

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

9 JOHN BERNAT,) 1:10-cv-0305 OWW JLT
10 Plaintiff,) SCHEDULING CONFERENCE ORDER
11 v.)
12 CITY OF CALIFORNIA CITY,) Non-Dispositive Motion
13 CALIFORNIA CITY POLICE) Filing Deadline: 12/27/10
14 DEPARTMENT, OFFICER STANDISH)
KNOWLTON BADGE #53024 AND LT.)
ERIC HURTADO BADGE #53012 and)
DOES 1 through 10, inclusive,)
15 Defendants.) Non-Dispositive Motion
16) Hearing Date: 2/4/10 9:00
Bakersfield)
17) Dispositive Motion Filing
18) Deadline: 1/10/11
19) Dispositive Motion Hearing
20) Date: 2/14/11 10:00 Ctrm.
3)
21) Settlement Conference Date:
2/16/11 10:00 Bakersfield
22) Pre-Trial Conference Date:
3/7/11 11:00 Ctrm. 3
Trial Date: 4/26/11 9:00
Ctrm. 3 (JT-5 days)

25 || I. Date of Scheduling Conference.

26 June 30, 2010.

27 | II. Appearances Of Counsel.

28 Williamson & Krauss by Todd B. Krauss, Esq., appeared on

1 behalf of Plaintiff.

2 Manning & Marder, Kass, Ellrod, Ramirez LLP by Susan E.
3 Coleman, Esq., appeared on behalf of Defendants.

4 III. Summary of Pleadings.

5 1. On August 8, 2009, Plaintiff, a 68 year old man with
6 osteo arthritis in most all of his joints and gouty arthritis in
7 his feet, along with a degenerative disc disease in his neck,
8 asthma and numerous other medical conditions, alleges he went to
9 Central Park to feed the geese and spend a nice day in the fresh
10 air. Plaintiff alleges he walked around the park and then sat in
11 his car to rest and relax at the park. Unbeknownst to Plaintiff,
12 an individual called the police regarding a suspicious person.

13 2. Defendant Knowlton received a call from dispatch
14 advising him of a suspicious person closely watching the girls
15 swimming in the pool. The caller alleged that Plaintiff was
16 staring at the girls over a chain linked fence that surrounded
17 the pool. Upon arriving at the location, Defendant Knowlton
18 noticed an employee at the Central Park swimming school pointing
19 to a white Toyota pick up truck with the license plate 8T008977
20 parked in the parking area near the pool area.

21 3. Defendant Knowlton approached the vehicle and alleges
22 he saw Plaintiff sitting in the driving seat moving his head in
23 fast motion looking toward subjects in numerous areas of the
24 park. Defendant Knowlton contacted the Plaintiff by knocking on
25 the driver side window and motioning for him to roll it down.

26 4. Defendant Knowlton alleges that the Plaintiff became
27 very agitated and pointed his finger very close to his face,
28 whereupon Knowlton took a step back to a position slightly behind

1 the driver side door and advised the Plaintiff to be aware of
2 where he waves his hand. Knowlton further alleges that Plaintiff
3 got extremely upset and swung his closed fist in a backwards
4 motion while leaning his body in Knowlton's direction. Knowlton
5 claims to have grabbed Plaintiff's left wrist and attempted a
6 control hold, but Plaintiff was able to pull his arm back into
7 the car and roll up the window.

8 5. Knowlton attempted to open the driver's side door 2-3
9 times to remove Plaintiff from the vehicle. Plaintiff locked the
10 door and began to reverse his vehicle. At this point in time,
11 Defendant Hurtado arrived and prevented the Plaintiff from
12 leaving by blocking his exit with his patrol car.

13 6. Defendants allege that Plaintiff exited his vehicle,
14 where he was told to turn around and place his hands on the back
15 of his head. Upon exiting the vehicle, Plaintiff allegedly
16 yelled at the officers as they were giving him instructions to
17 comply. Knowlton told the Plaintiff that if he did not comply
18 with their instructions he was going to be tased.

19 7. Defendant Hurtado attempted to place a control hold on
20 Plaintiff in order to place handcuffs on him, whereupon it is
21 alleged that the Plaintiff began to struggle with Hurtado and
22 somehow was able to pull his arm away from Hurtado. Plaintiff
23 fell against the back rear bed of the truck, whereupon Knowlton
24 fired his taser into the left stomach and leg region of the
25 Plaintiff. The application of the taser caused the Plaintiff to
26 fall to the ground and suffer a scrape to his left elbow,
27 whereupon he was handcuffed and placed under arrest.

28 8. Plaintiff was taken into custody, checked by paramedics

1 at the scene, then taken to Tehachapi Hospital to be cleared for
2 booking. Plaintiff was then taken to Kern County Sheriff's
3 Department Central receiving area and booked.

