

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT DABNEY, et al.,)
)
Plaintiff(s),)
)
v.)
)
CITY OF HAYWARD, et al.,)
)
Defendant(s).)
_____)

No. C09-4116 BZ

ORDER CONTINUING JURY TRIAL


It is hereby ORDERED as follows:

1. The jury trial scheduled for February 14, 2011 is continued to May 23, 2011.

2. Defendant shall file a motion for summary judgment on the Monell claim by February 28, 2011. Plaintiffs' opposition is due March 14, 2011. The reply is due March 21, 2011. The Court will schedule a hearing if necessary.

3. If both sides stipulate to waving the jury, a bench trial will begin Monday, February 14, 2011 at 8:30 a.m. The stipulation must be filed by 2 p.m. today.

Dated: 2/11/2011


Bernard Zimmerman
United States Magistrate Judge

1. defendant Officers forcibly entered the plaintiffs' residence;
2. in forcing entry, defendant Officers acted intentionally;
3. defendant Officers did not wait a reasonable amount of time before forcing entry;
4. the manner of entry was unreasonable under the circumstances; and
5. the forcible entry resulted in damages to Mr. Jones' ^{home} ~~gate~~ and to Ms. Fleming;

An entry is reasonable if all of the circumstances known to the officers at the time would cause a reasonable person to believe that the entry was necessary to prevent physical harm to the officers or destruction of evidence.

A person acts "intentionally" when the person acts with a conscious objective to engage in particular conduct. Thus, the plaintiffs must prove the defendant Officers meant to forcibly enter the plaintiffs' residence. Although the plaintiffs do not need to prove the Officers intended to violate the plaintiffs' Fourth Amendment rights, it is not enough if the plaintiffs only prove the Officers acted negligently, accidentally or inadvertently in forcibly entering plaintiffs' residence.