

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

SCHOONER CREEK FARM, )  
SARAH DYE, and DOUGLAS MACKEY )  
 )  
Plaintiffs, )  
 )  
v. ) Cause No. 1:20-cv-00518-RLY-DML  
 )  
CITY OF BLOOMINGTON, INDIANA, )  
 )  
And, )  
 )  
JOHN HAMILTON, in his official capacity )  
As Mayor of the City of Bloomington, Indiana and )  
in his individual capacity, )  
 )  
And, )  
 )  
PAULA MCDEVITT, in her official capacity )  
as Administrator of the Bloomington Parks and, )  
Recreation Department in her individual capacity, )  
 )  
And, )  
 )  
MARCIA VELDMAN, in her official capacity )  
As the Program Coordination for the Bloomington )  
Community Farmers Market and in her individual )  
capacity, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_)  
 )  
CITY OF BLOOMINGTON, INDIANA, )  
 )  
And, )  
 )  
JOHN HAMILTON, in his official capacity )  
As Mayor of the City of Bloomington, Indiana and )  
in his individual capacity, )  
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And, )  
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PAULA MCDEVITT, in her official capacity )

as Administrator of the Bloomington Parks and, )  
 Recreation Department in her individual capacity, )  
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 And, )  
 )  
 MARCIA VELDMAN, in her official capacity )  
 As the Program Coordination for the Bloomington )  
 Community Farmers Market and in her individual )  
 capacity, )  
 )  
 Counter-claim plaintiffs, )  
 )  
 v. )  
 )  
 SARAH DYE and DOUGLAS MACKEY, )  
 )  
 Counter-claim defendants. )

**CASE MANAGEMENT PLAN**

**I. Parties and Representatives**

A. Plaintiffs: Schooner Creek Farm, Sarah Dye, and Douglas Mackey

Counter-claim defendants: Sarah Dye and Douglas Mackey

Represented by:

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- B. Defendants: City of Bloomington, Mayor John Hamilton, Paul McDevitt, and Marcia Veldman

Counter-claim plaintiffs: City of Bloomington, Mayor John Hamilton, Paul McDevitt, and Marcia Veldman

Represented by:

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Counsel shall promptly file a notice with the Clerk if there is any change in this information.

## **II. Jurisdiction and Statement of Claims**

- A. The Court has subject matter jurisdiction over the plaintiffs' claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

It has supplemental jurisdiction over the counter-claims under 28 U.S.C. § 1367(a) because the counter-claims are so related to the plaintiffs' claims that they form part of the same case and controversy under Article III of the United States Constitution.

- B. Plaintiffs assert the defendants repeatedly deprived the Plaintiffs of their Constitutionally protected rights. And, the defendants did so with a particular intent – to drive the Plaintiffs out of the Bloomington Community Farmers' Market. The inciting cause to this litigation was a social media campaign waged by non-parties to the case. The non-parties asserted that the Plaintiffs held some politically unpopular views; they alleged that the Plaintiffs were Nazis and white supremacists. The defendants, apparently accepting the allegations as true, sought

to exclude the Plaintiffs from the Farmers' Market. They publicly acknowledged that the First Amendment stood in the way of any effort to oust Plaintiffs from the Market directly, and instead sought to coerce Plaintiffs out of the Market through selective enforcement of local rules and through encouraging third-parties who would boycott and intimidate the Plaintiffs.

- C. The defendants deny the plaintiffs' claims. After non-parties to this litigation decided that they disagreed with the plaintiffs' political or ideological views, they made the plaintiffs' views public on several electronic platforms and organized protests at the City's Market. In essence, the non-parties and the plaintiffs have each attempted to "win" the dispute between them by demanding that the City take their respective side. This lawsuit involves the plaintiffs' incorrect belief that the City has taken the non-parties' side when, in fact, the City has remained neutral. Once the dispute was brought into the Market, the City operated the Market in a manner that was fair and reasonable given the evolving and volatile situation. It respected the First Amendment and other rights of all concerned while balancing the need for public safety. Although the plaintiffs complain that the City did not do enough to remove non-party protestors from the Market and condoned the protestors' speech and actions, the City arrested several of the non-party protestors who attempted to disrupt the plaintiffs' business. Those non-party protestors have now threatened suit. They claim the City has condoned the plaintiffs' views. The fact that neither the plaintiffs nor the non-parties are happy demonstrates the City's fairness and neutrality.