4 A. Plaintiff's Factual & Legal Contentions.

5 9. On August 8, 2009, prior to being shot multiple times
6 with a taser, John Bernat had not committed any crime and was
7 within his Constitutional rights to ask Officers Knowlton and
8 Hurtado what was going on. The Officers had no legal
9 justification to use physical force against the Plaintiff while
10 simply trying to ask him questions. Plaintiff had simply asked
11 to know what was going on and was told that force was going to be
12 used against him if he did not place his hands behind his back.
13 At no time did Plaintiff threaten or confront Officers Knowlton
14 or Hurtado in order to justify the use of force let alone the use
15 of a taser against him. Officer Knowlton claims that he was
16 justified in using the taser because Plaintiff would not place
17 his arms behind his back after being asked to do so even though
18 he had committed no crime.

19 10. Plaintiff seeks compensatory damages for the
20 unjustified, wrongful and malicious acts of the Defendants that
21 caused him to suffer fright, extreme and severe mental anguish
22 and extreme physical pain. Plaintiff relies on the objective
23 reasonableness standard enunciated in *Graham v. Connor*, 490 U.S.
24 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Plaintiff further
25 claims that Officers Knowlton and Hurtado acted intentionally and
26 recklessly in that shooting the Plaintiff with a taser multiple
27 times was willful, malicious, oppressive and in conscious
28 disregard of Plaintiff's constitutional rights, thereby

1 justifying the imposition of punitive or exemplary damages
2 against Officers Knowlton and Hurtado.

3 11. Pursuant to the provisions of *Farmer v. Brennan*, 511
4 U.S. 825, 835 (1994) and *Wilson v. Seiter*, 501 U.S. 294 (1991),
5 Plaintiff must establish that the Defendants acted recklessly,
6 knowingly, or with unnecessary and wanton behavior. Defendants
7 maintain that they at all times complied with the standard of
8 care. *Monroe v. Regents of the University of California*, 215
9 Cal.App.3d 977, 983-84 (1989). Defendants maintain that
10 Plaintiff will be unable to establish a mere negligence case
11 against them pursuant to *Flowers v. Torrance Memorial Hospital*
12 *Medical Center*, 8 Cal.4th 992, 999 (1994), and will be unable to
13 establish *Monell* responsibility against the City of California
14 and Officers Standish Knowlton and Eric Hurtado. *Monell, supra*,
15 436 U.S. at 694.

16 12. Plaintiff demanded a jury trial in his complaint dated
17 February 19, 2010, and Defendants demanded a jury trial in their
18 answer dated April 8, 2010.

19 B. Defendants' Factual and Legal Contentions.

20 13. Defendants contend their use of force was reasonable
21 under the Fourth Amendment. When Plaintiff attempted to evade
22 and assault officers, and resisted arrest, Defendant Knowlton
23 reasonably used force by grabbing Plaintiff's wrist and then
24 using the taser to control him. *Graham*, 490 U.S. 386.
25 Defendants are also entitled to qualified immunity, as they
26 reasonably believed their actions in restraining Plaintiff were
27 lawful in light of his aggressive actions. *Saucier v. Katz*, 533
28 U.S. 194, 201 (2001).

1 14. Similarly, Defendants did not commit an assault or
2 battery on Plaintiff, as their use of force was reasonable to
3 take Plaintiff into custody when he assaulted officers and
4 resisted arrest. Defendants were not negligent when they
5 initially acted to question Plaintiff and then take him into
6 custody, but were responding reasonably to Plaintiff's yelling
7 and his evasive, assaultive, and resistive actions. Nor did
8 Defendants threaten or intimidate Plaintiff in violation of Civil
9 Code 52.1, as their commands were lawful and appropriate.

10 15. Defendant, City of California, is not liable under a
11 Monell theory because the individual Defendants did not act
12 inappropriately. Section 193 precludes local government
13 liability absent action pursuant to official municipal policy of
14 some nature that caused a constitutional tort. *Monell v. New*
15 *York City Dept. of Social Services*, 436 U.S. 658, 694 (1978).
16 Only when a City's policy or custom causes the injury, or the
17 City's inadequate training of an officer causes the injury, is
18 the entity liable. *Id.* at 692, 694; *City of Canton v. Harris*,
19 489 U.S. 378, 387 (1989). Defendant City of California properly
20 hired, retained, supervised, trained, and disciplined its
21 officers, including the individual Defendants in this case.

22 IV. Orders Re Amendments To Pleadings.

23 1. The parties do not anticipate amending the pleadings at
24 this time.

25 V. Factual Summary.

26 A. Admitted Facts Which Are Deemed Proven Without Further
27 Proceedings.

28 1. Plaintiff, John Bernat, is an individual citizen

1 of the United States.

