

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MONTAE HOWARD, an individual,  
Plaintiff,

v.

CITY OF VALLEJO, a municipal  
corporation; ROBERT GREENBERG  
and ROBERT KERR, individually  
and in their official  
capacities as law enforcement  
officers for the City of  
Vallejo Police Department;  
DOES 1-50, inclusive,  
individually and in their  
capacities as law enforcement  
officers and/or personnel for  
the City of Vallejo Police  
Department,

Defendants.

No. CIV 13-1439 LKK/KJN

**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

1 SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR  
2 AN ORDER OF JUDGMENT.

3 Pursuant to court order, a Status (Pretrial Scheduling)  
4 Conference was held in chambers on January 13, 2014. DeWitt M.  
5 Lacy appeared as counsel for plaintiff; Richard W. Osman appeared  
6 as counsel for defendants. After hearing, the court makes the  
7 following 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 28 U.S.C. § 1343, is  
19 undisputed, and is hereby found to be proper, as is venue.

20 **MOTION HEARING SCHEDULES**

21 All law and motion except as to discovery is left open, save  
22 and except that it shall be conducted so as to be completed by  
23 **March 1, 2015**. The word "completed" in this context means that  
24 all law and motion matters must be **heard** by the above date.  
25 Because this date is not necessarily a date previously set aside  
26 for law and motion hearings, it is incumbent upon counsel to  
27 contact this court's courtroom deputy, Ana Rivas at (916) 930-  
28 4133, sufficiently in advance so as to ascertain the dates upon

1 which law and motion will be heard and to properly notice its  
2 motion for hearing before that date. Counsel are cautioned to  
3 refer to Local Rule 230 regarding the requirements for noticing  
4 such motions on the court's regularly scheduled law and motion  
5 calendar. **Opposition or statement of non-opposition to all**  
6 **motions shall be filed not later than 4:30 p.m. fourteen (14)**  
7 **days preceding the hearing date, or by proof of service by mail**  
8 **not less than seventeen (17) days preceding the hearing date.**  
9 This paragraph does not preclude motions for continuances,  
10 temporary restraining orders or other emergency applications, and  
11 is subject to any special scheduling set forth in the  
12 "MISCELLANEOUS PROVISIONS" paragraph below.

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

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

26 **Unless prior permission has been granted, memoranda of law**  
27 **in support of and in opposition to motions are limited to thirty**  
28 **(30) pages, and reply memoranda are limited to fifteen (15)**

1 pages. The parties are also cautioned against filing multiple  
2 briefs to circumvent this rule.

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

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

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

21 **DISCOVERY**

22 No modifications of the discovery requirements found in the  
23 Federal Rules is ordered.

24 All discovery is left open, save and except that it shall be  
25 so conducted as to be completed by **January 1, 2015**. The word  
26 "completed" means that all discovery shall have been conducted so  
27 that all depositions have been taken and any disputes relative to  
28 discovery shall have been resolved by appropriate order if

1 necessary and, where discovery has been ordered, the order has  
2 been complied with. Motions to compel discovery must be noticed  
3 on the magistrate judge's calendar in accordance with the local  
4 rules of this court and so that such motions will be heard not  
5 later than **December 1, 2014**. In this regard, all counsel are to  
6 designate in writing and file with the court and serve upon all  
7 other parties a final list of the names of all experts that they  
8 propose to tender at trial not later than **thirty (30) days** before  
9 the close of discovery herein established. All designated  
10 experts shall submit written reports which counsel shall exchange  
11 at the time of designation. The contents of the report must  
12 comply with Fed. R. Civ. P. 26 (a)(2)(B). All experts so  
13 designated are to be fully prepared to render an informed opinion  
14 at the time of designation so that they may fully participate in  
15 any deposition taken by the opposing party. Experts will not be  
16 permitted to testify at the trial as to any information gathered  
17 or evaluated, or opinion formed, after deposition taken  
18 subsequent to designation.

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

#### 26 **MID-LITIGATION STATEMENTS**

27 Not later than fourteen (14) days prior to the close of  
28 discovery, all parties shall file with the court and serve on all

1 other parties a brief statement summarizing all law and motion  
2 practice heard by the court as of the date of the filing of the  
3 statement, whether the court has disposed of the motion at the  
4 time the statement is filed and served, and the likelihood that  
5 any further motions will be noticed prior to the close of law and  
6 motion. The filing of this statement shall not relieve the  
7 parties or counsel of their obligation to timely notice all  
8 appropriate motions as set forth above.