In any event, Sarah Dye and Douglas Mackey executed a contract with the City pursuant to which they promised not to sue the City or any of its agents or employees and waived, released, and discharged the claims that they are now attempting to pursue. By bringing this lawsuit, they have breached that contract. That same contract also requires Dye and Mackey to indemnify the defendants for the attorneys' fees and costs they incur in connection with defending this lawsuit and pay any judgment or settlement for which the defendants would become liable. Consequently, Dye and Mackey gain nothing by pursuing this action.

### **III. Pretrial Pleadings and Disclosures**

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before **June 15, 2020**.
- B. Plaintiff(s) shall file preliminary witness and exhibit lists on or before **June 22, 2020**.
- C. Defendant(s) shall file preliminary witness and exhibit lists on or before **June 29, 2020**.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before **July 15, 2020**.

Sec. III E. The parties shall submit (not file) courtesy copies of their respective demand and response at the time of service via email to *judgelynychchambers@insd.uscourts.gov*. There is no need to follow the email with a hard copy.

- E. Plaintiff(s) shall serve Defendant(s) (but not file with the Court) a statement of special damages, if any, and make a settlement proposal, on or before **July 15, 2020**. Defendant(s) shall serve on the Plaintiff(s) (but not file with the Court) a response thereto within 30 days after receipt of the proposal.
- F. Except where governed by paragraph (G) below, expert witness disclosure deadlines shall conform to the following schedule: Plaintiff(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or **February 12, 2021**. Defendant(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before **April 12, 2021**.
- G. Notwithstanding the provisions of paragraph (F), above, if a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party, such expert disclosures must be served on opposing counsel no later than **January 11, 2020**. If such expert disclosures are served the parties shall confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment. The parties shall make good faith efforts to avoid requesting enlargements of the dispositive motions deadline and related briefing deadlines. Any proposed modifications of the CMP deadlines or briefing schedule must be approved by the Court.
- H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections on or before **August 13, 2021**. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by S.D. Ind. L.R. 56-1.
- I. All parties shall file and serve their final witness and exhibit lists on or before **April 30, 2021**. This list should reflect the specific potential witnesses the party may call at trial. It is not sufficient for a party to simply incorporate by reference “any witness listed in discovery” or such general statements. The list of final witnesses shall include a brief synopsis of the expected testimony.
- J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.
- K. Discovery of electronically stored information (“ESI”). The parties do not anticipate a substantial amount of ESI in this case.

To the extent that ESI is responsive to a discovery request, the parties agree to either print out and produce paper copies of the electronically stored documents or save the ESI onto a computer disk or thumb drive and produce it electronically in

either the same format in which it is ordinarily kept and maintained by that party or .PDF format.

The parties agree to the Court's standard claw-back provision, which provides:

In the event that a document protected by the attorney-client privilege, the attorney work product doctrine or other applicable privilege or protection is unintentionally produced by any party to this proceeding, the producing party may request that the document be returned. In the event that such a request is made, all parties to the litigation and their counsel shall promptly return all copies of the document in their possession, custody, or control to the producing party and shall not retain or make any copies of the document or any documents derived from such document. The producing party shall promptly identify the returned document on a privilege log. The unintentional disclosure of a privileged or otherwise protected document shall not constitute a waiver of the privilege or protection with respect to that document or any other documents involving the same or similar subject matter.

#### **IV. Discovery<sup>1</sup> and Dispositive Motions**

Due to the time and expense involved in conducting expert witness depositions and other discovery, as well as preparing and resolving dispositive motions, the Court requires counsel to use the CMP as an opportunity to seriously explore whether this case is appropriate for such motions (specifically including motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue. To this end, counsel must select the track set forth below that they believe best suits this case. If the parties are unable to agree on a track, the parties must: (1) state this fact in the CMP where indicated below; (2) indicate which track each counsel believes is most appropriate; and (3) provide a brief statement supporting the reasons for the track each counsel believes is most appropriate. If the parties are unable to agree on a track, the Court will pick the track it finds most appropriate, based upon the contents of the CMP or, if necessary, after receiving additional input at an initial pretrial conference.

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion?

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<sup>1</sup> The term "completed," as used in Section IV.C, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

Yes. Defendants intend to move for summary judgment on the grounds that the plaintiffs have waived and released the claims they attempt to pursue in this action, but even if they did not: (1) no constitutional violations occurred; (2) the defendants named in their individual capacities are entitled to qualified immunity; and (3) there is no right of action for money damages under the Indiana Constitution. As counter-claim plaintiffs, they will also seek summary judgment on the breach of contract and indemnity issues for a judgment of their damages, indemnity, and attorneys' fees and costs.

