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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 IN AND FOR THE DISTRICT OF ARIZONA  
13

Terrence Bressi,

Plaintiff,

vs.

(1) Pima County Sheriff Mark  
Napier, in his individual and official  
capacities, *et al.*,

Defendants.

Case No. 4:18-cv-00186 DCB

JOINT CASE  
MANAGEMENT PLAN

14  
15 1. **Counsel appearing at the Pretrial Scheduling Conference:**

16 On behalf of Plaintiff: Ralph E. Ellinwood, Esq., (###) ###-####

17  
18 On behalf of the County Defendants: Nancy J. Davis, Esq., (###) ###-  
19 ####

20  
21 On behalf of the Federal Defendants: Dennis C. Bastron, Esq., (###)  
22 ####-####

23  
24  
25 2. **Nature of the case; factual and legal basis of claims and**  
26 **defenses:**

27  
28 Plaintiff:

1           1.     Count I, Violations of First and Fourteenth Amendment Rights  
2                     (Free Speech) Against All County and Federal Defendants.  
3

4           The actions of County and Federal Defendants violated Plaintiff's right  
5 to freedom of speech guaranteed by the First Amendment to the Constitution  
6 and applicable to the County Defendants through the Fourteenth Amendment  
7 to the Constitution. Defendants acted to eliminate and chill Plaintiff's exercise  
8 of his right to speak, and by extension, his right not to speak.

9           The First and Fourteenth Amendment right not to speak in this particular  
10 context was clearly established as of April 10, 2017. Plaintiff reasonably fears  
11 that all Defendants are likely to continue to chill Plaintiff's First Amendment  
12 rights at the SR-86 checkpoint. The Federal Defendants have truncated and  
13 attempted to chill Plaintiff's First Amendment rights since April 10, 2017, at  
14 the SR-86 checkpoint.

15           2.     Count II, Violation of Fourth and Fourteenth Amendment Rights  
16                     Within the Checkpoint Primary Inspection Lane (*City of*  
17                     *Indianapolis v. Edmond*) Against All County and Federal  
18                     Defendants.  
19

20           The United States Supreme Court has clarified the lawful scope and  
21 purpose of interior checkpoints in *United States v. Martinez-Fuerte*, 428 U.S.  
22 543 (1976) and *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S. Ct. 447  
23 (2000). Checkpoints operated with the primary purpose of detecting illegal  
24 narcotics and/or ordinary criminal wrongdoing, and which result in the

1 temporary seizure of motorists absent individualized suspicion, are violative of  
2 the Fourth Amendment. Consistent with the Fourth Amendment, the Federal  
3 Defendants have the legal authority to maintain the SR-86 checkpoint for the  
4 primary purpose of detecting and apprehending individuals unlawfully present  
5 in the United States. The SR-86 checkpoint does not conform to those  
6 requirements.

7 On April 10, 2017, the Federal Defendants operated the SR-86  
8 checkpoint in such a manner that the checkpoint's primary purpose was to  
9 detect general criminal wrongdoing. On April 10, 2017, the County Defendants  
10 collaborated with the Federal Defendants in such a way that the primary  
11 purpose of the SR-86 checkpoint was the detection of general criminal  
12 wrongdoing.

13 On April 10, 2017, and on many occasions since that date, Plaintiff has  
14 been unlawfully seized by Defendants at the primary inspection lane of the SR-  
15 86 checkpoint. These unlawful seizures in the primary inspection lane resulted  
16 from Defendants' operation of the checkpoint for a primary purpose not  
17 countenanced by the Fourth Amendment. The unlawful conditions of the SR-  
18 86 checkpoint, as they existed on April 10, 2017, continue to exist at the SR-86  
19 checkpoint today.

1           3.     Count III, Violation of Fourth and Fourteenth Amendment Rights  
2                 for Arrest Absent Probable Cause Against Defendants Roher and  
3                 Kunze.  
4

5           On April 10, 2017, Defendant Roher, aware that agents with the U.S.  
6 Border Patrol had found no particularized suspicion to continue the detention  
7 of or to arrest Plaintiff, effectuated an arrest of Plaintiff purportedly under the  
8 state law authority granted to him as an Arizona peace officer. Leading up to,  
9 during, and after the arrest, Defendant Roher was unable to articulate any  
10 reasonable suspicion or probable cause to believe that Plaintiff had committed  
11 or was committing a state misdemeanor, felony, or petty offense.

