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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-16929
D.C. No. 2:19-cv-00007-MCE-CKD

[Filed February 16, 2023]

FRANCISCO DUARTE,
Plaintiff-Appellant,

and

ALEJANDRO GUTIERREZ,
Plaintiff,

v.

CITY OF STOCKTON; STOCKTON POLICE DEPARTMENT; ERIC JONES; KEVIN JAYE HACHLER; ERIC B. HOWARD; MICHAEL GANDY; CONNER NELSON; UNDERWOOD, Sergeant,
Defendants-Appellees.

App. 2

OPINION

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Argued and Submitted November 15, 2022
San Francisco, California

Filed February 16, 2023

Before: Johnnie B. Rawlinson and Andrew D. Hurwitz, Circuit Judges, and Kathleen Cardone,[*] District Judge.

Opinion by Judge Cardone

SUMMARY[**]

Civil Rights

In an action brought pursuant to 42 U.S.C. § 1983, the panel reversed the district court's dismissal of plaintiff's false arrest and municipal liability claims, as well as the district court's adverse summary judgment on plaintiff's excessive force claim, and remanded for further proceedings.

Plaintiff pled "no contest" or "nolo contendere" to willfully resisting, obstructing, and delaying a peace officer in violation of section 148(a)(1) of the California

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[*] The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Penal Code. Although plaintiff entered the equivalent of a guilty plea, the state court never entered an order finding him guilty of the charge to which he pleaded. Instead, the court ordered that its acceptance of plaintiff's plea would be "held in abeyance," pending his completion of ten hours of community service and obedience of all laws. After the six months of abeyance elapsed, the charges against plaintiff were "dismissed" in the "interest of justice" on the prosecutor's motion.

The district court held that plaintiff's false arrest and excessive force claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), which holds that § 1983 claims must be dismissed if they would "necessarily require the plaintiff to prove the unlawfulness of his conviction." Plaintiff's municipal liability claims were also rejected as improperly filed against defendants who were not "persons."

The panel held that the *Heck* bar does not apply in a situation where criminal charges are dismissed after entry of a plea that was held in abeyance pending the defendant's compliance with certain conditions. The panel rejected appellees' argument that by pleading no contest and completing the conditions of his agreement with the prosecution, plaintiff was functionally convicted and sentenced. The panel held that the *Heck* bar requires an actual judgment of conviction, not its functional equivalent.

The panel further held that the district court erred in dismissing plaintiff's municipal liability claims against the City of Stockton and Stockton Police Department. Longstanding precedent establishes that both California municipalities and police departments

are "persons" amenable to suit under § 1983. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 701 (1978); *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988).

COUNSEL

Elizabeth Bixby (argued) and David Oyer, Roderick & Solange MacArthur Justice Center, Washington, D.C.; Easha Anand, Roderick & Solange MacArthur Justice Center, San Francisco, California; Yolanda Huang, Law Office of Yolanda Huang, Oakland, California; for Plaintiff-Appellant.

Dana A. Suntag (argued), Joshua J. Stevens, and Amy N. Seilliere, Herum Crabtree Suntag, Stockton, California, for Defendants-Appellees.

Marie L. Miller and Patrick M. Jaicomo, Institute for Justice, Arlington, Virginia; Anya Bidwell, Institute for Justice, Austin, Texas; for Amicus Curiae Institute for Justice.

OPINION

CARDONE, District Judge:

In this 42 U.S.C. § 1983 action, Francisco Duarte appeals from the dismissal of his false arrest and municipal liability claims, as well as the adverse grant of summary judgment on his excessive force claim. The district court held that Duarte's false arrest and excessive force claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Under *Heck*, § 1983 claims must be dismissed if they would "necessarily require the plaintiff to prove the unlawfulness of his

conviction." *Id.* at 486. But because Duarte was never convicted, we find that the *Heck* bar does not apply.

Duarte's municipal liability claims were also rejected as improperly filed against defendants who were not "persons." But longstanding precedent establishes that both California municipalities and police departments are "persons" amenable to suit under § 1983. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 701 (1978); *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988). Accordingly, we reverse the judgment of the district court and remand for further proceedings.

I. BACKGROUND

The following facts are undisputed unless otherwise noted.

A. Duarte's Arrest

On May 5, 2017, Duarte was in a public area in downtown Stockton, California. The parties dispute how it happened but agree that Duarte ended up standing within a few feet of a group of Stockton police officers—including Michael Gandy and Kevin Jaye Hachler—who were detaining another person. Appellees assert that Gandy twice ordered Duarte to back up. Duarte contends that if he was so ordered, he did not hear it. Either way, the parties agree that Gandy forcefully took Duarte to the ground when he did not back up.

The parties also agree that either Hachler, Gandy, or both ordered Duarte to put his hands behind his back. Duarte claims he was unable to do so because his

hands were pinned under him by the weight of Gandy pressing down on his back. Appellees claim that rather than attempt to comply, Duarte tried to pull his arm away.

The parties agree that Hachler then struck Duarte in the leg with a baton, breaking a bone. Duarte claims that Hachler struck him "at least six times on the same spot on his leg." After the encounter, Duarte was taken into custody.

B. State Criminal Proceedings

Duarte was charged with willfully resisting, obstructing, and delaying a peace officer in violation of section 148(a)(1) of the California Penal Code. On July 12, 2018, Duarte and his attorney both signed and dated a document titled "Misdemeanor Advisement of Rights, Waiver and Plea Form" (the "Plea Form"). On the Plea Form, Duarte initialed the statement, "I hereby freely and voluntarily plead . . . no contest." He also initialed several statements evincing his understanding of his rights, the charges against him, and the effect of entering a plea. Among those statements were the following:

> I understand that a plea of no contest (nolo contendere) will have exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit.
>
> . . .
>
> My decision to enter this plea has been made freely and voluntarily. No promises or inducements have been made in connection with

> this plea except: plea in abeyance – 10 hours community service at any non-profit of my choice. 6 month [illegible] vacate plea and dismissal on Jan. 12, 2019 – if I fail to do the 10 hours of community service, then CTS & 3 years informal probation.
>
> . . .
>
> I understand that this conviction could be used against me in the future as a prior conviction, to increase any penalties for future convictions, or could be used to violate my probation or parole which has been granted in another case.

On the same day, the court held a hearing and entered a Minute Order, stating, "Defendant pleads Nolo Contendre [sic] to: 1, PC 148(A)(1) . . . . Court's acceptance of plea held in abeyance."[1] The Minute Order also incorporated the conditions from the Plea Form, requiring Duarte to complete ten hours of community service and obey all laws.

Six months later, the state court held another hearing and entered a Minute Order, in which the "event type" was denoted "Plea Held In Abeyance," and which ordered, "Case dismissed upon motion of DDA, Interest of justice."

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[1] The judge signed Duarte's Plea Form beneath a paragraph stating that "[t]he Court accepts the defendant's plea(s) and admission(s), if any," but left the space for a date next to his signature blank.

C. Federal Civil Proceedings

On December 31, 2018, Duarte filed this § 1983 action in the United States District Court for the Eastern District of California, asserting claims for excessive force and false arrest against Gandy, Hachler, Stockton Chief of Police Eric Jones, three other Stockton police officers, and a number of John Doe officers. Duarte also brought associated municipal liability claims against the City of Stockton and the Stockton Police Department.

The district court dismissed Duarte's claims against the City of Stockton and Stockton Police Department, and the false arrest claims against the individual defendants. It found that neither municipal entity was a "person" subject to suit under § 1983 and dismissed the false arrest claim as barred under *Heck*. After discovery, the district court granted summary judgment to the police officers on Duarte's claim for excessive force, finding it was also *Heck*-barred.

This timely appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1291. *See Hall v. City of Los Angeles*, 697 F.3d 1059, 1070 (9th Cir. 2012).

II. DISCUSSION

A. Standard of Review

"We review de novo a district court's grant or denial of summary judgment. We also review de novo a district court's grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6)." *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 777 (9th Cir. 2014) (en banc) (internal citations omitted).

B. Excessive Force and False Arrest Claims

We have never considered whether the *Heck* bar applies when criminal charges were dismissed after entry of a plea that was held in abeyance pending the defendant's compliance with certain conditions. We hold that *Heck* does not apply in this situation.

1. The *Heck* Doctrine

The Supreme Court framed its *Heck* decision as standing "at the intersection" of 42 U.S.C. § 1983 and 28 U.S.C. § 2254. *See Heck*, 512 U.S. at 480–81. Section 1983 provides a cause of action against state actors who commit constitutional violations, while § 2254 authorizes habeas corpus relief from unconstitutional state detention. *Id.* A habeas petitioner must first exhaust state remedies, while a § 1983 plaintiff need not. *Id*. A tension thus arises between the two laws "when establishing the basis for [a § 1983] damages claim necessarily demonstrates the invalidity of [a] conviction." *Id*. at 481–82.

Resolving that tension, *Heck* held that

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . . . A claim for

> damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983.

Id. at 486–87 (footnote omitted); *see also Jackson v. Barnes*, 749 F.3d 755, 759–60 (9th Cir. 2014) (quoting *Heck*, 512 U.S. at 486–87).[2]

But "[i]f the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed." *Heck*, 512 U.S. at 487 (footnotes omitted). In other words, "the *Heck* rule . . . is called into play only when there exists 'a conviction or sentence that has *not* been . . . invalidated,' that is to say, an 'outstanding criminal judgment.'" *Wallace v. Kato*, 549 U.S. 384, 393 (2007) (quoting *Heck*, 512 U.S. at 486–87); *accord Roberts v. City of Fairbanks*, 947 F.3d 1191, 1198 (9th Cir. 2020).

2. *Heck* does not apply because Duarte was never convicted.

Duarte argues that *Heck* does not apply because the criminal charges against him were dismissed without entry of a conviction. Appellees argue *Heck* should nevertheless apply because by pleading no contest and

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[2] The holding was confined to claims for money damages. The Court had previously held that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983." *Heck*, 512 U.S. at 481 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 488–90 (1973)).

completing the conditions of his agreement with the prosecution, Duarte was functionally convicted and sentenced.

The *Heck* bar, however, requires an actual judgment of conviction, not its functional equivalent. *Wallac*e, 549 U.S. at 393; *Roberts*, 947 F.3d at 1198 ("The absence of a criminal judgment [] renders the *Heck* bar inapplicable; the plain language of the decision requires the existence of a conviction in order for a § 1983 suit to be barred." (citing *Heck*, 512 U.S. at 487)); *Martin v. City of Boise*, 920 F.3d 584, 613 (9th Cir. 2019) ("Where there is no 'conviction or sentence' that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine has no application.").

Heck speaks of challenges that would impugn "a conviction *or* sentence," *see Heck*, 512 U.S. at 486–87 (emphasis added), and Appellees argue that Duarte was effectively sentenced to completing the terms of his plea agreement. But a conviction is a prerequisite to a sentence. *See Sentence*, *Black's Law Dictionary* (11th ed. 2019) ("The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer . . . . Also termed *judgment of conviction*."). Because Duarte was never convicted, he was also never sentenced. *See Mitchell v. Kirchmeier*, 28 F.4th 888, 895 (8th Cir. 2022) (holding the plaintiff's claims were not *Heck* barred because he "was never convicted of—and therefore, *a fortiori*, never sentenced on—the charges against him."); *see also Blazak v. Ricketts*, 971 F.2d 1408, 1413 (9th Cir. 1992) (noting, in the habeas

context, "There can be no sentence without a conviction.").

According to *Black's Law Dictionary*, the primary definition of "conviction" is, "The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty." *Conviction*, *Black's Law Dictionary* (11th ed. 2019). A secondary definition is, "The judgment (as by a jury verdict) that a person is guilty of a crime." *Id.* Applying these definitions to the case at hand yields a straightforward result: Duarte was not convicted because he was never found or proved guilty. *See id.*

To be sure, Duarte pleaded "no contest" or "nolo contendere" to the resisting arrest charge. And, under California law, a court ordinarily "shall find the defendant guilty" upon entry of such a plea, which is "considered the same as a plea of guilty." Cal. Penal Code § 1016(3). But this only serves to underscore that a plea itself is not a conviction. A plea is entered by the criminal defendant, but a conviction does not follow without a subsequent order from the court. *See id.* Indeed, California law provides for several pretrial diversion programs, with terms akin to those in the agreement entered by Duarte, in which this distinction is highlighted. *See, e.g.*, *id.* § 1000.10(a) ("A defendant's plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty is entered . . . .").

Although Duarte entered the equivalent of a guilty plea, the state court never entered an order finding him guilty of the charge to which he pleaded. Instead, the court ordered that its acceptance of Duarte's plea would be "held in abeyance," pending his completion of

ten hours of community service and obedience of all laws. *Black's Law Dictionary* defines "abeyance" as, "Temporary inactivity; suspension." *Abeyance*, *Black's Law Dictionary* (11th ed. 2019). Suspension of the plea is not a finding of guilt or a conviction.

After the six months of abeyance elapsed, the charges against Duarte were "dismissed" in the "interest of justice" on the prosecutor's motion. A "dismissal" is the "[t]ermination of an action, claim, or charge without further hearing, esp. before trial; esp. a judge's decision to stop a court case through the entry of an order or judgment that imposes no civil or criminal liability on the defendant with respect to that case." *Dismissal*, *Black's Law Dictionary* (11th ed. 2019). Dismissal, which imposes no criminal liability, is thus the opposite of a conviction, which imposes such liability. *See Vasquez Arroyo v. Starks*, 589 F.3d 1091, 1095 (10th Cir. 2009); *see also People v. Hernandez*, 994 P.2d 354, 359, 361 (Cal. 2000) (noting that "furtherance of justice" dismissals "cut[] off an action or a part of an action *against* the defendant"). Because the charges against Duarte were dismissed, he was never convicted. And because there is no conviction that Duarte's § 1983 claims would impugn, *Heck* is inapplicable.

Our conclusion is consistent with the majority of circuits to consider *Heck* in the context of pretrial diversion agreements. The Sixth, Eighth, Tenth, and Eleventh Circuits have all held that where the conditions of the agreement are satisfied and the criminal charges are dismissed without entry of conviction, *Heck* does not bar subsequent civil rights

claims. *See Mitchell*, 28 F.4th at 895–96; *Vasquez Arroyo*, 589 F.3d at 1093–96; *S.E. v. Grant Cnty. Bd. of Educ.*, 544 F.3d 633, 637–39 (6th Cir. 2008); *McClish v. