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18 CITY OF PINOLE, TIM CAUWELS (inadvertently sued
19 herein as TIM COUWELS), CHRIS FODOR,
20 ZACH BLUME, PAUL M. CLANCY,
21 CITY OF RICHMOND and CHRIS MAGNUS

22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 IFETAYO R. AZIBO-BOYNTON, an
25 individual; and the ESTATE OF LEVI B.
BOYNTON, JR. by and through personal
representative IFETAYO R. AZIBO-
BOYNTON,

Plaintiffs,

CITY OF PINOLE, a city governmental
entity; CITY OF RICHMOND, a city
governmental entity; TIM COUWELS, an
individual; CHRIS FODOR, an individual;
ZACH BLUME, an individual; PAUL M.
CLANCY, an individual; CHRIS MAGNUS,
an individual; and DOES 1-50, inclusive,

Defendants.

) **CASE NO. C10-04151**

) **JOINT CASE MANAGEMENT**
) **CONFERENCE STATEMENT**

) **Date: April 14, 2011**
) **Time: 10:00 a.m.**
) **Location: Courtroom 3, 17th Floor**
) **San Francisco, CA 94111**

) **Honorable Judge Richard Seeborg**

1 Plaintiffs and all Defendants, by and through counsel Linnea N. Willis and James M.
2 Marzan hereby submit this Joint Case Management Conference Statement.

3 **1. JURISDICTION AND SERVICE**

4 The jurisdiction of this court is properly invoked because the claims include federal and
5 state claims. The federal claims include alleged violations under 42 U.S.C. §1983, 42 U.S.C.
6 §1985, and the U.S. Constitution, including U.S. Const. amend. 4, U.S. Const. amend. 5, U.S.
7 Const. amend. 9 and U.S. Const. amend. 14.

8 All Defendants were served with the Complaint and have appeared. Defendants deny the
9 allegations of Plaintiffs' Complaint and any wrongdoing.

10 At present, neither Plaintiff nor Defendants are aware of issues pertaining to personal
11 jurisdiction or venue with respect to Defendants that have been served to date.

12 **2. FACTS AND PROCEDURAL STATUS**

13 **A. Plaintiffs' Statement of Facts:**

14 On September 12, 2009 at approximately 0109 hours, a call was made to 911 the CITY
15 OF PINOLE reporting that a carjacking of a Jeep Grand Cherokee had occurred. Shortly,
16 thereafter, a CITY OF PINOLE police car dispatched and spotted a vehicle fitting the description
17 (hereinafter "Subject Vehicle"). The CITY OF PINOLE police car unit followed the Subject
18 Vehicle at a slow speed and called for back-up as it was reported that there were weapons
19 involved. The CITY OF PINOLE police officers pursued the suspects in the Subject Vehicle
20 over a short distance into the CITY OF RICHMOND. Defendant TIM COUWELS instructed
21 CHRIS FODOR, ZACH BLUME, DOES 1-50, and other Defendants not to turn on lights or
sirens until back-up vehicles arrived.

22 At approximately 1006 hours, Defendant TIM COUWELS, CHRIS FODOR, ZACH
23 BLUME and DOES 1-50 cause Subject Vehicle to go into a ravine and off the road. Allegedly,
24 one shot was allegedly shot from Subject Vehicle. At that point, Defendants COUWELS,
25 BLUME, FODOR and DOES 1-50, in their capacity as police officers and employees for the
CITY OF PINOLE POLICE DEPARTMENT and CITY OF RICHMOND POLICE
DEPARTMENT, proceeded to fire approximately 32b rounds upon the vehicle. This was

1 excessive in light of the fact that the car was ran off the road and was in a ravine. In addition,
2 firing over 30 rounds without first trying to talk down the situation was also unnecessary and an
3 excessive use of force.

4 Defendants and each of them also used excessive use of force in attempting to apprehend
5 Decedent LEVI B. BOYNTON, JR., an alleged suspect in a carjacking. None of the
6 aforementioned Officer Defendants actually saw the Decedent shoot a weapon. Further, there is
7 no evidence that Decedent fired any weapon upon the Officer Defendants.

8 As a result of the unlawful pursuit, wrongful firing of shots, excessive force, and
9 wrongful death of Decedent LEVI B. BOYNTON, JR., Defendants TIM COUWELS, CHRIS
10 FODOR, ZACH BLUME, DOES 1-50 and their employer Defendants CITY OF PINOLE and
11 CITY OF RICHMOND, said Defendants caused the wrongful death of Decedent LEVI B.
12 BOYNTON, JR. As a result of Defendants' actions, Plaintiffs has suffered damages in an
13 amount to be determined at trial.

14 **B. Defendants' Statement of Facts:**

15 During the early morning hours of September 12, 2009, decedent and two of his friends,
16 Charles Davis and DeVauria Clay-Holland, were driving within the CITY OF PINOLE to
17 commit a carjacking and armed robbery. They saw a Jeep Cherokee parked in the parking lot of
18 the McDonald's Restaurant in Pinole with an occupant inside; decedent and Davis then carjacked
19 the vehicle at gunpoint while Clay-Holland waited parked nearby. They then drove the Jeep
20 Cherokee to Clay-Holland's girlfriend's apartment where decedent, Davis and Clay-Holland
21 ransacked the interior of the Jeep Cherokee for valuables. Decedent, Davis and Clay-Holland
22 then decided to drive to San Francisco to commit a robbery.

23 Corporal Fodor initially observed a vehicle matching the description of the carjacked
24 vehicle in the area of San Pablo Avenue and Tara Hills Road in Pinole. Cpl. Fodor called in the
25 vehicle's license plate to dispatch, which confirmed it was the vehicle stolen in the carjacking.
Cpl. Fodor followed the Jeep Cherokee westbound on San Pablo Avenue but did not activate his
emergency lights and siren at that time. Cpl. Fodor was instructed by Sergeant Tim Cauwels to
wait until a sufficient number of units were on scene before affecting a traffic stop. Once Sgt.

1 Cauwels and Officer Zach Blume arrived on scene, Sgt. Cauwels radioed to activate lights and
2 sirens. After the police emergency lights and sirens were activated, the carjacked vehicle failed
3 to stop and continued traveling on the Richmond Parkway and then on Atlas Road in the CITY
4 OF RICHMOND.

5 While on Atlas Road, the carjacked vehicle began to slow down and the vehicle doors
6 opened at least once. According to Davis and Clay-Holland, a decision was made to slow the
7 vehicle so all of the occupants could jump from the moving vehicle to evade arrest while the
8 police continued to follow the Jeep Cherokee. The Jeep Cherokee slowed down but before
9 decedent, Davis and Clay-Holland could jump from the vehicle, it went off of the roadway and
10 into a ravine. Sgt. Cauwels exited his squad car and began moving towards the location of where
11 the Jeep Cherokee came to a rest. As he did, Sgt. Cauwels heard gunshots coming from the
12 direction of the carjacked vehicle; a bullet sailed by the left side of his head. In fear for his life
13 and the lives of the other officers, Sgt. Cauwels returned fire. Cpl. Fodor and Officer Blume also
14 returned fire, fearing for their lives and the lives of other officers.

15 No Richmond Police officer discharged a weapon at any time and Chief Chris Magnus
16 had no involvement in the events leading up to and precipitating the incident.

17 Defendants deny that they caused the Jeep Cherokee to go off of the road and into a
18 ravine. Defendants deny that they used excessive force in attempting to apprehend the
19 carjacking suspect, LEVI B. BOYNTON, JR. Shots were fired from the direction of the vehicle
20 that decedent had carjacked. Officers were legally justified in returning fire in defense of
21 themselves and others present. Defendants deny any wrongdoing, deny that any of decedent's or
22 plaintiffs' civil rights were violated and deny that plaintiffs are entitled to any recovery or award
23 of damages.

