

Dec 20 2004

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 04-20516-CIV-Jordan/Brown

JUDITH HANEY, et al.,

Plaintiffs,

v.

MIAMI-DADE COUNTY, et al.,

Defendants.

AGREED MOTION TO MODIFY SCHEDULING ORDER

Plaintiffs and Defendants, by and through their respective counsel, jointly move to modify the Court's Order Setting Schedule issued June 8, 2004.

INTRODUCTION

On May 1, 2004, Plaintiffs filed their First Amended Complaint alleging they were all strip searched illegally by Defendants at various detention centers operated by Defendants following being arrested on minor crimes and before their first appearances. Plaintiffs included class claim allegations and indicated they would request certification of the action as a class action.

On May 28, 2004, defendants moved to dismiss Plaintiffs' request for injunctive relief. On June 8, 2004, this Court issued its Order Setting Schedule, requiring mediation, and referring certain motions to the magistrate judge. That schedule set the matter for a two week trial beginning August 22, 2005, and established other dates including the following:

August 2, 2004: All motions to amend pleadings or join parties are filed.

January 3, 2005: Parties exchange expert witness summaries and reports required by

Local Rule 16.1.K

- February 1, 2005: Parties exchange rebuttal expert witness summaries and reports required by Local Rule 16.1.K
- March 1, 2005: All discovery, including expert discovery, is completed.
- March 15, 2005: Parties to have completed mediation.
- April 15, 2005: All pre-trial motions other than motions in limine are filed.
- May 16, 2005: Parties to submit joint pre-trial stipulation and proposed jury instructions

The parties have proceeded diligently, have exchanged documents, and have taken deposition of one of the Plaintiffs and eight correctional officers employed by Defendants. Based on information disclosed in those depositions, Plaintiffs will soon notice the depositions of additional employees of Defendants, have served additional requests for production of documents, and have served interrogatories designed to determine the number of persons in the class Plaintiffs seek to represent. Defendants have noticed the depositions of the remaining Plaintiffs.

The parties have also agreed to attempt to resolve this dispute through mediation, and that mediation is now scheduled to begin February 7, 2005. In order to promote the resolution of this dispute and, if not resolved, to properly present it for trial, the parties jointly propose a modification of the Order Setting Schedule. A copy of a proposed modified Order Setting Schedule is attached as Exhibit A.

A. Proposed Modification of Order Setting Schedule

The Order Setting Schedule issued on June 8, 2004, set the matter for a two week jury trial to begin on August 22, 2005, and established a series of other dates which, by this motion, the parties

are jointly requesting the court to modify.

Counsel have agreed that the complaint may be modified to clarify Plaintiffs' legal position that a violation of the Florida State Statute restricting strip search of arrestees prior to first appearance constitutes a recognition of a liberty interest which cannot be denied without due process. The parties also agree that all such motions to amend pleadings may be filed on or before March 1, 2005.

Because the parties are pursuing resolution of this dispute through mediation and believe that, if mediation is not successful, the nature, identity and necessity of expert witnesses may be affected by the Court's ruling on various anticipated motions, the parties agree that exchange of expert witness summaries and reports should be deferred to April 1, 2005, and the exchange of rebuttal expert witness summaries and reports required on or before May 2, 2005.

Since the nature and scope of discovery will depend upon the Court's ruling on Plaintiffs' anticipated motion for class certification, the parties agree that discovery, including expert witness discovery, should be held open until July 1, 2005, and that all pre-trial motions, other than motions in limine should be filed by August 15, 2005.

The parties agree that the two week trial should be continued from August 22, 2005, to begin on or after December 5, 2005 (consistent with the Court's calendar), with calendar call to be held on or after November 29, 2005, and all joint pre-trial stipulations and proposed jury instructions to be filed by September 15, 2005.

All other provisions of the June 8, 2004, Order Setting Schedule would remain as originally ordered.

This joint motion is supported by the affidavit of Mark E. Merin, one of the attorneys for

plaintiffs, attached hereto.

