

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

GUADALUPE FONSECA, et al.,

Plaintiff,

vs.

CITY OF FRESNO,

Defendant.

) 1:10cv0147 LJO DLB

) ORDER CONTINUING HEARING  
) ON DEFENDANTS’ MOTION TO COMPEL  
) (Documents 33 and 35)

) Date: October 11, 2011  
) Time: 9:30 a.m.  
) Courtroom 9

On August 25, 2011, Defendants City of Fresno and Officer Mark Wilcox filed this motion to compel the deposition of Plaintiff Guadalupe Fonseca (“Mr. Fonseca”). The motion was heard on September 23, 2011, before Dennis L. Beck, United States Magistrate Judge. Melanie Partow appeared on behalf of Mr. Fonseca. Brande Gustafson appeared on behalf of Defendants City of Fresno and Officer Wilcox. Stephen Pass appeared on behalf of Defendant Officer Mike Trenholm.

**BACKGROUND**

Mr. Fonseca, by and through his Guardian Ad Litem Mary Guerrero, and Paula Fonseca, filed this civil rights action against the City of Fresno, Fresno Police Officer Mark Wilcox, California Highway Patrol Officer Mike Trenholm and Does 3-10, on January 27, 2010. Plaintiffs’ allegations arise out of Mr. Fonseca’s arrest on December 12, 2008.

1 Plaintiffs filed a First Amended Complaint (“FAC”) on June 22, 2010.

2 Pursuant to the September 15, 2010, Scheduling Conference Order, the non-dispositive  
3 motion filing date is October 14, 2011, and the dispositive motion filing date is October 24, 2011.  
4 The pretrial conference is set for February 1, 2012 and trial is set for March 19, 2012. On July 20,  
5 2011, the parties stipulated to extend discovery as follows: non-expert discovery cutoff- October 14,  
6 2011; exert discovery cutoff- October 28, 2011.

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

10 **FACTUAL ALLEGATIONS**

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

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

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

25

---

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

28