12           Defendant Roher arrested Plaintiff for allegedly violating A.R.S. § 13-  
13 2906 (Obstructing a highway or other public thoroughfare), despite the fact that  
14 Defendant Roher had no probable cause to believe that Plaintiff committed or  
15 was committing such crime. Defendant Kunze ratified Defendant Roher's  
16 actions and further prolonged the length of Plaintiff's arrest, despite the fact  
17 that neither Defendant Kunze nor Defendant Roher had probable cause to  
18 believe that Plaintiff committed any crime. At all relevant times, Defendants  
19 Roher and Kunze were acting under color of state law.

20           Plaintiff's right to be free from arrest absent probable cause to believe  
21 that he committed or was committing a crime was clearly established as of April  
22 10, 2017.



1 otherwise encourage proper training of the Pima County Sheriff's Department  
2 deputies and, therefore, failed to adequately train their deputies to handle usual  
3 and recurring situations.

4 Defendants failed to train their deputies to handle usual and recurring  
5 situations, and were indifferent to the substantial risk of inadequate training to  
6 prevent violations of law by its deputies.

7 In the County Defendant's Answer to Plaintiff's Second Amended  
8 Complaint, they continue to affirmatively allege that the standard law  
9 enforcement training, protocols, and policies provided to Pima County Sheriff's  
10 Department deputies are adequate when deputies conduct general law  
11 enforcement operations at or near what are supposed to be limited scope federal  
12 immigration checkpoints.

13 6. Count VI, Failure to Supervise, 42 U.S.C. § 1983 Against  
14 Defendant Napier in his Individual Capacity, Defendants Kunze,  
15 and Pima County Board of Supervisors.  
16

17 Defendants Napier, Kunze, and Pima County Board of Supervisors were  
18 acting under the color of state law at all times relevant herein and failed to  
19 properly supervise their deputies, thereby depriving Plaintiff of his  
20 constitutional rights. Defendants knew or reasonably should have known that  
21 their subordinates were engaging in acts that deprived Plaintiff (and other  
22 motorists) of their constitutional rights.

1 Defendants knew or reasonably should have known that the  
2 subordinates' conduct would deprive Plaintiff of his constitutional rights.  
3 Defendants failed to act to prevent their subordinates from engaging in such  
4 conduct and disregarded the known or obvious consequences that a deficiency  
5 in adequate supervision would cause the subordinates to violate Plaintiff's  
6 constitutional rights. Such deficiency did actually cause the subordinates to  
7 deprive Plaintiff of his constitutional rights. Defendants engaged in conduct  
8 that showed a reckless disregard to the deprivation by the subordinates of the  
9 rights of people such as Plaintiff.

10 7. Count VII, False Imprisonment, Arizona State Law Against  
11 Defendants Roher and Kunze.

12  
13 On April 10, 2017, Plaintiff was falsely imprisoned by Defendant Roher  
14 when he was handcuffed and prevented from leaving his location outside of the  
15 primary inspection station of the SR-86 federal checkpoint. The necessary  
16 elements of false imprisonment under Arizona law are: (1) the defendant acted  
17 with intent to confine another person within boundaries fixed by the defendant;  
18 (2) the defendant's act resulted in such confinement, either directly or  
19 indirectly; and (3) the other person was conscious of the confinement or was  
20 harmed by it. *See Hart v. Raynor*, 190 Ariz. 272 (App. 1997); *Boies v. Raynor*,  
21 89 Ariz. 257 (1961).