2 2. Defendant City of California City is a public
3 entity within the meaning of California law.

4 3. The California City Police Department is sued
5 although it does not appear to be a legal entity with capacity to
6 be sued under the Civil Rights Act.

7 4. Defendants Standish Knowlton and Eric Hurtado are
8 duly acting and employed police officers for the City of
9 California City.

10 5. At all times each officer was acting in the course
11 and scope of his employment and under color of law.

12 6. The subject incident that gives rise to this case
13 occurred on or about August 8, 2009, at Central Park in
14 California City.

15 7. The Officers contacted Plaintiff at the Central
16 Park on the date of August 8, 2009 and placed Plaintiff under
17 arrest.

18 8. In affecting the arrest, a taser was used on the
19 Plaintiff.

20 9. The Plaintiff was taken to the hospital, treated,
21 and released.

22 B. Contested Facts.

23 1. All remaining facts are disputed.

24 VI. Legal Issues.

25 A. Uncontested.

26 1. Jurisdiction exists under 28 U.S.C. §§ 1331 and
27 1343(3). Plaintiff also invokes jurisdiction under 28 U.S.C.
28 § 1367.

1 2. Venue is proper under 28 U.S.C. § 1391(b) .

2 3. The parties agree that the substantive law of the
3 State of California provides the rule of decision for
4 supplemental claims.

5 B. Contested.

6 1. The key legal issues involve the following:

7 2. Whether it was objectively reasonable for Officers
8 Knowlton and Hurtado to have used any force, including the use of
9 the taser against Plaintiff, or whether such use amounted to the
10 use of excessive force according to the standards set forth in
11 *Graham*.

12 3. Whether Officers Knowlton and Hurtado are entitled
13 to qualified immunity because it was not clearly established, in
14 a more particularized sense, that their actions at the time of
15 this incident were violative of Plaintiff's constitutional
16 rights.

17 4. Whether the City has liability under *Monell* for
18 the actions of its officers.

19 VII. Consent to Magistrate Judge Jurisdiction.

20 1. The parties have not consented to transfer the
21 case to the Magistrate Judge for all purposes, including trial.

22 VIII. Corporate Identification Statement.

23 1. Any nongovernmental corporate party to any action in
24 this court shall file a statement identifying all its parent
25 corporations and listing any entity that owns 10% or more of the
26 party's equity securities. A party shall file the statement with
27 its initial pleading filed in this court and shall supplement the
28 statement within a reasonable time of any change in the

1 information.

2 IX. Discovery Plan and Cut-Off Date.

3 1. The parties are ordered to complete all non-expert
4 discovery on or before October 4, 2010.

5 2. The parties are directed to disclose all expert
6 witnesses, in writing, on or before October 11, 2010. Any
7 rebuttal or supplemental expert disclosures will be made on or
8 before November 11, 2010. The parties will comply with the
9 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding
10 their expert designations. Local Rule 16-240(a) notwithstanding,
11 the written designation of experts shall be made pursuant to F.
12 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
13 information required thereunder. Failure to designate experts in
14 compliance with this order may result in the Court excluding the
15 testimony or other evidence offered through such experts that are
16 not disclosed pursuant to this order.

17 3. The parties are ordered to complete all discovery,
18 including experts, on or before December 10, 2010.

19 4. The provisions of F. R. Civ. P. 26(b)(4) shall
20 apply to all discovery relating to experts and their opinions.
21 Experts may be fully prepared to be examined on all subjects and
22 opinions included in the designation. Failure to comply will
23 result in the imposition of sanctions.

24 X. Pre-Trial Motion Schedule.

25 1. All Non-Dispositive Pre-Trial Motions, including any
26 discovery motions, will be filed on or before December 27, 2010,
27 and heard on February 4, 2011, at 9:00 a.m. before Magistrate
28 Judge Jennifer L. Thurston in Bakersfield.

1 2. In scheduling such motions, the Magistrate
2 Judge may grant applications for an order shortening time
3 pursuant to Local Rule 142(d). However, if counsel does not
4 obtain an order shortening time, the notice of motion must comply
5 with Local Rule 251.

6 3. All Dispositive Pre-Trial Motions are to be
7 filed no later than January 10, 2011, and will be heard on
8 February 10, 2011, at 10:00 a.m. before the Honorable Oliver W.
9 Wanger, United States District Judge, in Courtroom 3, 7th Floor.
10 In scheduling such motions, counsel shall comply with Local Rule
11 230.

12 XI. Pre-Trial Conference Date.

13 1. March 7, 2011, at 11:00 a.m. in Courtroom 3, 7th Floor,
14 before the Honorable Oliver W. Wanger, United States District
15 Judge.

16 2. The parties are ordered to file a Joint Pre-
17 Trial Statement pursuant to Local Rule 281(a)(2).