Dated: December 20, 2004

Respectfully submitted,

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Dated: December 20, 2004

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**DECLARATION OF MARK E. MERIN IN SUPPORT OF
AGREED MOTION FOR ORDER TO MODIFY SCHEDULING ORDER**

I, Mark E. Merin, under penalty of perjury, do declare and say:

1. I am an attorney licensed to practice in the state of California and before the Federal District Courts in the state of California, the Ninth Circuit Court of Appeal, and the United States Supreme Court. I have also been specially admitted, *pro hac vice*, to appear before this Court as counsel for Plaintiffs.

2. The Complaint alleges that Defendants illegally strip searched females arrested for minor crimes at various facilities maintained and operated by Defendants prior to their first appearances. At the time the First Amended Complaint was filed on May 1, 2004, Plaintiffs and their counsel had very little information about the policies, practices and procedures challenged by this Complaint, other than the experiences of Plaintiffs themselves.

3. Even before the scheduling order was issued on June 8, 2004, Defendants had moved to dismiss Plaintiffs' request for injunctive relief, a motion that was not denied until August 24,

2004, after the specified date in the scheduling order for motions to amend pleadings or join parties had expired.

4. While the parties were directed to attempt to pursue mediation, dates for the exchange of expert witness summaries and reports were established in January and February, prior to the earliest date when mediation could have been initiated.

5. The parties have diligently discovered the case and have exchanged documents and taken the depositions of eight of Defendants correctional officer employees, and one of the representative Plaintiffs. Additionally, depositions have now been scheduled of other witnesses whose identity and significance was discovered during the depositions of other witnesses, and further document production request and interrogatories served. Defendants have noticed the deposition of additional plaintiffs and those depositions will proceed in January 2005.

6. The scheduling order previously established is, in light of the nature and complexity of this case, unrealistic and virtually impossible to meet given the legal and factual complexity of the case and its final determination affected by court rulings on motions which have not yet been presented, specifically plaintiffs' anticipated motion for class certification.

7. The parties have worked cooperatively and are now embarking on a good faith attempt to resolve the matter through mediation scheduled for February 7 and 8, 2005. In order for resources to be focused most advantageously on achieving results in the mediation, the parties have met and conferred and jointly agree that the scheduling order should be modified as set out in this agreed motion and the accompanied proposed order to allow the parties to focus on mediation and, thereafter, if necessary, to move the matter toward trial following completion of discovery and preparation and disclosure of expert witnesses.

I declare under penalty of perjury that the above is true and correct and that this Declaration was executed this 20th day of December 2004, in Sacramento, California.

s/
Mark E. Merin

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[PROPOSED] ORDER MODIFYING PREVIOUS SCHEDULING ORDER

This matter is before the Court on the parties' Agreed Motion to Modify the Scheduling Order of June 8, 2004. The Court having reviewed the Agreed Motion and being otherwise advised in the premises finds good cause appearing from the Agreed Motion submitted by counsel for the parties, and therefore this Court's prior Order Setting Scheduling of June 8, 2004 is modified to provide as follows:

The case is set for trial during the Court's two week trial calendar beginning on December 5, 2005. Calendar call will be held at 9:00 a.m. on November 29, 2005, in Courtroom Eight of the United States Courthouse, 301 N. Miami Avenue, Miami, Florida. No pre-trial conference will be held unless a party requests one no later than 30 days prior to the calendar call or the Court determines that one is necessary. The parties shall adhere to the following modified schedule:

March 1, 2005: All motions to amend the pleadings other than to add additional parties

- April 1, 2005: Parties to exchange expert witness summaries and reports required by Local Rule 16.1.K.
- May 2, 2005: Parties to exchange rebuttal expert witness summaries and reports required by Local Rule 16.1.K.
- July 1, 2005: All discovery, including expert discovery, is completed.
- August 15, 2005: All pre-trial motions other than motions in *limine* are to be filed.
- September 15, 2005: Parties to submit joint pre-trial stipulation and proposed jury instructions.

All other provisions of the June 8, 2004, Order Setting Schedule shall remain as previously ordered.

DONE AND ORDERED in chambers in Miami, Florida, this ____ day of December 2004.

Adalberto Jordan
United States District Judge

cc: Jeffrey P. Ehrlich, Esq.
Mark E. Merin, Esq.
Randall C. Berg, Jr., Esq.
Andrew C. Schwartz, Esq.