24 **C. PROCEDURAL STATUS**

25 All Defendants were served on December 23, 2010. The Proof of Services/Summons
Returned Executed are all filed on December 27, 2010.

Defendants CITY OF PINOLE, TIM COUWELS, CHRIS FODOR and ZACH BLUME
filed their Answer on January 13, 2011. Defendants CITY OF RICHMOND and CHRIS

1 MAGNUS filed their Answer on January 24, 2011.

2 Plaintiffs' Statement: Defendants objected to original Judge James Larson on January 13,
3 2011. The case was therefore reassigned to Honorable Judge Richard Seeborg on January 14,
4 2011.

5 Defendants' Statement: Defendants did not consent to Magistrate Judge Larson as
6 defendants understood the Judge will be retiring from the bench shortly. Defendants did not
7 want the case reassigned to a different Magistrate Judge.

8 This Case Management Conference will be the first Case Management Conference.

9 **3. LEGAL ISSUES**

10 The following causes of action are alleged by Plaintiff:

11 First Cause of Action: Violation of Fourth Amendment of U.S. Constitution (42 U.S.C. §1983)

12 Second Cause of Action: Conspiracy to Violate Decedent's Civil Rights (42 U.S.C. §1985)

13 Third Cause of Action: Wrongful Death (42 U.S.C. §1983 and U.S. Constitution)

14 Fourth Cause of Action: Wrongful Death (CA Code Civil Procedure §§377.60 and 377.61, the
California Constitution and Applicable California Law

15 Fifth Cause of Action: Violation of Plaintiffs' Civil Rights to Familial Relationship (42 U.S.C.
§1983)

16 Sixth Cause of Action: Monell (42 U.S.C. §1983)

17 Seventh Cause of Action: Survival Action: Violation of Decedent's Civil Rights (42 U.S.C.
18 §1983)

19 Eighth Cause of Action: Negligence (California and Federal Law)

20 Ninth Cause of Action: Negligent Supervision (California and Federal Law)

21 Tenth Cause of Action: Intentional Infliction of Emotional Distress (California Law)

22 Eleventh Cause of Action: Negligent Infliction of Emotional Distress (California Law)

23 Twelfth Cause of Action: Violation of Decedent's Right to Enjoy Civil Rights (CA Civil Code
§52.1)

24 Thirteenth Cause of Action: Violation of Decedent's State Statutory Rights (CA Civil Code
25 §51.7)

Fourteenth Cause of Action: Assault and Battery

1 Defendants deny decedent's/Plaintiffs' constitutional rights were violated and that the
2 actions taken by the officers were lawful and proper under the circumstances. Defendants
3 contend that the legal issues are whether the Defendants are entitled to Summary Judgment based
4 on qualified immunity or other grounds.

5 **A. Plaintiffs' Statement of the Issues in Dispute:**

- 6 1. Whether Defendant Officers wrongfully caused the death of decedent LEVI BOYNTON,
7 JR.
8 2. Whether any shot truly was fired from the vehicle by any person.
9 3. Where was the shot fired from, and where was the shot directed at if a shot was fired.
10 4. Whether decedent LEVI BOYNTON, JR. fired the shot, if a shot was fired.
11 5. Whether Defendant Officers were justified in firing over 30 rounds on the Subject
12 Vehicle, even if 1 shot was fired from the vehicle.
13 6. Whether Defendant Officers were justified in causing the death of LEVI BOYNTON, JR.
14 7. Whether Defendant Officers violated decedent's civil rights during the chase, after the
15 vehicle was shot, after the Defendant Officers fired over 30 rounds on the Subject
16 Vehicle, and in killing decedent LEVI BOYNTON, JR.

