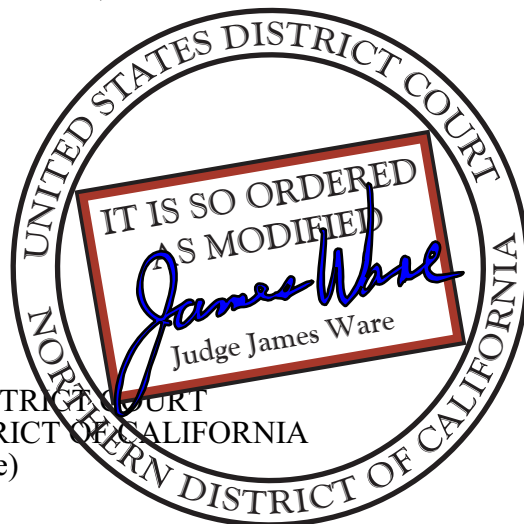


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8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 (San Jose)

12	GERALDINE MALDONADO et al.,)	No. C08-05642 JW
13	Plaintiffs,)	JOINT FURTHER CASE MANAGEMENT CONFERENCE STATEMENT
14	v.	ORDER CONTINUING STAY OF ACTION TO JUNE 21, 2010; CONTINUING CASE MANAGEMENT CONFERENCE	
15	CITY OF GILROY et al.,		
16	Defendants.		
17	<hr/>		

18 The parties met and conferred in compliance with Local Rule 16-1, et seq. to prepare this
 19 Joint Case Management Statement.

20 Pursuant to this Court’s June 25, 2009 Order [Doc #45], this case is currently stayed
 21 pending the outcome of Plaintiff’s criminal appeal. The purpose of this Statement, in part, is to
 22 update the Court regarding the status of that appeal and its impact on these civil proceedings.
 23 That information is set forth below in section 11 “Scheduling.”

24 1. Jurisdiction and Service:

25 This court has subject matter jurisdiction based upon Plaintiffs’ claims brought under 42
 26 U.S.C. sections 1983 and 1985. All parties have been served.

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1 2. Facts:

2 Plaintiff Geraldine Maldonado and her children, Plaintiffs Priscilla Maldonado and M.M.,
3 attended a car show at the Santa Clara County Fairgrounds on September 2, 2007. Defendants
4 Gallacinao and Callahan (Gilroy Police Department officers) and Defendants Urena, Lopez, and
5 Tran (Santa Clara County Sheriff's Office deputies) provided security for the car show.

6 Defendant officers/deputies escorted Tavo Collazo from the Fairgrounds for violation of
7 car show rules (Mr. Collazo is married to Plaintiff Geraldine Maldonado's niece).

8 Plaintiffs contend that, without cause or justification, Defendants also attempted to escort
9 Plaintiff Geraldine Maldonado from the Fairgrounds and used excessive force against her by,
10 *inter alia*, grabbing her arms, grabbing her hair, striking her in the face, and shocking her with a
11 tazer. Defendants deny that they acted without cause or justification, used excessive force, and
12 that any officer/deputy applied a tazer to Plaintiff Geraldine Maldonado's body.

13 Defendants contend that Plaintiff Geraldine Maldonado verbally interfered with the escort
14 of Mr. Collazo and failed to comply with instructions to not interfere, thus resulting in the
15 decision to also escort her from the Fairgrounds. Defendants further contend that Plaintiff
16 Geraldine Maldonado resisted efforts to escort her from the Fairgrounds by, *inter alia*,
17 pushing/hitting Defendant Callahan in the chest, pulling away from Defendants' grasps,
18 swinging her arm at Defendant Gallacinao, and spitting at Defendant Gallacinao's face, thus
19 justifying the use of force to restrain and arrest Plaintiff Geraldine Maldonado. Plaintiffs deny
20 all of these contentions.

21 Plaintiffs further contend that Defendants Gallacinao and Maldonado falsely arrested
22 Plaintiff Geraldine Maldonado and that Defendants Urena, Lopez, and Tran conspired to author
23 arrest reports that falsely stated that Plaintiff Geraldine Maldonado spat at or upon Defendant
24 Gallacinao. Defendants deny these contentions.

25 A jury convicted Plaintiff Geraldine Maldonado of two misdemeanors: battery upon a
26 peace officer; and resisting/delaying/obstructing a peace officer. A motion for new trial was
27 denied in May 2009. Thereafter, the court appointed appellate counsel and an appeal has been
28 filed. (See, Section 11, *infra*.)

1 3. Legal Issues:

2 The parties dispute whether Plaintiffs Priscilla Maldonado and M.M. have standing to sue
3 the Defendants for conspiracy to violate civil rights (Claim No. 9 to Plaintiffs' Complaint). The
4 alleged conspiracy pertains to the false arrest and prosecution of only Plaintiff Geraldine
5 Maldonado.

6 The parties dispute whether Plaintiff Geraldine Maldonado still has a cognizable 42
7 U.S.C. section 1985 (conspiracy) claim against Defendants. A jury convicted Plaintiff
8 Geraldine Maldonado of the crimes for which she was arrested. Consequently, her arrest and
9 prosecution were not falsely made and her civil rights were not violated by the arrest and
10 prosecution. Thus, the reports prepared by Defendants did not cause any harm or damage to
11 Plaintiff Geraldine Maldonado. (*Pierce v. Stinson*, 493 F.Supp. 609, 611 (D.C.Tenn.1979),
12 citing *Carey v. Piphus*, 435 U.S. 247, 254 (1978) [purpose of 42 U.S.C. section 1985 is to
13 compensate for harm actually caused by overt acts of conspiracy].) However, as indicated
14 below, the original conviction is currently on appeal.

15 The parties dispute whether the City of Gilroy and County of Santa Clara can be held
16 liable under the theory of *respondeat superior* for the alleged 42 U.S.C. section 1985 claim
17 against Individual Defendants.

18 The parties dispute whether punitive damages may be awarded against the City of Gilroy
19 and the County of Santa Clara. (*City of Newport v. Fact Concerts, Inc*, 453 U.S. 247, 259-71
20 (1981); see also, *Ninth Circuit Manual of Modern Civil Jury Instructions*, Comment to Jury
21 Instruction No. 5.5.)

22 4. Motions:

23 There are no prior or pending motions.

24 All Defendants are contemplating the following motions: summary judgment; motion to
25 strike punitive damages as to the City of Gilroy and County.

26 5. Amendment of Pleadings:

27 The parties do not currently anticipate amendments to the pleadings.

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1 6. Evidence preservation:

2 Defendants have collected and preserved all documented and electronic evidence available
3 to them. A significant amount of evidence was prepared by the prosecution and criminal
4 defense teams in connection with the criminal jury trial. The civil Defendants in this matter do
5 not have equal access to those materials, since the District Attorney's Office cannot release
6 those materials to the civil Defendants, since they are separate and distinct legal persons and
7 entities. Defendants hope to arrange production of all pertinent materials – still photographs
8 obtained from a videotape and blown up for jury publication, witness declarations, and various
9 jury trial exhibits – with Plaintiffs' attorneys, who represented Plaintiff Geraldine Maldonado in
10 the criminal jury trial.

11 7. Disclosures:

12 All parties have prepared and served Initial Disclosures within the time parameters set
13 forth in Federal Rule of Civil Procedure 26(a)(1).

14 8. Discovery:

15 The parties agree that each individual or entity party is permitted 25 specially prepared
16 interrogatories, 25 requests for admissions, an unlimited number of requests for production of
17 documents and things, but those requests must be narrowly tailored, and 7 fact witness
18 depositions, each of which shall be limited to no more than seven hours in duration on one day.
19 If, after completing 7 depositions, a party believes (s)he requires additional depositions, then
20 (s)he may apply to the court for leave to take additional depositions.

21 9. Relief Sought:

22 Plaintiffs seek a judgment for damages in their favor.

23 The City of Gilroy, the County of Santa Clara, and their affiliated co-defendants seek
24 judgment in their favor.

25 10. Settlement and ADR:

26 All parties are amenable to Early Neutral Evaluation. Plaintiffs are also amenable to
27 mediation before a private mediator.

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1 11. Scheduling:

2 The appellate court recently appointed Ron Rayes as new counsel to represent Plaintiff in
3 her criminal appeal. Mr. Rayes filed Ms. Maldonado’s opening brief last month. The People
4 have requested additional time to file their response brief. It is the understanding of the parties
5 that the criminal appeal will be fully briefed by the end of January 2010, that oral argument will
6 likely take place in March or April 2010, and that a final decision will be issued by the end of
7 May 2010.

8 The parties to this civil action respectfully request that the current stay remain in place and
9 that a further case management conference be scheduled in early June 2010.

10 12. Trial:

11 The parties all request a jury and anticipate that trial will last five to eight days.

12 13. Disclosure of Non-party Interested Entities or Persons:

13 The City of Gilroy, the County of Santa Clara, and their affiliated co-defendants are
14 exempt from the Local Rule 3-16 disclosure requirements.

15 All other parties have filed the “Certification of Interested Entities or Persons” required by
16 Civil Local Rule 3-16. Pursuant to Civil L.R. 3-16, Plaintiffs assert that as of the date of this
17 Joint Initial Case Management Conference Statement, other than the named parties, there is no
18 such interest to report.

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1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
2 "conformed" signature (/S/) within this e-filed document.

3 MIGUEL MÁRQUEZ
4 Acting County Counsel

5 Dated: December 4, 2009

6 By: /S/
7 MARK F. BERNAL
8 Deputy County Counsel

9 Attorneys for Defendants
10 COUNTY OF SANTA CLARA,
11 DEPUTY R. URENA, DEPUTY S.
12 LOPEZ, and DEPUTY J. TRAN

13 BURTON, SCHMAL & DiBENEDETTO

14 Dated: December 4, 2009

15 By: /S/
16 TIMOTHY J. SCHMAL, ESQ.

17 Attorneys for Defendants
18 CITY OF GILROY, SERGEANT
19 GALLACINAO, CORPORAL
20 CALLAHAN, and POLICE CHIEF
21 GREGG GIUSIANA

22 LIVINGSTON LAW FIRM

23 Dated: December 4, 2009


24 By: /S/
25 CRAIG A. LIVINGSTON. ESQ.

26 Attorneys for Plaintiffs
27 GERALDINE MALDONADO,
28 PRISCILLA MALDONADO,
and M.M., a minor, by and through
Guardian Ad Litem, Miguel Maldonado

*** ORDER ****

In light of the parties' representation, the Court finds good cause to continue the STAY presently imposed on the case to June 21, 2010. Accordingly, the December 14, 2009 Case Management Conference is continued to **June 21, 2010 at 10 a.m.** On or **before June 11, 2010**, the parties shall file a Joint Case Management Conference Statement. The Statement shall include, among other things, an update on Plaintiff's underlying criminal appeal, and if the stay should be lifted, a good faith discovery plan with a proposed date for the close of all discovery.

Dated: December 8, 2009


JAMES WARE
United States District Judge