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8	IN THE UNITED STATES DISTRICT COURT FOR THE	
9	EASTERN DISTRICT OF CALIFORNIA	
10	GUADALUPE FONSECA, et al.,	) 1:10cv0147 LJO DLB
11	GUADALUI E FUNSLEA, et al.,	) 1.10000147 EJO DEB
12	Plaintiff,	) ORDER CONTINUING HEARING ) ON DEFENDANTS' MOTION TO COMPEL
13		(Documents 33 and 35)
14	VS.	) Date: October 11, 2011 ) Time: 9:30 a.m.
15	CITY OF FRESNO,	) Courtroom 9
16	Defendant.	
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18	On August 25, 2011, Defendants City of Fresno and Officer Mark Wilcox filed this motion to	
19	compel the deposition of Plaintiff Guadalupe Fonseca ("Mr. Fonseca"). The motion was heard on	
20	September 23, 2011, before Dennis L. Beck, United States Magistrate Judge. Melanie Partow	
21	appeared on behalf of Mr. Fonseca. Brande Gustafson appeared on behalf of Defendants City of	
22	Fresno and Officer Wilcox. Stephen Pass appeared on behalf of Defendant Officer Mike Trenholm.	
23	BACKGROUND	
24	Mr. Fonseca, by and through his Guardian Ad Litem Mary Guerrero, and Paula Fonseca, filed	
25	this civil rights action against the City of Fresno, Fresno Police Officer Mark Wilcox, California	
26	Highway Patrol Officer Mike Trenholm and Does 3-10, on January 27, 2010. Plaintiffs' allegations	
27	arise out of Mr. Fonseca's arrest on December 12, 2008.	
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Plaintiffs filed a First Amended Complaint ("FAC") on June 22, 2010.

Pursuant to the September 15, 2010, Scheduling Conference Order, the non-dispositive
motion filing date is October 14, 2011, and the dispositive motion filing date is October 24, 2011.
The pretrial conference is set for February 1, 2012 and trial is set for March 19, 2012. On July 20,
2011, the parties stipulated to extend discovery as follows: non-expert discovery cutoff- October 14,
2011; exert discovery cutoff- October 28, 2011.

Defendants City of Fresno and Officer Mark Wilcox ("City Defendants") filed this motion to
compel Mr. Fonseca's deposition<sup>1</sup> on August 25, 2011. The parties filed a joint statement on
September 16, 2011.

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## **FACTUAL ALLEGATIONS**

According to the FAC, on or about December 12, 2008, Mr. Fonseca, a Latino male of
majority age who suffers from a mental disability, walked out of his house in Fresno, California, to
take out the trash. While on duty, Officers Wilcox and Trenholm detained and arrested Mr. Fonseca
just outside the doorway to his residence for no reason and without probable cause.

Plaintiff Paula Fonseca, Mr. Fonseca's mother, observed the incident and told the officers
that he was mentally disabled and was not a criminal. Officers Wilcox and Trenholm used excessive
force in the course of unlawfully detaining Mr. Fonseca, including but not limited to forcibly
grabbing him, slamming him on the ground, punching him and kicking him. He complied with the
Officers at all times and was not armed.

Mr. Fonseca was taken into custody with obvious injuries and did not refuse medical aid.
Officers Wilcox and Trenholm did not immediately report the use of force or seek medical assistance
for Mr. Fonseca. As a result of the excessive force, Mr. Fonseca remained in a coma for eight days.
Moreover, Paula Fonseca suffered a heart attack on or about December 12, 2008, while in the
hospital with him.

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<sup>1</sup> Defendant CHP Officer Trenholm is not a moving party but agrees with all facts and arguments set forth by the City Defendants.

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1	Based on these facts, Plaintiffs allege causes of action under the United States Constitution	
2	and California law.	
3	DISCOVERY AT ISSUE	
4	City Defendants seek to compel the deposition of Mr. Fonseca over Plaintiffs' objections that	
5	he is mentally incompetent to testify. Despite Plaintiffs' willingness to stipulate that Mr. Fonseca is	
6	not competent to testify and will not be called as a witness at trial, City Defendants believe that a	
7	videotaped deposition would be "useful" to an expert in determining whether an Independent	
8	Medical Examination is necessary.	
9	However, where there is a threshold issue as to competency, a deposition is not the proper	
10	method for testing a witness's competency. Instead, the issue is better addressed by gathering	
11	sufficient information to make a reasoned competency determination <i>prior</i> to the deposition. To this	
12	end, the parties have agreed to cooperate in document production to assist in making a competency	
13	determination before reaching the issue of Mr. Fonseca's deposition. The parties are also directed to	
14	discuss extensions of the discovery deadlines that will accommodate this discovery without moving	
15	the pretrial conference and trial dates.	
16	ORDER	
17	Accordingly, the Court CONTINUES this matter to October 11, 2011, at 9:30 a.m., in	
18	Courtroom 9. The parties shall contact the Court prior to this date if the matter is resolved and a	
19	hearing is no longer necessary.	
20	IT IS SO ORDERED.	
21	Dated:September 23, 2011/s/ Dennis L. BeckUNITED STATES MAGISTRATE JUDGE	
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