

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Lisa Molesky, as guardian ad litem for J.M., a minor v. Oscar
Carrillo, et al.**

Molesky · No. 1:22-cv-01567-ADA-CDB · Decided March 10, 2023

SUMMARY

This is a scheduling order issued by the United States District Court for the Eastern District of California in Molesky v. Carrillo, Case No. 1:22-cv-01567-ADA-CDB. The order sets amendment, discovery, motion, pretrial conference, settlement, and jury trial deadlines for claims arising under 42 U.S.C. § 1983 and related California law.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Christopher D. Baker
DECIDED	March 10, 2023
DOCKET	1:22-cv-01567-ADA-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Scheduling order issued after a Rule 16 scheduling conference in a civil-rights action brought under 42 U.S.C. § 1983 and related state-law claims.
PRECEDENTIAL VALUE	Nonprecedential case-management and scheduling order
PARTIES	Lisa Molesky, as guardian ad litem for J.M., a minor v. Oscar Carrillo, et al.

TOPICS

[civil procedure](#) [section 1983](#) [guardianship procedure](#) [torts](#)

PRACTICE AREAS

[civil procedure](#) [civil rights](#) [guardianships](#) [torts](#)

FACTUAL BACKGROUND

The plaintiff is a minor represented by a guardian ad litem and asserts claims for individual liability, failure to intervene, and supervisory liability under 42 U.S.C. § 1983. The plaintiff also asserts claims under California Civil Code § 52.1, California Government Code § 844.6, negligence, and false imprisonment. The order does not recite the underlying events giving rise to those claims.

PROCEDURAL HISTORY

The minor plaintiff, through her guardian ad litem, brought claims against Oscar Carrillo and other defendants. Following the March 9, 2023 scheduling conference before Magistrate Judge Christopher D. Baker, the court set deadlines for amendment of pleadings, disclosures, discovery, motions, settlement, pretrial proceedings, and trial.

DISPOSITION

other

CASES CITED

- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)
- Foman v. Davis, 371 U.S. 178, 182 (1962)

OPINION

1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8
9 LISA MOLESKY, as guardian ad litem Case No. 1:22-cv-01567-ADA-CDB 10 for J.M., a
minor, SCHEDULING ORDER (Fed. R. Civ. P. 16) 11 Plaintiffs, 12 v. Discovery Deadlines: 13
OSCAR CARRILLO, ET AL., -Amend by: May 8, 2023 -Rule 26 Disclosures: April 5, 2023 14
Defendants. -Expert Disclosures: September 22, 2023 -Fact Discovery Cut-Off: September 8,
2023 15 -Expert Discovery Cut-Off: November 17, 2023 -Mid-Discovery Status Conference: July
24, 16 2023, at 9:30 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA
93301 17 Non-Dispositive Motion Deadlines: 18 -Filing: December 1, 2023 -Hearing: On or
before January 8, 2024, at 10:30 19 a.m., in Bakersfield Federal Courthouse 20 Dispositive
Motion Deadlines: -Filing: January 22, 2024 21 -Hearing: March 4, 2024, at 1:30 p.m, in Robert
E. Coyle Federal Courthouse, Fresno, 22 Courtroom 1, 8th Floor 23 Pre-Trial Conference: July 1,
2024, at 1:30 p.m., in Fresno Federal Courthouse, Courtroom 1, 24 8th Floor 25 Trial: August 27,
2024, at 8:30 a.m, in Fresno Federal Courthouse, Courtroom 1, 8th Floor 26 27 28 1 Plaintiff, a
minor, through is guardian ad litem asserts claims under 42 U.S.C. § 1983 for 2 individual
liability, failure to intervene, and supervisory liability.

Plaintiff also raises claims for relief 3 for violations of Cal. Civ. Code § 52.1 (“the Bane Act”),
negligence under Cal. Gov. Code § 844.6, 4 and False Imprisonment. 5 I. Date of Scheduling
Conference 6 March 9, 2023, before Magistrate Judge Christopher D. Baker. 7 II. Appearances of
Counsel 8 Erin Darling on behalf of Plaintiff. 9 Nicholas Street appeared on behalf of Defendants.