B. On or before **February 19, 2021**, and consistent with the certification provisions of Fed. R. Civ. P. 11(b), the party with the burden of proof shall file a statement of the claims or defenses it intends to prove at trial, stating specifically the legal theories upon which the claims or defenses are based.

C. Select the track that best suits this case:

    X     Track 2: Dispositive motions are expected and shall be filed by **April 12, 2021**; non-expert witness discovery and discovery relating to liability issues shall be completed by **February 12, 2021**; expert witness discovery and discovery relating to damages shall be completed **June 11, 2021**.

Absent leave of Court, and for good cause shown, all issues raised on summary judgment under Fed. R. Civ. P. 56 must be raised by a party in a single motion.

V. **Pre-Trial/Settlement Conferences**

At any time, any party may call the Judge's Staff to request a conference, or the Court may *sua sponte* schedule a conference at any time. **The parties recommend a settlement conference in late January 2021.**

VI. **Trial Date**

The parties request a trial date in **early December 2021**. The trial is by jury and is anticipated to take five (5) days.

VII. **Referral to Magistrate Judge**

A. **Case.** At this time, all parties **do not** consent to refer this matter to the currently assigned Magistrate Judge pursuant to 28 U.S.C. 636(c) and Fed. R. Civ. P. 73 for all further proceedings including trial.

B. **Motions.** The parties may also consent to having the assigned Magistrate Judge rule on motions ordinarily handled by the District Judge, such as motions to dismiss, for summary judgment, or for remand. If all parties consent, they should

file a joint stipulation to that effect. Partial consents are subject to the approval of the presiding district judge.

**VIII. Required Pre-Trial Preparation**

**A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:**

1. File a list of trial witnesses, by name, who are actually expected to be called to testify at trial. This list may not include any witnesses not on a party's final witness list filed pursuant to Section III.I.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
  - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
  - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).



6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

**B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:**

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

**IX. Other Matters**

None at this time.

Respectfully submitted,

Counsel for Plaintiffs:

/s/ Michael Jay Bruzzese (with permission)

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Counsel for Defendants

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Email: [pschneeman@stephlaw.com](mailto:pschneeman@stephlaw.com)

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x            
PARTIES APPEARED BY COUNSEL ON **May 13, 2020**, FOR AN INITIAL PRETRIAL CONFERENCE. APPROVED AS SUBMITTED.

          x            
APPROVED AS AMENDED.  
APPROVED AS AMENDED PER SEPARATE ORDER.

APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

APPROVED, BUT THE DEADLINES SET IN SECTION(S) \_\_\_\_\_ OF THE PLAN IS/ARE SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

THIS MATTER IS SET FOR TRIAL BY \_\_\_\_\_ ON \_\_\_\_\_ . FINAL PRETRIAL CONFERENCE IS SCHEDULED FOR \_\_\_\_\_ AT \_\_\_\_\_ .M., ROOM \_\_\_\_\_ .

A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE FOR \_\_\_\_\_ AT \_\_\_\_\_ .M. COUNSEL SHALL APPEAR:

\_\_\_\_\_ IN PERSON IN ROOM \_\_\_\_\_ ; OR

\_\_\_\_\_ BY TELEPHONE, WITH COUNSEL FOR INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING THE COURT JUDGE AT ( \_\_\_\_ ) \_\_\_\_\_ ; OR

\_\_\_\_\_ BY TELEPHONE, WITH COUNSEL CALLING THE JUDGE'S STAFF AT ( \_\_\_\_ ) \_\_\_\_\_ .

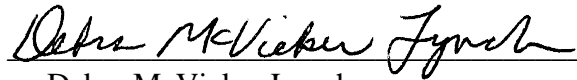
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DISPOSITIVE MOTIONS SHALL BE FILED BY **April 12, 2021**.

          x            
NON-EXPERT WITNESS AND LIABILITY DISCOVERY SHALL BE COMPLETED BY **February 12, 2021**.

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Fed. R. Civ. P. 16-1(f), to and including dismissal or default.

**APPROVED AND SO ORDERED.**

Date: 5/22/2020



Debra McVicker Lynch  
United States Magistrate Judge  
Southern District of Indiana