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CITY OF CONCORD AND OFFICER B. COLLINS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSE O. ROCHIN,

Plaintiff,

vs.

CITY OF CONCORD, OFFICER B.  
COLLINS, and DOES 1 through 20,  
inclusive,

Defendants.

Case No. CV 09-0758 JL

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT AND  
~~PROPOSED~~ CASE MANAGEMENT  
ORDER**

Date: August 12, 2009  
Time: 10:30 a.m.  
Judge: Hon. James Larson  
Dept: Courtroom F, 15<sup>th</sup> Floor (SF)

Action Filed: 2/25/2009

The parties hereby jointly submit this Case Management Conference Statement and Proposed Case Management Order per FRCP and Local Rules.

**1. Jurisdiction and Service**

The parties agree that this Court has subject matter jurisdiction over all claims in this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. The parties further agree that this Court has pendent jurisdiction to hear and decide the claims arising out of state law pursuant to 28 U.S.C. § 1367. The parties further agree that this Court has personal jurisdiction over all parties,

JOINT CASE MANAGEMENT CONFERENCE  
STATEMENT AND [PROPOSED] CASE  
MANAGEMENT ORDER CV 09-0758 JL

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1 and that venue in the Northern District of California is proper. All parties have been served and  
2 have appeared.

## 3 **2. Relevant Facts**

### 4 Plaintiff's Contentions:

5 Plaintiff Jose Rochin lives with his common law spouse and three minor children in an  
6 apartment located at 3480 Royal Road in the City of Concord. The apartment complex consists  
7 of two separate two story units facing one another with a common courtyard in between. Plaintiff  
8 has lived in this apartment with his family for the past nine years. He is a self employed licensed  
9 Landscape Contractor working in Contra Costa County for the past 25 years. On July 27, 2008,  
10 Mr. Rochin was seated at his desk located near the kitchen area of his apartment working at his  
11 computer doing payroll while several of his employees were standing by in the apartment waiting  
12 to get paid. It was a warm summer day and the front door to the apartment was open.

13 Several police officers came to the front door asking for "Carlos Rochin." They identified  
14 themselves as Concord Police. From his seat at his desk he replied that there was no Carlos here,  
15 and told the officers that he was Jose Rochin. The police officers demanded that that he come  
16 outside. After he shut down his computer, he went to the front door where two officers ushered  
17 him out the door. He was immediately instructed to put his hands up, which he did, and two of  
18 the officers grabbed him threw him to the concrete patio face first. One officer put his knee on  
19 his head, another officer put his knee against his back and a female officer was on his legs. Mr.  
20 Rochin kept telling the officers that he was Jose Rochin and not Carlos Rochin. While he was  
21 pinned on the ground the offices grabbed his arms and pulled his hands behind his back and  
22 handcuffed him. The officers then pulled him up by his hands and arms, forcibly extending his  
23 arms up toward his shoulders wrenching his shoulders and causing him to bend way over as they  
24 escorted him to the squad car that was parked on the street in the sun in front of the apartment  
25 complex. Throughout this time Mr. Rochin kept trying to tell the officers that he was not Carlos  
26 but Jose, but the officers ignored him.

27 After sitting in the hot squad car with all the windows rolled up for over an hour, Michelle  
28 Rainwater, plaintiff's common law wife, arrived back from the store (where she had gone just

1 before the police arrived to cash a check to pay plaintiff's workers) and was told by her neighbors  
 2 that the police accused Jose of being someone called Carlos and that the Police arrested him and  
 3 put him inside a police squad car that was still parked in front of the apartment. Michelle  
 4 approached the police officers telling them that plaintiff was Jose Rochin and the "father of my  
 5 children." At that time, the police removed plaintiff's wallet from his back pocket to confirm his  
 6 identify. Nevertheless, plaintiff was arrested for allegedly resisting and obstructing the officers  
 7 and transported to the Concord Police station where he was detained for several hours before  
 8 being released. He was issued a citation to appear in court, however charges were never filed and  
 9 the matter was dropped.

10 Several neighbors and employees of plaintiff witnessed these events from various  
 11 locations at the apartment complex. All these witnesses claim that plaintiff was complying with  
 12 the officers' demands and was not resisting.