10 III. Magistrate Judge Consent: 11 Currently there is no joint consent to magistrate judge jurisdiction. 12 Notice of Congested Docket and Court Policy of Trailing 13 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the 14 Eastern District is to trail all civil cases.

The parties are hereby notified that for a trial date set before a 15 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case 16 set on the same date until a courtroom becomes available.

The trial date will not be reset. 17 The Magistrate Judges' availability is far more realistic and accommodating to parties than that 18 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize 19 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge 20 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of 21 Civil Procedure 73, and Local Rule 305.

Any appeal from a judgment entered by a United States 22 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit. 23 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United 24 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the 25 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance 26 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern 27 District of California.

28 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to 1 conduct all further proceedings, including trial, and to file a consent/decline form (provided by the 2 Court at the inception of this case) indicating whether they will consent to the jurisdiction of the 3 Magistrate Judge. 4 IV. Pleading Amendment Deadline 5 Any requested pleading amendments are ordered to be filed, either through a stipulation or 6 motion to amend no later than May 8, 2023.

The parties are advised that filing motions and/or 7 stipulations requesting leave to amend the pleadings does not reflect on the propriety of the amendment 8 or imply good cause to modify the existing schedule, if necessary. All proposed amendments must (A) 9 be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any 10 modification to the existing schedule, see *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 11 (9th Cir.

1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not (1) 12 prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or (4) futile, 13 see *Foman v. Davis*, 371 U.S. 178, 182 (1962). 14 V. Discovery Plan and Cut-Off Date 15 The parties are ordered to exchange the initial disclosures required by Fed.

R. Civ. P. 26(a)(1) 16 by April 5, 2023. 17 The parties are ordered to complete all discovery pertaining to non-experts on or before 18 September 8, 2023, and all discovery pertaining to experts on or before November 17, 2023. 19 The parties are directed to disclose all expert witnesses¹, in writing, on or before September 22, 20 2023, and to disclose all rebuttal experts on or before October 12, 2023.

The written designation of 21 retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and 22 (C) and shall include all information required thereunder. Failure to designate experts in compliance 23 with this order may result in the Court excluding the testimony or other evidence offered through such 24 experts that are not disclosed pursuant to this order.

25 26 27 28 1 In the event an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's 1 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts 2 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions 3 included in the designation.

Failure to comply will result in the imposition of sanctions, which may 4 include striking the expert designation and preclusion of expert testimony. 5 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement 6 disclosures and responses to discovery requests will be strictly enforced. 7 A mid-discovery status conference is scheduled for July 24, 2023, at 9:30 a.m. before 8 Magistrate Judge Christopher D. Baker.

Counsel SHALL file a joint mid-discovery status conference 9 report no later than one week before the conference. Counsel also SHALL lodge the joint status report 10 via e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery 11 counsel have completed and that which needs to be completed as well as any impediments to 12 completing the discovery within the deadlines set forth in this order.

Counsel SHALL discuss 13 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement, 14 and (2) proposed dates for convening a settlement conference before a U.S. magistrate judge. 15 VI. Pre-Trial Motion Schedule 16 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later 17 than December 1, 2023² and heard on or before January 8, 2024.

Discovery motions shall be set 18 before Magistrate Judge Baker. For these hearings and at the direction of the Courtroom Deputy Clerk, 19 the Court may permit counsel to appear remotely (via Zoom) or via teleconference [(877) 402-9757, 20 Access Code 6966236] provided the Courtroom Deputy Clerk receives a written notice of the intent to 21 appear telephonically no later than five court days before the noticed hearing date.

All other non- 22 dispositive hearings SHALL be set before Judge de Alba. 23 No motion to amend or stipulation to amend the case schedule will be entertained unless it is 24 filed at least one week before the first deadline the parties wish to extend. Likewise, no written 25 discovery motions shall be filed without the prior approval Magistrate Judge Baker.

A party with a 26 27 28 2 Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery 1 discovery dispute must first confer with the opposing party in a good faith effort to resolve by 2 agreement the issues in dispute.

If that good faith effort is unsuccessful, the moving party promptly 3 shall seek a telephonic hearing with all involved parties and Magistrate Judge Baker. To schedule this 4 telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at (661) 5 326-6620 or via email at SHall@caed.uscourts.gov. At least three days before the conference, counsel 6 SHALL file informal letter briefs detailing their positions.