18 3. Counsel's attention is directed to Rules 281
19 and 282 of the Local Rules of Practice for the Eastern District
20 of California, as to the obligations of counsel in preparing for
21 the pre-trial conference. The Court will insist upon strict
22 compliance with those rules.

23 XII. Motions - Hard Copy.

24 1. The parties shall submit one (1) courtesy paper copy to
25 the Court of any motions filed. Exhibits shall be marked with
26 protruding numbered or lettered tabs so that the Court can easily
27 identify such exhibits.

28 ///

1 XIII. Trial Date.

2 1. April 26, 2011, at the hour of 9:00 a.m. in Courtroom
3, 7th Floor, before the Honorable Oliver W. Wanger, United
4 States District Judge.

5 2. This is a jury trial.

6 3. Counsels' Estimate Of Trial Time:

7 a. 4-5 days.

8 4. Counsels' attention is directed to Local Rules
9 of Practice for the Eastern District of California, Rule 285.

10 XIV. Settlement Conference.

11 1. A Settlement Conference is scheduled for February 16,
12 2011, at 10:00 a.m. in Bakersfield before the Honorable Jennifer
13 L. Thurston, United States Magistrate Judge.

14 2. Unless otherwise permitted in advance by the
15 Court, the attorneys who will try the case shall appear at the
16 Settlement Conference with the parties and the person or persons
17 having full authority to negotiate and settle the case on any
18 terms at the conference.

19 3. Permission for a party [not attorney] to attend
20 by telephone may be granted upon request, by letter, with a copy
21 to the other parties, if the party [not attorney] lives and works
22 outside the Eastern District of California, and attendance in
23 person would constitute a hardship. If telephone attendance is
24 allowed, the party must be immediately available throughout the
25 conference until excused regardless of time zone differences.
26 Any other special arrangements desired in cases where settlement
27 authority rests with a governing body, shall also be proposed in
28 advance by letter copied to all other parties.

1 4. Confidential Settlement Conference Statement.
2 At least five (5) days prior to the Settlement Conference the
3 parties shall submit, directly to the Magistrate Judge's
4 chambers, a confidential settlement conference statement. The
5 statement should not be filed with the Clerk of the Court nor
6 served on any other party. Each statement shall be clearly
7 marked "confidential" with the date and time of the Settlement
8 Conference indicated prominently thereon. Counsel are urged to
9 request the return of their statements if settlement is not
10 achieved and if such a request is not made the Court will dispose
11 of the statement.

12 5. The Confidential Settlement Conference
13 Statement shall include the following:
14 a. A brief statement of the facts of the
15 case.
16 b. A brief statement of the claims and
17 defenses, i.e., statutory or other grounds upon which the claims
18 are founded; a forthright evaluation of the parties' likelihood
19 of prevailing on the claims and defenses; and a description of
20 the major issues in dispute.
21 c. A summary of the proceedings to date.
22 d. An estimate of the cost and time to be
23 expended for further discovery, pre-trial and trial.
24 e. The relief sought.
25 f. The parties' position on settlement,
26 including present demands and offers and a history of past
27 settlement discussions, offers and demands.
28 ///

1 XV. Request For Bifurcation, Appointment Of Special Master,
2 Or Other Techniques To Shorten Trial.

3 1. These issues will be addressed by motion, except that
4 the issue of punitive damages as to amount, if any, shall be
5 tried in a second phase in a continuous trial before the same
6 jury.

7 XVI. Related Matters Pending.

8 1. There are no related matters.

9 XVII. Compliance With Federal Procedure.

10 1. The Court requires compliance with the Federal
11 Rules of Civil Procedure and the Local Rules of Practice for the
12 Eastern District of California. To aid the court in the
13 efficient administration of this case, all counsel are directed
14 to familiarize themselves with the Federal Rules of Civil
15 Procedure and the Local Rules of Practice of the Eastern District
16 of California, and keep abreast of any amendments thereto.

17 XVIII. Effect Of This Order.

18 1. The foregoing order represents the best
19 estimate of the court and counsel as to the agenda most suitable
20 to bring this case to resolution. The trial date reserved is
21 specifically reserved for this case. If the parties determine at
22 any time that the schedule outlined in this order cannot be met,
23 counsel are ordered to notify the court immediately of that fact
24 so that adjustments may be made, either by stipulation or by
25 subsequent scheduling conference.

26 2. Stipulations extending the deadlines contained
27 herein will not be considered unless they are accompanied by
28 affidavits or declarations, and where appropriate attached

1 exhibits, which establish good cause for granting the relief
2 requested.

3 3. Failure to comply with this order may result in
4 the imposition of sanctions.

5
6 IT IS SO ORDERED.

7 Dated: June 30, 2010

8 /s/ Oliver W. Wanger
9
10 UNITED STATES DISTRICT JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28