1 Defendant Roher acted with intent and confined Plaintiff within a fixed  
2 boundary, at the side of State Route 86. Plaintiff did not consent to such  
3 confinement. Defendant Roher's conduct resulted in the confinement of  
4 Plaintiff, without probable suspicion of any crime or state traffic violation  
5 committed by Plaintiff. In confining Plaintiff without Plaintiff's consent,  
6 Defendant Roher acted outside the scope of the warrantless arrest authority  
7 conferred upon him by Title 13 and Title 41 of Arizona Revised Statutes.  
8 Plaintiff was conscious of the confinement inflicted upon him by Defendant  
9 Roher on April 10, 2017.

10 Defendant Kunze ratified and acquiesced to the actions that Defendant  
11 Roher took in confining Plaintiff. Defendant Kunze had the authority and  
12 ability to reverse or otherwise halt the unlawful actions of Defendant Roher.

13 8. Count VIII, False Imprisonment (FTCA), 28 U.S.C. § 1346(b),  
14 Against the United States of America.  
15

16 Through the actions described herein on April 10, 2017, employees of  
17 Defendant United States of America, during the course of their work duties at  
18 the SR-86 federal checkpoint, intentionally confined Plaintiff at the  
19 checkpoint's primary inspection station while allowing Defendant Roher to  
20 conduct general law enforcement operations within the boundaries of the  
21 checkpoint as part of Defendant Roher's Operation Stonegarden deployment.



1           Additionally, employees of Defendant United States of America acted  
2 with intent in confining Plaintiff within the boundaries of the SR-86 federal  
3 checkpoint while encouraging and/or inducing Defendant Roher to participate  
4 in Plaintiff's detention and inspection at the federal checkpoint's primary  
5 inspection station.

6           Further, employees of Defendant United States of America acted with  
7 intent in encouraging and/or inducing Defendant Roher to first release Plaintiff  
8 from the primary inspection station and then confine Plaintiff along the side of  
9 State Route 86 outside the boundaries of the federal checkpoint's inspection  
10 stations prior to placing Plaintiff in handcuffs.

11           Finally, employees of Defendant United States of America acted with  
12 intent in assisting Defendant Roher with the arrest of Plaintiff and his continued  
13 confinement along the side of State Route 86.

14           The conduct of employees of Defendant United States of America  
15 resulted in the confinement of Plaintiff without probable suspicion of any  
16 crime, state traffic violation, or civil immigration violation under federal law.

17 Plaintiff was conscious of the confinement inflicted upon him on April 10,  
18 2017.

19

1 Federal Defendants:

2  
3 In their answer, the Federal Defendants denied that any federal  
4 employee committed a tort against Plaintiff on April 10, 2017, and they  
5 denied that any relevant Border Patrol policies and practices violate the  
6 Constitution. The Federal Defendants affirmatively alleged that

- 7
- 8 • One or more of Plaintiff's claims is barred by the statute of  
9 limitations.
  - 10 • One or more of Plaintiff's claims is barred for failure to exhaust  
11 administrative remedies.
  - 12 • One or more of Plaintiff's claims is barred by 28 U.S.C. §  
13 2680(a).
  - 14 • One or more of Plaintiff's claims is barred because it is based on  
15 the actions of contractors rather than federal employees.
- 16  
17  
18

19 County Defendants:

20  
21 In its Order dated April 3, 2020, the Court narrowed the claims against  
22 the County Defendants. As to the remaining claims, the County Defendants  
23 maintain the following:

- 24
- 25 • the complaint fails to state a claim upon relief can be granted;
  - 26 • that the individually-named defendants are entitled to qualified  
27 immunity, *see White v. Pauly*, — U.S. —, 137 S. Ct. 548, 552  
28 (2017);
  - 29 • that there was probable cause and reasonable suspicion for the  
30 arrest of plaintiff, *see Reichle v. Howards*, 566 U.S. 658, 664–65  
31 (2012) (noting the Supreme “Court has never recognized a First  
32 Amendment right to be free from a retaliatory arrest that is supported  
33 by probable cause”); *see also Devenpeck v. Alford*, 543 U.S. 146, 152  
34  
35

1 (2004) (probable cause and reasonable suspicion are also a complete  
2 defense to a Fourth Amendment claim of unlawful seizure).

