidence or order of this court,  
20 the parties remain free to tender appropriate discovery documents  
21 during trial for such purposes as, but not limited to,  
22 impeachment or memory refreshment.

23 Pursuant to Local Rule 281(b)(8), the parties' Pretrial  
24 Statements shall contain a "statement of legal theory, etc."  
25 Each party shall commence this section by specifying as to each  
26 claim whether federal or state law governs, and if state law, the  
27 state whose law is applicable.

28 Counsel are also reminded that, pursuant to Fed. R. Civ. P.



1 16, it will be their duty at the Pretrial Conference to aid the  
2 court in (a) formulation and simplification of issues and the  
3 elimination of frivolous claims or defenses; (b) settling of  
4 facts which should be properly admitted; and (c) the avoidance of  
5 unnecessary proof and cumulative evidence. Counsel must prepare  
6 their Pretrial Statements, and participate in good faith at the  
7 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO  
8 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include  
9 monetary sanctions, orders precluding proof, eliminations of  
10 claims or defenses, or such other sanctions as the court deems  
11 appropriate.

12 **TRIAL SETTING**

13 Trial is **SET** for **June 30, 2015**, at 10:30 a.m. Trial will be  
14 by jury. The parties represent in good faith that the trial will  
15 take approximately ten (10) days.

16 **SETTLEMENT CONFERENCE**

17 A Settlement Conference will be set before a judge other  
18 than the trial judge at the time of the Pretrial Conference.

19 Counsel are cautioned to have a principal capable of  
20 disposition present at the Settlement Conference or to be fully  
21 authorized to settle the matter on any terms and at the  
22 Settlement Conference.

23 **MISCELLANEOUS PROVISIONS**

24 The parties are reminded that pursuant to Fed. R. Civ. P.  
25 16(b), the Status (pretrial scheduling) Order **shall not be**  
26 **modified except by leave of court upon a showing of good cause.**  
27 Counsel are cautioned that changes to any of the scheduled dates  
28 will necessarily result in changes to all other dates. Thus,

1 even where good cause has been shown, the court will not grant a  
2 request to change the discovery cutoff date without modifying the  
3 pretrial and trial dates.

4 **Agreement by the parties pursuant to stipulation does not**  
5 **constitute good cause. Nor does the unavailability of witnesses**  
6 **or counsel, except in extraordinary circumstances, constitute**  
7 **good cause.**

8 The parties are reminded of their continuing obligation to  
9 supplement their statements relative to the identification of  
10 parent corporations and any publicly held company that owns 10%  
11 or more of the party's stock within a reasonable time of any  
12 change in the information.


13 The parties are admonished that they are not to cite or  
14 refer to any of the quotations inscribed in the pavers on the  
15 front plaza of the United States Courthouse in any written or  
16 oral presentation to the court or a jury.

17 There appear to be no other matters presently pending before  
18 the court that will aid the just and expeditious disposition of  
19 this matter.

20 IT IS SO ORDERED.

21 DATED: November 25, 2013.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT