

TENTATIVE RULINGS for CIVIL LAW and MOTION January 16, 2015

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843
Telephone number for the clerk in Department Seven: (530) 406-6722

TENTATIVE RULING

Case: **Arias v. City of Woodland**
Case No. CV CV 10-1163

Hearing Date: **January 16, 2015** **Department Seven 8:30 a.m.**

The motion for summary adjudication on the second cause of action for false arrest is **DENIED**. The plaintiff has also brought an excessive force claim, and the defendants have not moved for summary adjudication on that claim. “An officer cannot be engaged in the lawful performance of her duties [for purposes of a Penal Code section 148 claim] if she is subjecting an arrestee to excessive force.” (*Truong v. Orange County Sheriff’s Department* (2005) 129 Cal.App.4th 1423, 1428.) Thus, because a factual dispute exists as to the excessive force claim, there is also a factual dispute as to the officer’s probable cause for the arrest, since the defendant’s non-compliance with the officer’s request would be excused if the officer was using excessive force at the time.

The defendants may argue that the arrest preceded any use of excessive force, and therefore the arrest is not tainted by any such later-occurring excessive force, but there are no facts supporting this chronology in either the original or revised separate statement.

The prosecutor’s independent decision to file charges does create a rebuttable presumption of probable cause, but that presumption is irrelevant to the present motion because it only “insulates the arresting officers *for liability for harm suffered after the prosecutor initiated formal prosecution.*” (*Smiddy v. Varney* (9th Cir. 1986) 803 F.2d 1469, 1471 [emphasis added].) This presumption may bar damages (if any) arising after the filing of the information, but it does not support summary adjudication of the entire false arrest claim. (Code Civ. Proc., § 437c, subd. (f)(1).)

A presumption of probable cause also arises from the magistrate’s decision to hold the defendant to answer on the Penal Code section 148, subdivision (a) charge. (*Awabdy v. City of Adelanto* (9th Cir. 2004) 368 F.3d 1062.) The court finds that this presumption is in the nature of a collateral estoppel, and thus it only applies if the issues litigated before the magistrate are

identical to the issues posed by the present motion. The defendants bear the burden of showing that the issues are identical. (*See Lucido v. Superior Court* (1990) 51 Cal. 335, 341.)

Here, the defendants have failed to carry this burden. The only portion of the preliminary hearing transcript cited by the defendants (pp. 70:27 – 71:23) does not mention the argument that the arrest was tainted by the alleged excessive force, so this court cannot conclude that this argument has already been considered and rejected by the magistrate. Again, as noted above, perhaps the defendants can show at trial that any excessive force came after the challenged arrest, but their summary adjudication papers have not established this chronology.

The motion for summary adjudication of the third cause of action is **DENIED**. A single incident may create municipal liability when “the ‘officers’ conduct is so outrageous that a reasonable administrator should have known that he or she should do something about it.” (*Mendez v. County of San Bernardino* (C.D. Cal. 2005) 2005 WL 5801541 *4 [citing *Larez v. City of Los Angeles* (9th Cir. 1991) 946 F.2d 630].)

The plaintiff alleges such outrageous conduct here, but neither party informs the court of the particulars of this alleged conduct, and so the court is unable to summarily adjudicate this claim. Presumably, the plaintiff is referring to the physical contact that caused his injuries, but that contact is not referenced in any separate statement or particularly identified in any other way, and therefore the court cannot make any judgment as to whether it was outrageous or not. This claim – that the officers’ conduct was outrageous and therefore supportive of a *Monell* claim -- must therefore await trial.

If no hearing is requested, plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.

TENTATIVE RULING

Case: **Tavenier v. Promia Inc.**
Case No. CV G 14-1980
Hearing Date: **January 16, 2015** **Department Two** **9:00 a.m.**

Plaintiff Eric Tavenier’s application for the right to attach order is **DROPPED FROM CALENDAR** for failure to file a proof of service indicating service of the moving papers on defendant Promia Inc. (Code Civ. Proc., §§ 484.040, 1005, subd. (b).) Proof of service of the moving papers must be filed no later than five court days before the date of the hearing. (Code Civ. Proc., §§ 1013, 1013a; Cal. Rules of Court, rule 3.1300(c).)

