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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

YVETTE FELARCA *et al.*,

PLAINTIFFS,

VS.

ROBERT J. BIRGENEAU *et al.*,

DEFENDANT(S).

Case No.: 11-CV-05719 YGR

**ORDER ENTERING TENTATIVE RULING ON
DEFENDANTS' MOTIONS TO DISMISS AS
ORDER OF COURT**

11 Pursuant to the parties' stipulation (Dkt. No. 100), the Court's Tentative Ruling **DENYING IN**
12 **PART** and **GRANTING IN PART** the Motions of the Alameda County Sheriff's Office Defendants and
13 the University of California Police Department Defendants and **GRANTING** the Motion of the UC
14 Administrators shall be the Order of the Court. Accordingly, for the reasons set forth therein:

15 (1) The Motion to Dismiss filed by Defendants Gregory Ahern, Chavez, Garcia, King, and
16 Obichere (Dkt. No. 50) is **DENIED IN PART** and **GRANTED IN PART**:

17 a) The Motion is **DENIED** as to Count IV against Defendants Chavez, Garcia,
18 King, and Obichere. Plaintiffs may pursue their claim for excessive force
19 against Defendants Chavez, Garcia, King, and Obichere.

20 b) The Motion is **GRANTED** as to all claims against Gregory Ahern, and Counts I,
21 II, III, V, and VI against Defendants Chavez, Garcia, King, and Obichere,
22 **WITH LEAVE TO FILE A MOTION TO AMEND.**

23 (2) The Motion to Dismiss filed by Defendants Robert J. Birgeneau, George Breslauer,
24 Mitchell Celaya, Claire Holmes, Harry Legrande, Linda Williams, and John Wilton (Dkt. No. 57) is
25 **GRANTED**:

26 a) **WITH LEAVE TO AMEND** the claims for First Amendment Retaliation (Count
27 I); Fourth Amendment Excessive Force (Count IV); and Fourth Amendment
28 False Arrest (Count V), and

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b) **WITH LEAVE TO FILE A MOTION TO AMEND** the claims for Abuse of Process (Count II); Retaliatory Prosecution (Count III); and Conspiracy to Violate Civil Rights (Count VI).

(3) The Motion to Dismiss filed by Defendants Rick Florendo, Samantha Lachler, and N. Hernandez (Dkt. No. 58) is **DENIED IN PART** and **GRANTED IN PART**:

a) The Motion is **DENIED** as to Count IV against Defendant Samantha Lachler. Plaintiffs may pursue their claim for excessive force against Defendant Samantha Lachler.

b) The Motion is **GRANTED** as to all claims against Rick Florendo and N. Hernandez, and Counts I, II, III, V, and VI against Samantha Lachler, **WITH LEAVE TO AMEND** Count IV, and **WITH LEAVE TO FILE A MOTION TO AMEND** Counts I, II, III, V, and VI.

(4) No later than 28 days from the date this Order is filed, Plaintiffs shall file one of the following:


- a) Second Amended Complaint;
- b) Motion for Leave to Amend the First Amended Complaint to add claims for which leave to amend was not granted¹; or
- c) Statement indicating that they will proceed on Count IV of the First Amended Complaint against Defendants Chavez, Garcia, King, Obichere, and Samantha Lachler.

(5) The February 26, 2013 hearing on the Motions is **VACATED**.

(6) This Order Terminates Docket Numbers 50, 52, 57, and 58.

IT IS SO ORDERED.

Date: February 25, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

¹ Should Plaintiffs proceed with this option, they shall file as an exhibit, a proposed Second Amended Complaint, *see* Civil L.R. 10-1, which highlights those claims for which leave to amend is requested.