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9 Attorneys for Defendants

10 UNITED STATES DISTRICT COURT
11 STATE OF CALIFORNIA, CENTRAL DISTRICT

12 KARI BODE and GINA NASTASI,)
13 Plaintiffs,)
14 v.)
15 CITY OF FULLERTON; OFFICER)
16 ALBERT RINCON; OFFICER)
17 CHRISTOPHER WREN; and DOES 1)
18 to 100, inclusive,)
19 Defendants.)

NO. SACV10-835 AG(MLGx)

**JOINT SCHEDULING
CONFERENCE REPORT**

DATE: August 23, 2010
TIME: 9:00 a.m.
CTRM: 10-D

21 Pursuant to Fed. R. Civ. P. 26(f), and the Court's Notice of Intent to
22 Schedule the Case, a meeting was held between counsel for Plaintiff and
23 Defendants on August 16, 2010, by and through Plaintiff's counsel Leah Berry of
24 Morey & Upton, and defense counsel Bruce D. Praet of Ferguson, Praet &
25 Sherman. The parties hereby submit the following Joint Scheduling Conference
26 Report:

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1 **(1) SHORT FACTUAL SUMMARY OF THE CASE AND OF CLAIMS**
2 **AND DEFENSES:**

3 **A. *Plaintiff's Position:***

4 Plaintiffs bring this action against the Fullerton Police Department, Officer
5 Albert Rincon and Officer Christopher Wren alleging causes of action for:
6 Assault; Sexual Battery; Battery by Peace Officer; False Imprisonment;
7 Negligence; Intentional Infliction of Emotional Distress; Negligent Infliction of
8 Emotional Distress; and, Violation of Civil Rights. Plaintiffs allege that they were
9 unlawfully stopped, searched, detained, assaulted, battered, sexually harassed and
10 molested, and arrested. Plaintiffs further allege that the Fullerton Police
11 Department was aware of Officer Rincon's prior history of sexual assaults and
12 failed to remove him from public interaction prior to the incident.

13 **B. *Defendants' Position:***

14 While it is unfortunate that criminal charges against each of the Plaintiffs
15 were eventually dismissed by the District Attorney, the Supreme Court long ago
16 noted that "*The Constitution does not guarantee that only the guilty will be*
17 *arrested. If it did, § 1983 would provide a cause of action for every defendant*
18 *acquitted -- indeed, for every suspect released.*" *Baker v. McCollan*, 443 U.S.
19 *137, 145, 99 S.Ct. 2689, 2695 (1979).*

20 Contrary to the allegations that each of the Plaintiffs was "falsely arrested",
21 Defendants assert that probable cause existed for each of their arrests.
22 Unfortunately, it is also not uncommon for female arrestees to allege that an
23 arresting officer improperly touched them during the arrest process. However, the
24 Fullerton Police Department conducted a thorough internal investigation of these
25 complaints and found no evidence to support the allegations beyond the proverbial
26 "she said/he said".

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1 **(2) A SHORT SYNOPSIS OF THE PRINCIPLE ISSUES:**

2 **A. *Plaintiffs' Position:***

3 Plaintiffs will offer evidence in support of the above-referenced allegations.

4 **B. *Defendants' Position:***

5 As noted above, Defendants assert that there was probable cause for the
6 arrest of each of the Plaintiffs at the time and that no constitutional or other
7 violation occurred. Defendants further assert that there was no improper touching
8 and that any touching or minimal use of force was reasonable and necessary
9 during the course of these lawful arrests.

10 **(3) STATEMENT OF WHETHER PARTIES ARE LIKELY TO BE**
11 **ADDED AND WHETHER THE PLEADINGS ARE LIKELY TO BE**
12 **AMENDED:**

13 Plaintiffs may add additional Officers as parties to this litigation upon
14 further discovery and investigation. Plaintiffs reserve their right to amend the
15 necessary pleadings in order to include all proper parties.

16 **(4) STATEMENT AS TO ISSUES WHICH ANY PARTY BELIEVES**
17 **MAY BE DETERMINED BY MOTION AND LISTING OF THEN-**
18 **CONTEMPLATED LAW AND MOTION MATTERS:**

19 **A. *Plaintiff's Position:***

20 Plaintiff knows of no such motions at this time.

21 **B. *Defendants' Position:***

22 Defendants are cautiously optimistic that at least Officer Wren and the City,
23 if not all Defendants, may be subject to dismissal by way of summary judgment
24 following discovery.

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1 **(5) STATEMENT OF WHAT SETTLEMENT DISCUSSIONS HAVE**
2 **OCCURRED AND WHAT SETTLEMENT PROCEDURE IS**
3 **RECOMMENDED:**

4 On April 13, 2010 Defendant City of Fullerton offered \$7,500.00 to each
5 Plaintiff. Plaintiffs rejected said offer. On June 21, 2010 Defendants issued an
6 Offer of Judgement pursuant to Fed. R. Civ. P. 68. Plaintiffs did not accept this
7 offer. On June 21, 2010 Plaintiffs each demanded \$200,000.00 to resolve their
8 individual claims. Thereafter, counsel engaged in additional settlement
9 discussions and agreed to proceed with Alternative Dispute Resolution in the form
10 of a Voluntary Settlement Conference with a neutral, pending authority from the
11 City of Fullerton.

12 Defendants have served each Plaintiff with a separate Rule 68 Offer in the
13 amount of \$7,500 plus reasonable attorney's fees not to exceed \$2,500 (i.e. up to
14 \$10,000 each) at this early phase of litigation. It is Defendants understanding that
15 these offers have been rejected.

16 **(6) DISCOVERY PLAN:**

17 ***A. Plaintiff's Position:***

18 Plaintiffs will serve special interrogatories, a request for production of
19 documents and request for admissions on Defendants. Plaintiffs will take the
20 depositions of Defendants and any witnesses later identified, including Fullerton
21 Police Department Officers and those involved in the Department's Internal
22 Affairs and investigation units. The limitation on discovery will be those that are
23 set forth in the Federal Code of Civil Procedure and any additional limitations
24 imposed by this Court.

25 ***B. Defendants' Position:***

26 Defendants will likely serve written discovery and take the depositions of
27 Plaintiffs and any witnesses later identified. The limitation on discovery will be
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1 those that are set forth in the Federal Code of Civil Procedure and any additional
2 limitations imposed by this Court.

3 **(7) STATEMENT OF WHETHER TRIAL BY JURY OR COURT AND**
4 **ESTIMATED LENGTH:**

5 All parties have requested a jury trial. The length of trial is estimated to be
6 five days depending on the scope of the issues remaining at trial.

7 **(8) STATEMENT OF OTHER ISSUES:**

8 Defendants will be requesting bifurcation of *Monell* issues.

9 **(9) PROPOSED DEADLINES:**

- 10 (a) Discovery Cut Off: August 6, 2011
- 11 (b) Expert Discovery Cut Off: August 20, 2011
- 12 (b) Motion Hearing Cut Off: September 17, 2011
- 13 (c) Final Pretrial Conference: October 22, 2011
- 14 (d) Trial: November 6, 2011

15 DATED: August 16, 2010 FERGUSON, PRAET & SHERMAN
16 A Professional Corporation

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18 /s/ Bruce D. Praet
19 Bruce D. Praet
20 Attorneys for Defendants

21 DATED: August 16, 2010 LAW OFFICES OF MOREY & UPTON

22 /s/ John H. Upton
23 John H. Upton
24 Leah Berry
25 Attorneys for Plaintiffs