### 13 Defendants' Contentions

14 On July 27, 2008, City of Concord police officers were dispatched to a report of a domestic  
 15 disturbance at 3480 Royal Rd., Apartment #3, Concord, California. Dispatch advised the officers  
 16 that the complainant, Yvonne Iniguez, was leaving her pregnant sister's residence and saw her  
 17 sister's boyfriend, Jose Rochin ("Rochin"), pushing her sister and throwing things.

18 Officer Brandon Collins, Officer T. Roberts, and Officer C. Souza arrived on scene. The  
 19 three officers went to the apartment and found the front door wide open. Officer Collins knocked  
 20 on the door and made verbal contact with a male seated inside the apartment who identified  
 21 himself as "Jose," later confirmed to be Rochin by his California Drivers' License. There were  
 22 two other males located in the kitchen area of the apartment. Rochin was angered by the officers'  
 23 presence and said that he and his wife had simply been arguing. Officer Collins stepped inside  
 24 and asked Rochin if he could speak to Rochin outside. Rochin was non-compliant to the request  
 25 and continued what he was doing. Officer Collins again asked Rochin to step outside so the  
 26 officers could speak with him. Rochin began throwing things around the apartment and yelled  
 27 obscenities. Finally, Rochin reluctantly agreed to step outside with the officers.

1 As Rochin was walking outside, Officer Collins noticed Rochin was wearing a leather  
2 case on his belt. A closer look at the case revealed it contained a large pocket knife. Once  
3 outside, Officer Collins wanted to remove the knife from Rochin for the officers' safety and he  
4 also wanted to search Rochin for additional weapons. Officer Collins told Rochin to place his  
5 hands on his head. Rochin did not comply with the request and kept his hands at his sides.  
6 Rochin became even more belligerent and once again started using obscenities. Officer Collins  
7 again told Rochin to put his hands on his head and began to reach for Rochin's right wrist. As  
8 Officer Collins was grasping Rochin's wrist, Rochin immediately resisted, locking his arms down  
9 at his sides and clenching his fists. Rochin then began to pull away from Officer Collins by  
10 yanking his arms from his grasp. Officer Collins knew Rochin was armed with a knife and felt  
11 that Rochin was a threat to himself and the other officers.

12 Officer C. Souza grabbed Rochin's left arm and Officer Collins grabbed Rochin's right  
13 arm. Rochin was resisting the officers by refusing to follow demands to give the officers his  
14 hands as they tried to place Rochin's hands behind his back. Officer Souza wrapped his arm  
15 around Rochin's neck and used a leg sweep to get Rochin on the ground. Officers Collins  
16 assisted Officer Souza by leading Rochin to the ground. All three went to the ground, where  
17 Rochin continued to struggle and resist. Officer Collins laid down across Rochin's mid-section in  
18 an attempt to keep him on the ground. Officer Collins had to pry Rochin's right arm from under  
19 his body because he was still resisting. Officer Collins placed a handcuff on Rochin's right wrist  
20 and then tried to assist Officer Souza in retrieving Rochin's left arm, which was also under his  
21 body.

22 Once Rochin was in handcuffs, the officers helped him to his feet. Rochin was yelling  
23 and cussing, complaining that the left handcuff was too tight. Officer Collins noticed several  
24 subjects standing around watching the incident. Officer Collins did not know who the subjects  
25 were or if they were there to assist Rochin. Officer Collins determined that it was not the safest  
26 area to attempt to adjust Rochin's handcuff. Rochin was told several times that as soon as he got  
27 to the patrol vehicle, out of the complex and in a safer area, the officers would adjust the  
28 handcuffs. While walking to the patrol car, Rochin stopped several times and tried to turn

1 towards the officers. Therefore, Officer Collins administered a left rear wrist lock and Officer  
 2 Souza administered a right rear wrist lock and assisted him Rochin to the patrol car. While at the  
 3 patrol car, Officer Collins adjusted the handcuffs, assured proper fit, and double locked them.  
 4 Officer Collins then secured Rochin in the back seat of his patrol car.

### 5 **3. Legal Issues**

6 Plaintiff alleges five causes of action against the City of Concord and Officer Collins.  
 7 Plaintiff alleges that Defendants violated his civil rights under federal law and further violated  
 8 legal duties owed to him under state law. The principal legal issues in dispute include whether  
 9 any federal constitutional rights were violated and whether any state torts were committed.