3  
4 • that a § 1983 failure to train claim requires Plaintiff to show  
5 deliberate indifference. *City of Canton, Ohio v. Harris*, 489 U.S. 378  
6 (1989);

7  
8 • that plaintiff has failed to properly plead and cannot show a *Monell*  
9 failure to supervise (“To impose liability against a county for its  
10 failure to act, a plaintiff must show: (1) that a county employee  
11 violated the plaintiff’s constitutional rights; (2) that the county has  
12 customs or policies that amount to deliberate indifference; and (3) that  
13 these customs or policies were the moving force behind the  
14 employee’s violation of constitutional rights.” *Long v. County of Los*  
15 *Angeles*, 442 F.3d 1178, 1186 (9th Cir. 2006));

16  
17 • that as to the state law claims against Defendants Roher and  
18 Kunze, probable cause supports the arrest and detention (“A detention  
19 which occurs pursuant to legal authority” such as probable cause is  
20 lawful and does not constitute the tort of false imprisonment. *Slade v.*  
21 *City of Phoenix*, 112 Ariz. 298, 300 (1975); and

22  
23 • that under A.R.S. § 12-820.04, punitive damages are barred as to  
24 all state law claims.

25  
26 **3. Factual and legal issues genuinely in dispute and whether they**  
27 **can be narrowed by stipulation or motions:**

28  
29 Plaintiff:

30  
31 On multiple occasions, Plaintiff’s First Amendment right not to speak  
32 has been violated. In the instant case, Plaintiff was first detained by a Border  
33 Patrol agent at the primary inspection station and told not to move from the  
34 checkpoint area after exercising his right not to speak. Plaintiff was then  
35 detained by a County Deputy based on Plaintiff’s failure to speak to the Border  
36 Patrol agent. The deputy, who was conducting a Stonegarden deployment at  
37 the federal checkpoint on behalf of the Border Patrol, then released Plaintiff  
38 from the primary inspection station without first consulting with the Border  
39 Patrol agent who initially detained Plaintiff. After leaving the primary  
40 inspection station, Plaintiff was subsequently followed down the road and

1 falsely arrested by the deputy and ultimately charged with blocking a roadway  
2 based upon the time Plaintiff had been detained at the checkpoint's primary  
3 inspection station.

4  
5 Violations of *Martinez-Fuerte v. United States*, 428 U.S. 543 (1976).  
6 This case gives the Border Patrol the authority to maintain a limited scope  
7 immigration checkpoint with a primary purpose of detecting and apprehending  
8 those individuals unlawfully present in the United States. In the instant case,  
9 the primary purpose of the checkpoint on April 10, 2017, was for general law  
10 enforcement purposes.

11  
12 Violations of Fourth and Fourteenth Amendment Rights pursuant to *City*  
13 *of Indianapolis v. Edmond*, 531 U.S. 32 (2000). Plaintiff was unlawfully seized  
14 and detained by a Border Patrol agent and Deputy Roher who were working  
15 together at a federal immigration checkpoint. Deputy Roher was conducting  
16 general law enforcement operations on behalf of the United States Border  
17 Patrol at a federal checkpoint during an Operation Stonegarden deployment  
18 which was pre-coordinated and sanctioned by the United States Border Patrol.  
19 Plaintiff was then pursued by Deputy Roher after being instructed to leave the  
20 checkpoint with no particularized suspicion to believe Plaintiff's vehicle  
21 contained illegal aliens. Deputy Roher restrained the liberty of Plaintiff without  
22 particularized suspicion at a location that the Fourth Amendment authorized be  
23 done only by federal law enforcement agents for a limited immigration-related  
24 purpose. Deputy Roher lacked the legal authority to participate in federal  
25 immigration checkpoint operations or investigate possible violations of federal  
26 immigration law.

27  
28 Arrest absent probable cause pursuant to the Fourth and Fourteenth  
29 Amendments and 42 U.S.C. § 1983. Plaintiff was asked to answer investigatory  
30 questions from federal agents or move his vehicle to secondary inspection at  
31 the federal checkpoint by Deputy Roher without possessing legal authority to  
32 participate in federal immigration checkpoint operations, without possessing  
33 particularized suspicion that his vehicle contained aliens unlawfully present in  
34 the United States, and without particularized suspicion that Plaintiff committed  
35 any state or federal crime for which Deputy Roher had legal authority to arrest.  
36 Deputy Roher arrested Plaintiff for allegedly violating A.R.S. § 13-2906  
37 (obstructing a highway or other public thoroughfare), despite having no  
38 probable cause to do so and despite the presence of a state-issued encroachment  
39 permit creating a legal privilege under A.R.S. § 2906. Deputy Roher should  
40 have been aware of the legal privilege contained with A.R.S. § 2906.

1 Violations of 42 U.S.C. § 1983, pursuant to *Monell* as against Defendant  
2 Napier whose actions amounted to deliberate indifference of Plaintiff's  
3 constitutional rights.

4  
5 Violations of 42 U.S.C. § 1983 as to a failure to train Pima County  
6 Sheriff's Deputies by Defendants Napier, Kunze, and Defendant Pima County  
7 Board of Supervisors as well as a failure to supervise. All disregarded the  
8 known or obvious consequences that a particular training deficiency would  
9 cause subordinates to violate Plaintiff's constitutional rights, and did just that.  
10 Defendants engaged in conduct that showed a reckless disregard to the  
11 deprivations by the subordinates of the rights of people such as Plaintiff.

12  
13 False imprisonment as against Deputy Roher, Sergeant Kunze, and the  
14 United States of America. See *Hart v. Raynor*, 190 Ariz. 272, 281, 947 P.2d  
15 846, 855 (App. 1997). "Any restraint, however slight, upon another's liberty to  
16 come and go as one pleases, constitutes an arrest." See *Boies v. Raynor*, 89  
17 Ariz. 257, 259, 361 P.2d 1, 2 (1961), quoting *Swetman v. F.W. Woolworth Co.*,  
18 83 Ariz. 189, 192, 318 P.2d 364, 366 (1957).

19  
20 Federal and County Defendants deny that at various times, some County  
21 Defendants were supervised by employees of Defendant United States Border  
22 Patrol pursuant to the terms of the federal Operation Stonegarden program.  
23 (SAC, ¶ 33) This, despite the 2016-2017 OPSG Operations Order defining  
24 OPSG as a joint mission with the Border Patrol having operational control over  
25 OPSG deployments and requiring close coordination with participants such as  
26 PCSD deputies, defining the OPSG as a joint mission, requiring participating  
27 deputies to check in with USBP when starting and ending OPSG shifts, provide  
28 USBP with intelligence information during their shifts, provide USBP with  
29 Daily Activity reports, and to pre-coordinate deployments with the USBP.  
30 This, despite USBP checkpoint policy requiring USBP to limit the scope of  
31 non-USBP law enforcement activities at USBP checkpoints. (Bates Nos. BRE  
32 1716-17)

33  
34 Federal Defendants deny that DHS's official website states that one of  
35 the primary purposes of USBP checkpoints is "to detect illegal narcotics."  
36 (SAC, ¶ 69, Bates No. BRE 4020)

37  
38 County Defendants deny that Defendant Roher was aware the Plaintiff  
39 was a United States citizen on April 10, 2017, despite Deputy Roher's

1 testimony to Plaintiff's defense attorney that he did know Plaintiff's citizenship  
2 status. (SAC, ¶ 74, Bates No. BRE 3461)

3  
4 Federal Defendants deny placing a K-9 unit in the bed of Plaintiff's truck  
5 on various occasions despite video evidence to the contrary. (SAC, ¶ 82, Bates  
6 Nos. BRE 13, 15, 248)

7  
8 Federal Defendants deny detaining Plaintiff for the purpose of  
9 conducting K-9 drug detection sniffs around Plaintiff's vehicle despite video  
10 evidence to the contrary. (SAC, ¶ 83, Bates Nos. BRE 13, 15, 47, 50, 135, 157,  
11 185, 191, 223, 226, 248, 279, 282, 3996, 4004)