The briefs may not exceed 7 pages, 7 excluding exhibits. Counsel must comply with Local Rule 251 with respect to discovery disputes or 8 the motion will be denied without prejudice and dropped from the Court's calendar. 9 All dispositive pre-trial motions shall be filed no later than January 22, 2024, and heard no 10 later than March 4, 2024, in Courtroom 1 at 1:30 p.m. before the Honorable Ana de Alba, United 11 States District Judge.

In scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and 12 Local Rules 230 and 260. 13 VII. Motions for Summary Judgment or Summary Adjudication 14 At least 21 days before filing a motion for summary judgment or motion for summary 15 adjudication, the parties are ORDERED to meet, in person or by telephone, to confer about the issues to 16 be raised in the motion.

17 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a 18 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole 19 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the 20 issues for review by the court; 5) explore the possibility of settlement before the parties incur the 21 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

22 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed 23 statement of undisputed facts at least five days before the conference. The finalized joint statement of 24 undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be 25 deemed true.

In addition to the requirements of Local Rule 260, the moving party shall file the joint 26 statement of undisputed facts. 27 In the notice of motion, the moving party SHALL certify that the

parties have met and 28 conferred as ordered above or set forth a statement of good cause for the failure to meet and confer. 1 Failure to comply may result in the motion being stricken.

2 VIII. Pre-Trial Conference Date 3 July 1, 2024, at 1:30 p.m. in Courtroom 1 before the Honorable Ana de Alba, United States 4 District Judge. 5 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2).

The 6 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly 7 to Judge de Alba's chambers, by email at ADAorders@caed.uscourts.gov. 8 Counsels' attention is directed to Rules 281 and 282 of the Local Rules of Practice for the 9 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.

10 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the 11 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the 12 Court to explain the nature of the case to the jury during voir dire. 13 IX. Trial Date 14 August 27, 2024, at 8:30 a.m. in Courtroom 1 before the Honorable Ana de Alba, United States 15 District Judge.

16 A. This is a jury trial. 17 B. Counsels' Estimate of Trial Time: 4-7 days 18 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of 19 California, Rule 285. 20 X. Settlement Conference 21 The parties are advised that Judge de Alba requires that a mandatory settlement conference be 22 conducted prior to trial by a federal judge.

Where the parties filed a summary judgment/adjudication 23 motion, a settlement conference shall be scheduled 30 days after the motion is fully briefed. In cases 24 where the parties do not file a summary judgment/adjudication motions, a settlement conference shall 25 be scheduled 30 days after the last day for the filing of dispositive motions. Unless otherwise requested 26 by the parties, the Settlement Conference will be set before Magistrate Judge Baker.

27 / / / 28 1 Request for Bifurcation, Appointment of Special Master, or other 2 Techniques to Shorten Trial 3 Not applicable at this time. 4 || XII. Related Matters Pending 5 There are no pending related matters. 6 || XIII. Compliance with Federal Procedure 7 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure 8 || and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any 9 || amendments thereto.

The Court must insist upon compliance with these Rules if it is to efficiently 10 || handle its increasing case load and sanctions will be imposed for failure to follow both the Federal 11 || Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California. 12 || XIV. Effect of this Order 13 The foregoing order represents the best estimate of the court and counsel as to the agenda mo: 14 || suitable to dispose of this case.

The trial date reserved is specifically reserved for this case. If the 15 || parties determine at any time that the schedule outlined in this order cannot be met, counsel are order 16 || to notify the court immediately of that fact so that adjustments may be made, either by stipulation or | 17 || subsequent status conference. 18 The dates set in this Order are considered to be firm and will not be modified absent a showin 19 || of good cause even if the request to modify is made by stipulation.

Stipulations extending the deadlit 20 || contained herein will not be considered unless they are accompanied by affidavits or declarations, anc 21 || where appropriate attached exhibits, which establish good cause for granting the relief requested. 22 Failure to comply with this order may result in the imposition of sanctions. 23 IT IS SO ORDERED. Dated: _March 10, 2023 | Wr Pr 25 UNITED STATES MAGISTRATE JUDGE 26 27 28