

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 NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Geraldine Maldonado, et al.,

NO. C 08-05642 JW

Plaintiffs,

**ORDER VACATING ORDER TO SHOW
CAUSE RE: DISMISSAL; LIFTING STAY
AND SETTING DEADLINE FOR FILING
OF AMENDED COMPLAINT**

v.

City of Gilroy, et al.,

Defendants.

On June 17, 2010, the Court issued an Order to Show Cause re: Dismissal. (Docket Item No. 50.) Upon review of the factual allegations of Plaintiffs' Complaint, the Court expressed a concern that Plaintiff Maldonado's criminal conviction may bar this action pursuant to Heck v. Humphry.¹ (Id.) In addition, the Court was concerned that this case has been pending for over a year and a half without completing even the earliest stages of discovery. (Id.)

The parties have filed their Responses to the Court's Order. (See Docket Item Nos. 51, 52, 53.) Upon review of the Responses, the Court finds good cause to VACATE the July 12, 2010 Order to Show Cause re: Dismissal hearing and orders as follows:

(1) The current stay of the case shall be immediately lifted;

(2) On or before **July 30, 2010**, Plaintiffs shall file an Amended Complaint. The

Amended Complaint shall adhere to the following terms:

¹ 512 U.S. 477 (1994).

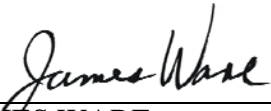
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (a) Since Plaintiff concedes that under Heck, her § 1983 claims cannot be based on allegations of false arrest, no such allegations shall be repeated in the Amended Complaint. (See Docket Item No. 51.)
- (b) In addition, because Plaintiff Maldonado was convicted under Cal. Penal Code § 148(a) for resisting arrest, such conviction can bar a § 1983 claim for excessive force where success on the § 1983 claim “would necessarily imply or demonstrate that the plaintiff's earlier conviction was invalid.” See Smith v. City of Helmet 394 F.3d 689, 699 (9th Cir. 2005). A section 148(a) conviction only bars an excessive force claim if the officer applied excessive force “during the course of the arrest.” Id. at 697. Thus, to the extent that Plaintiff alleges excessive force in effecting her arrest, her claim is incompatible with her conviction under section 148(a). However, Plaintiff does allege that after the arrest, when Defendant Callahan had complete control of her body movement, Defendant Gallacinao improperly and unnecessarily applied his taser gun on her, shocking her in the abdomen. (See Complaint generally, Docket Item No. 1.) In sum, the Amended Complaint shall make clear at what point Plaintiff Maldonado claims that the officers applied excessive force.
- (c) Since Plaintiffs have elected to bring suit against both the County of Santa Clara and the City of Gilroy, the Amended Complaint shall clearly set forth facts to support claims against each entity and well as their officers. Generally, allegations such as “Defendants” in the plural will not suffice.
- (d) Finally, the Court also questions whether Plaintiff’s children have standing to sue simply by being witnesses to the alleged use of excessive force on Plaintiff. Accordingly, the Amended Complaint—to the extent Plaintiff elects to keep her minor children in this case as Plaintiffs—shall clearly articulate the factual basis for their injuries and their legal standing to bring suit.

1 (3) On **August 30, 2010 at 10 a.m.**, the parties shall appear for a Case Management
2 Conference. On or before **August 20, 2010**, the parties shall file a Joint Case Management
3 Statement. The Statement shall include a good faith discovery schedule with a proposed date for the
4 close of all discovery.

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

Dated: July 9, 2010



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Craig Allen Livingston clivingston@livingstonlawyers.com
3 Crystal Lee Van Der Putten cvanderputten@livingstonlawyers.com
4 Mark F. Bernal mark.bernal@cco.sccgov.org
5 Timothy James Schmal Tschmal@bvslp.com

6 **Dated: July 9, 2010**

Richard W. Wieking, Clerk

7 **By: /s/ JW Chambers**
8 **Elizabeth Garcia**
9 **Courtroom Deputy**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28