12  
13 All Defendants deny that the stated purpose of Operation Stonegarden is  
14 to conduct "zero tolerance" traffic contacts despite the 2016-2017 Operations  
15 Order stating that, "Officers deployed to the target areas will conduct 'zero  
16 tolerance' traffic contacts." (SAC, ¶ 87)

17  
18 Defendants deny or are non-committal regarding PCSD deputies  
19 operating at the SR-86 checkpoint regardless of working under an OPSG  
20 deployment despite Defendant Roher's testimony to the contrary. (SAC, ¶ 97,  
21 Bates No. BRE 3438)

22  
23 Federal Defendants deny that they have allowed and encouraged PCSD  
24 deputies to engage in general law enforcement operations at the SR-86  
25 checkpoint, despite video evidence to the contrary, along with testimony from  
26 Defendant Roher. (SAC, ¶ 98, Bates Nos. BRE 210, 222, 228, 240, 263, 294,  
27 297, 299, 330, 383, 3436-39, 3469, 4002, 4011, 4012)

28  
29 Federal agents deny that Agent Frye detained Plaintiff at SR-86  
30 checkpoint on April 10, 2017, due to Plaintiff's failure to answer the agent's  
31 questions despite Agent Frye's statements to the contrary. (SAC, ¶ 156, Bates  
32 No. BRE 383)

33  
34 County Defendants deny that Defendant Roher took control of the law  
35 enforcement interaction initiated by the USBP after walking over to the primary  
36 inspection station and talking with Agent Frye despite Deputy Roher's  
37 testimony to the contrary and video evidence. (SAC, ¶ 161, Bates No. BRE  
38 3483)

1 County Defendants deny that Defendant Roher told Plaintiff that he  
2 needed to answer Agent Frye's questions despite video evidence to the  
3 contrary. (SAC, ¶ 163, Bates Nos. BRE 383)

4  
5 County Defendants deny that Defendant Roher told Plaintiff he could  
6 leave the SR-86 checkpoint despite video evidence to the contrary. (SAC, ¶  
7 165, Bates No. BRE 383)

8  
9 County Defendants deny that Defendant Roher only arrested and  
10 handcuffed Plaintiff after Plaintiff failed to answer Defendant Roher's  
11 questions regarding a non-existent citation despite video evidence to the  
12 contrary. (SAC, ¶ 178, Bates No. BRE 383)

13  
14 County Defendants deny that Defendant Roher violated A.R.S. § 13-  
15 3888 by failing to inform Plaintiff of his authority and cause for arrest despite  
16 video evidence to the contrary. (SAC, ¶ 179, Bates No. BRE 383)

17  
18 Federal Defendants:

19  
20 The relevant facts should be undisputed. The Plaintiff records every  
21 single one of his encounters with Border Patrol, so there is little to disagree  
22 about. The primary disputes here are legal—whether the State Route 86  
23 checkpoint is constitutional; whether the Sheriff Department's brief detention  
24 of Plaintiff on April 10, 2017, amounts to an unlawful arrest; and whether, if  
25 the arrest was unlawful, the United States may be liable for it.

26  
27 County Defendants:

28  
29 The County Defendants believe the following issues are in dispute and  
30 that some or all may be resolved by a dispositive motion:

- 31  
32 • Whether any county defendant violated plaintiff's civil rights.  
33  
34 • Whether the individually-named defendants are entitled to  
35 qualified immunity.  
36  
37 • Whether Deputy Roher lacked probable cause and/or reasonable  
38 suspicion.  
39



- 1 • Whether Deputy Roher violated Plaintiff's First Amendment  
2 rights.
- 3
- 4 • Whether Deputy Roher violated Plaintiff's Fourth Amendment  
5 rights.
- 6
- 7 • Whether Deputy Roher violated Plaintiff's Fourteenth  
8 Amendment rights.
- 9
- 10 • Whether Deputy Roher committed the state-law claim of false  
11 imprisonment.
- 12
- 13 • Whether Sergeant Kunze ratified any unconstitutional conduct by  
14 Deputy Roher.
- 15
- 16 • Whether Sergeant Kunze ratified any state law violations.
- 17
- 18 • Whether Pima County and/or Sheriff Napier have an  
19 unconstitutional practice, policy, or custom under *Monell*.
- 20
- 21 • Whether Plaintiff has a viable failure to train claim under § 1983.
- 22
- 23 • The nature and extent of Plaintiff's damages, if any.
- 24
- 25 • The percentage of comparative fault of Plaintiff with respect to his  
26 state-law claim.
- 27