17 **B. Defendant's Statement Of The Principle Factual Issues In Dispute:**

- 18 1. Whether the officers pursuit of the suspects, including decedent, was reasonable.
19 2. Whether decedent intentionally drove the carjacked vehicle off of the roadway.
20 3. Whether the officers discharged their weapon in self-defense and in the defense
21 of others.
22 4. Whether the CITY defendants and their respective police chiefs failed to train,
23 supervise and discipline their officers.

24 **4. MOTIONS**

25 There are currently no pending Motions. Defendants CITY OF RICHMOND and CHRIS
MAGNUS intend to file a 12(b)(6) Motion to Dismiss before Trial. In addition, Defendants
intend to file a Motion for Summary Judgment/ Adjudication, discovery motions as needed and
Motions in Limine.

1 Plaintiffs also anticipate discovery motions as needed and other pretrial motions.

2 **5. AMENDMENT OF PLEADINGS**

3 At this time, Plaintiff is not aware of any additional parties to be added. Plaintiff may
4 dismiss some Defendants after receiving discovery and determining the responsible parties.
5 After discovery, Plaintiff may also add additional parties.

6 Plaintiff will most likely file an Amended Complaint to clarify current causes of action
7 and add additional causes of action.

8 Defendants will file an appropriate responsive pleading to Plaintiffs' Amended
9 Complaint.

10 **6. EVIDENCE PRESERVATION**

11 Plaintiff has complied with the requirements of Rule 4. Defendants have stated that they
12 also complied with the Court's requirements.

13 Plaintiff is unaware as to whether Defendants have truly preserved evidence, and have
14 had various difficulties/challenges in obtaining information from Defendants prior to filing this
15 lawsuit. Plaintiff is hopeful that Defendants have preserved all evidence, videos, statements,
16 videos of statements, weapons, ballistics reports, vehicles, and all other evidence regarding this
17 case.

18 Defendants have been notified to preserve all potentially relevant evidence pertaining to
19 the incident and, to counsel's knowledge, have done so.

20 **7. DISCLOSURES**

21 To date, the parties have not made any initial disclosures. The parties anticipate
22 completing their Initial Disclosures per Rule 26 by the conference date, but may need additional
23 time to complete Initial Disclosures.

24 **8. DISCOVERY**

25 To date, the parties have not taken any discovery. The parties have meet and conferred
regarding discovery limits or a discovery schedule. Pursuant to Federal Rule of Civil Procedure
26(f), the parties anticipate on filing a written report outlining the discovery plan on April 28,
2011.

1 Plaintiffs intend to serve interrogatories, document requests and request for admissions
2 on Defendants. Plaintiffs also intend to depose each Defendant Officer, and will participate in
3 the deposition of all other persons whom Defendants depose.

4 Defendants contemplate serving interrogatories, document requests and requests for
5 admissions on Plaintiffs. Defendants also intend on deposing Plaintiff IFETAYO R. AZIBO-
6 BOYNTON, John Frick (the victim of the carjacking), Charles Davis, DeVauria Clay-Holland,
7 Deborah Carter (mother of Mr. Davis) and Shari and Stephen Holland (parents of Mr. Clay-
8 Holland).

9 **9. CLASS ACTION**

10 Not applicable to this case at this time.

11 **10. RELATED CASES**

12 At this time, the parties are aware of other related cases other than the criminal cases
13 pending against Charles Davis and DeVauria Clay-Holland in state court.

14 **11. DAMAGES AND OTHER RELIEF SOUGHT**

15 Plaintiff seeks general damages in excess of \$20 million, special damages in excess of
16 \$20 million, for funeral and burial expenses, lost wages, punitive damages in excess of \$20
17 million, for prejudgment interest on such damages as provided by law, all remedies available to
18 Plaintiff as a matter of law based upon the causes of action and claims set forth, attorney fees
19 incurred by Plaintiff, for costs of suit herein incurred and for such relief and further relief as the
20 court deems proper.