### 10 **4. Motions**

11 No motions are currently contemplated. The Defendants may file a motion for summary  
 12 judgment and/or summary adjudication in this matter. All parties anticipate filing motions in  
 13 limine.

### 14 **5. Amendment of Pleadings**

15 At this time no amendments are anticipated.

### 16 **6. Evidence Preservation**

17 The parties have mutually agreed to preserve all potentially relevant evidence.

### 18 **7. Disclosures**

19 The parties have exchanged initial disclosures in this case. No deadline for expert  
 20 disclosures has yet been set by the Court.

### 21 **8. Discovery**

22 Plaintiffs anticipate taking the deposition of the Concord police officers involved in the  
 23 incident as well as other percipient witnesses. In addition, plaintiff intends to propound written  
 24 discovery including interrogatories and requests for production of documents.

25 Defendants will be taking the deposition of Plaintiff and will be propounding written  
 26 discovery on Plaintiff. Defendants may also take the depositions of other identified percipient  
 27 witnesses. The Defendants will oppose any irrelevant and/or overbroad discovery requests of the  
 28

1 Plaintiff, including any requests for personnel related records of the involved officers and Monell  
 2 related discovery.

3 **9. Class Actions**

4 Not applicable.

5 **10. Related Cases**

6 Not applicable.

7 **11. Relief**

8 Plaintiff seeks recovery of monetary damages for personal injuries and for violation of his  
 9 constitutional rights as a result of Defendants alleged wrongful conduct as described in the  
 10 complaint on file herein. The full nature and extent of these damages is currently unknown.  
 11 Plaintiff's attorneys will also seek recovery of attorney's fees and costs under the applicable  
 12 statute.

13 **12. Settlement and ADR**

14 The parties have agreed to participate in mediation and have been appointed James  
 15 Hodgkins, Esq. from the Office of the City Attorney for the City of Oakland as the mediator. The  
 16 parties are in the process of scheduling the mediation for sometime in mid November of 2009.

17 **13. Consent to Magistrate Judge for All Purposes**

18 The parties have consented to being assigned to a Magistrate Judge (Your Honor) for all  
 19 purposes.

20 **14. Other References**

21 The case is not suitable for reference to binding arbitration, a special master, or the  
 22 Judicial Panel on Multidistrict Litigation.

23 **15. Narrowing of Issues**

24 As discovery is in its infancy, this matter is too premature to narrow the issues for trial as  
 25 of yet. However, the parties will work to narrow the issues through the discovery process and via  
 26 stipulations.

27 **16. Expedited Schedule**

28 This case cannot be handled on an expedited basis.

**17. Scheduling**

The parties propose the following schedule in this matter:

<b>Event</b>	<b>Proposed Deadline</b>
Last Day to Add New Parties or Claims per FRCP	November 2, 2009
Completion of non-expert discovery	April 2, 2010
Expert Disclosure Deadline	April 16, 2010
Rebuttal Expert Disclosure Deadline	April 30, 2010
Completion of Expert Discovery	June 4, 2010
Last Day to Hear Dispositive motions	August 27, 2010
File Pre-Trial Conference Statements	October 18, 2010
Pre-Trial Conference (subject to Court's availability)	October 26, 2010
Trial Date (subject to Court's availability)	November 15, 2010

**18. Trial**

The case will be tried to a jury. Trial is estimated to take 4-5 court days.

**19. Disclosure of Non-Party Interested Entities or Persons**

The parties are unaware of any non-parties whose interests could be substantially affected by the outcome of the proceeding.

**20. Other Matters**

There does not appear to be any other matters needing discussion at this point.

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Dated: July \_\_, 2009

McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
 PFALZER, BORGES & BROTHERS LLP

By: 

James V. Fitzgerald, III  
 Noah G. Blechman  
 Attorneys for Defendants  
 CITY OF CONCORD AND OFFICER B. COLLINS

Dated: July 29, 2009

BENNETT & JOHNSON LLP

By: 

William C. Johnson  
 Attorney for Plaintiff  
 JOSE O. ROCHIN

### ORDER

The parties proposed schedule agreed to herein shall be ordered as follows:

Event	Proposed Deadline
Last Day to Add New Parties or Claims per FRCP	November 2, 2009
Completion of non-expert discovery	April 2, 2010
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**IT IS SO ORDERED.**

Dated: August 12, 2009

By: 

Hon. James Larson  
 United States District Court Magistrate Judge