28 **4. Jurisdictional basis of the case, citing specific statutes:**

29  
30 Subject matter jurisdiction is proper pursuant to 28 U.S.C. §§ 1331,  
31 1343, and 1346, 42 U.S.C. § 1983, and the United States Constitution.  
32 Supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §  
33 1367. This Court has authority to award injunctive and declaratory relief  
34 pursuant to 18 U.S.C. §§ 1343, 2201, and 2202. This Court has the authority  
35 to award reasonable attorney fees to the prevailing party pursuant to 42 U.S.C.  
36 § 1988(b).  
37  
38



1           **5. Parties, if any, who have not been served or any joinder or**  
2           **additional parties:**

3  
4           All parties listed in the Second Amended Complaint have been properly  
5 served.

6  
7           **6. Names of parties not subject to the Court’s jurisdiction:**

8  
9           There are no parties who are not subject to the Court’s jurisdiction.

10  
11           **7. Whether there are dispositive or partially dispositive issues to**  
12           **be decided by pre-trial motions:**

13  
14           Plaintiff may file a dispositive or partially dispositive motion if  
15 necessary.

16  
17           The Federal Defendants intend to file a motion for summary judgment  
18 on all claims.

19  
20           The County Defendants anticipate filing a wholly or partially dispositive  
21 summary judgment motion.

22  
23           **8. Whether the case is suitable for reference to arbitration, to a**  
24           **master, or to a magistrate for trial:**

25  
26           Plaintiff believes this matter would be more appropriate for a settlement  
27 conference.

28  
29           The Federal Defendants do not believe a settlement will be possible.

30  
31           The County Defendants may be amendable to a settlement conference,  
32 but note that the Plaintiff and County attempted an earlier settlement conference  
33 that was unsuccessful.

34  
35           **9. The status of related cases pending before other judges of this**  
36           **court or before other courts:**

37  
38           Plaintiff: N/A

39  
40           Defendants: N/A

1           **10. Parties' responses to MIDP discovery requests:**  
2

3           The Plaintiff and County Defendants exchanged MIDP Disclosures and  
4 Documents on or about September 28, 2018. With the addition of the Federal  
5 Defendants to the lawsuit, the parties exchanged MIDP Disclosures and  
6 documents on or about November 1, 2019.  
7

8           In their MIDP responses, the Federal Defendants identified several  
9 relevant records that are law-enforcement sensitive or contain material subject  
10 to the Privacy Act. They would like to disclose those records, but cannot do so  
11 without a protective order in place. They reached out to the other parties about  
12 stipulating to a protective order, but the parties have not been able to agree on  
13 the terms of such a protective order.  
14

15           **11. Proposed deadlines:**  
16

17           a.       Discovery, including supplementation of MIDP responses:  
18

19           Plaintiff:     Due to the recent addition of the Federal Defendants,  
20 Counsel's trial schedule, and the number of possible depositions to be taken in  
21 this matter, no sooner than December 4, 2020.  
22

23           Defendants:

24           Federal Defendants suggest a close of discovery on November 13, 2020  
25  
26

27           The County Defendants agree with the date suggested by the Federal  
28 Defendants.  
29

30           b.       Dispositive motions:  
31

32           Plaintiff believes it will be February 12, 2021, for any filing of dispositive  
33 motions.  
34

35           Defendants:

36           The Federal and County Defendants suggest a dispositive-motion  
37 deadline of December 11, 2020.  
38  
39  
40