9 **FINAL PRETRIAL CONFERENCE**

10 The Final Pretrial Conference is **SET** for **June 1, 2015, at**  
11 **1:30 p.m.** Counsel are cautioned that counsel appearing for  
12 Pretrial will in fact try the matter.

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

23 The parties shall file Separate Pretrial Statements, the  
24 contents and timing of which are set forth in Local Rule 281,  
25 except that the parties are to prepare a JOINT STATEMENT with  
26 respect to the undisputed facts and disputed factual issues of  
27 the case. See Local Rule 281(b)(3), (4), and (6). The parties  
28 are reminded to include in their joint statement all disputed and

1 undisputed special factual information as required by Local Rule  
2 281(b)(6). Notwithstanding the provisions of Local Rule 281, the  
3 Joint Statement of Undisputed Facts and Disputed Factual Issues  
4 is to be filed with the court concurrently with the filing of  
5 plaintiff's Pretrial Statement.

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

23 Pursuant to Local Rule 281(b)(10) and (11), the parties are  
24 required to provide in their Pretrial Statements a list of  
25 witnesses and exhibits that they propose to proffer at trial, no  
26 matter for what purpose. These lists shall not be contained in  
27 the Pretrial Statement itself, but shall be attached as separate  
28 documents to be used as addenda to the Final Pretrial Order.

1 Plaintiff's exhibits shall be listed numerically; defendants'  
2 exhibits shall be listed alphabetically. In the event that the  
3 alphabet is exhausted, defendants' exhibits shall be marked "2A-  
4 2Z, 3A-3Z, etc." The Pretrial Order will contain a stringent  
5 standard for the proffering of witnesses and exhibits at trial  
6 not listed in the Pretrial Order. Counsel are cautioned that the  
7 standard will be strictly applied. On the other hand, the  
8 listing of exhibits or witnesses which counsel do not intend to  
9 call or use will be viewed as an abuse of the court's processes.

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

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

24 Counsel are also reminded that, pursuant to Fed. R. Civ. P.  
25 16, it will be their duty at the Pretrial Conference to aid the  
26 court in (a) formulation and simplification of issues and the  
27 elimination of frivolous claims or defenses; (b) settling of  
28 facts which should be properly admitted; and (c) the avoidance of



unnecessary proof and cumulative evidence. Counsel must prepare their Pretrial Statements, and participate in good faith at the Pretrial Conference, with these aims in mind. A FAILURE TO DO SO MAY RESULT IN THE IMPOSITION of SANCTIONS which may include monetary sanctions, orders precluding proof, eliminations of claims or defenses, or such other sanctions as the court deems appropriate.

#### **TRIAL SETTING**

Trial is **SET** for **September 1, 2015**, at 10:30 a.m. Trial will be by jury. The parties represent in good faith that the trial will take approximately seven (7) days.

#### **SETTLEMENT CONFERENCE**

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

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

#### **MISCELLANEOUS PROVISIONS**

The parties are reminded that pursuant to Fed. R. Civ. P. 16(b), the Status (pretrial scheduling) Order **shall not be modified except by leave of court upon a showing of good cause.** Counsel are cautioned that changes to any of the scheduled dates will necessarily result in changes to all other dates. Thus, even where good cause has been shown, the court will not grant a request to change the discovery cutoff date without modifying the pretrial and trial dates.

**Agreement by the parties pursuant to stipulation does not**

1 constitute good cause. Nor does the unavailability of witnesses  
2 or counsel, except in extraordinary circumstances, constitute  
3 good cause.


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

9 The parties are admonished that they are not to cite or  
10 refer to any of the quotations inscribed in the pavers on the  
11 front plaza of the United States Courthouse in any written or  
12 oral presentation to the court or a jury.

13 There appear to be no other matters presently pending before  
14 the court that will aid the just and expeditious disposition of  
15 this matter.

16 IT IS SO ORDERED.

17 DATED: January 13, 2014.

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22 LAWRENCE K. KARLTON  
23 SENIOR JUDGE  
24 UNITED STATES DISTRICT COURT  
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