21 **12. SETTLEMENT AND ADR**

22 Plaintiff requests that this matter be set for an early Settlement Conference with a
23 Magistrate Judge, and also sent for Mediation thereafter closer to the Trial date.

24 Defendants request a referral to Early Neutral Evaluation in light of the parties' positions
25 on liability.

13. CONSENT TO ASSIGNMENT OF CASE TO MAGISTRATE JUDGE

Plaintiffs are amendable to assignment to magistrate judge, for all purposes and for
Settlement Conference purposes.

1 Defendants do not consent to a Magistrate Judge for all purposes. Defendants declined to
2 proceed before a Magistrate Judge and requested that this case be reassigned to a United States
3 District Judge.

4 **14. OTHER REFERENCES**

5 The parties have agreed that this case is not suitable for binding arbitration, a special
6 master or a Judicial Panel on Multidistrict Litigation as this case needs to have a jury trial.

7 **15. NARROWING OF ISSUES**

8 The parties will conduct discussions regarding suggestions to expedite presentation of
9 evidence at trial. At this time, it does not appear feasible to narrow the issues.

10 Defendants believe the issues of liability and/or qualified immunity can be resolved by
11 summary judgment. Plaintiffs strongly disagree.

12 **16. EXPEDITED SCHEDULE**

13 Parties have agreed that due to the complex nature of this case that this case cannot be
14 expedited with streamlined procedures.

15 **17. SCHEDULING AND ESTIMATED LENGTH OF TRIAL**

16 As to Federal Rule of Civil Procedure 26(f), a written discovery report outlining the
17 discovery plan will be done on April 28, 2011. At this time we have not agreed upon any
18 anticipated dispositive motions, pretrial conference or a trial date.

19 The parties have met and conferred regarding proposed deadlines and court dates,
20 including a trial date, but have not agreed upon an anticipated date at this time.

21 Plaintiff believes it is premature to set a trial date at this time. If the Court sets the trial
22 and pretrial deadlines as this Case Management Conference, Plaintiff requests that the trial be set
23 no earlier than June 2012.

24 Plaintiff estimates this trial will take approximately 10-20 days.

25 Defendants believe the case will take 10-15 court days, depending on what issues have
been adjudicated prior to trial.

Defendants also believe that it is premature to set a trial date at this time as two key
witnesses, Mr. Clay-Holland and Mr. Davis, are presently being criminally prosecuted.

1 Defendants believe these depositions are critical but will likely be met with 5th Amendment
2 objections as the deponents' criminal cases are still pending.

3 If the court is inclined to set a trial schedule, Defendants propose the following dates:

4	Cut-off for non-expert Discovery:	January 31, 2012
5	Designation of Experts:	February 17, 2012
6	Cut-off for Expert Discovery:	March 19, 2012
7	Last day file Dispositive Motions:	April 6, 2012
8	Opposition to MSJ due by:	April 20, 2012
9	Reply due by:	April 27, 2012
10	Hearing of Dispositive Motions:	May 9, 2012
11	Pre-trial Hearing:	June 18, 2012
12	Trial Date:	August 6, 2012

13 Plaintiffs are ok with the August 6, 2012 Trial date, but would propose the discovery
14 cutoffs be much closer to the Trial date (within 30 days). Plaintiffs would also recommend that a
15 Settlement Conference and Mediation Compliance deadline be set for the parties as set forth
16 above.

17 **18. TRIAL: JURY PROPERLY DEMANDED**

18 All parties have properly demanded a jury trial in the Complaint and in the Answers.

19 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

20 The parties are currently unaware of any non-party interested entities or persons.

21 RESPECTFULLY SUBMITTED,

22 DATED: April 6, 2011

/s/ Linnea N. Willis

LINNEA N. WILLIS
Attorney for Plaintiffs

24
25 DATED: April 6, 2011

/s/ James M. Marzan

JAMES M. MARZAN
Attorney for Defendants