1 c. Proposed pre-trial order statement:  
2

3 Plaintiff: No sooner than April 2021.  
4

5 Defendants: The Federal Defendants suggest a deadline for the  
6 proposed pre-trial order on January 8, 2021, or 30 days after an order ruling on  
7 dispositive motions.  
8

9 The County Defendants also suggest a deadline for the proposed pre-trial  
10 order on January 8, 2021, or 30 days after an order ruling on dispositive  
11 motions.  
12

13 **12. Estimated date for trial and estimated length of trial:**  
14

15 Plaintiff: It is not anticipated that trial in this matter can occur until  
16 May 2021. Estimated time for trial will be ten (10) days.  
17

18 Defendants:  
19

20 The Federal Defendants suggest a trial date in April 2021. They estimate  
21 the trial will take one week.  
22

23 The County Defendants suggest an April 2021 trial date and recommend  
24 seven (7) days for the trial.  
25

26 **13. Whether a jury trial has been requested:**  
27

28 Plaintiff has requested a jury trial. The County Defendants agree that a  
29 jury trial was requested.  
30

31 Defendants:  
32

33 Federal Defendants: There is no right to a jury trial on the claims Plaintiff  
34 brought against the Federal Defendants. Plaintiff has an FTCA claim, and a  
35 claim for injunctive relief to redress alleged constitutional violations. But there  
36 is no right to a jury trial under the FTCA, *see Nurse v. U.S.*, 226 F.3d 996, 1004  
37 (9th Cir. 2000), and there is no right to a jury trial on his claims for injunctive  
38 relief, *see Tull v. U.S.*, 481 U.S. 412, 417 (1987) (observing that the right to a  
39 jury trial does not extend to cases traditionally tried in courts of equity); *eBay*

1 *Inc. v. MercExchange L.L.C.*, 547 U.S. 388, 391 (2006) (noting that injunctive  
2 relief is equitable relief).

3  
4 The County Defendants agree that a jury trial was requested.

5  
6 **14. Prospects of settlement, including desire to have settlement**  
7 **conference with another judge or magistrate, and how**  
8 **settlement efforts can be assisted:**  
9

10 Plaintiff believes a settlement conference may be successful.

11  
12 Defendants: The Federal Defendants do not believe a settlement  
13 conference will be useful.

14  
15 The County Defendants note that they and Plaintiff participated in a  
16 previous settlement conference that was unsuccessful. Depending on the course  
17 of discovery, the County Defendants may be amendable to a second settlement  
18 conference.

19  
20 **15. Class action:**

21  
22 N/A

23  
24 **16. Unusual, difficult, or complex problems affecting the conduct**  
25 **of the case. If the parties believe discovery will require more**  
26 **than six (6) months, counsel MUST provide an explanation as**  
27 **to why it is necessary and essential:**  
28

29 Plaintiff may wish to take as many as ten (10) depositions of County and  
30 Federal Defendants. A more detailed list of possible deponents will be  
31 provided to all counsel. The availability of Defendants will determine whether  
32 more than six (6) months will be required to complete this phase of discovery.  
33

34 Defendants: The Federal Defendants see no reason at this point why the  
35 discovery cannot be completed within six months.  
36

37 The County Defendants have concern with the impact the COVID-19  
38 pandemic may have on the ability of counsel to conduct depositions. The  
39 County Attorney has issued a directive that no persons are to attend or conduct

1 depositions in the physical presence of others while shelter-in place is still in  
2 place.

3  
4 **17. Other matters counsel feel will aid the Court in expediting the**  
5 **disposition of this matter efficiently.**

6  
7 None.

8  
9 Dated this 21<sup>st</sup> day of April 2020.

10  
11 Ralph E. Ellinwood,  
12 Attorney at Law, PLLC

United States Attorney

13  
14  
15 /s/ Ralph E. Ellinwood  
16 Ralph E. Ellinwood  
17 Attorney for Plaintiff

/s/ Dennis Bastron  
Dennis Bastron  
Asst. U.S. Attorney  
Attorney for Federal Defendants

18  
19  
20 /s/ Nancy J. Davis  
21 Nancy J. Davis  
22 Deputy County Attorney  
23 Attorney for the County Defendants

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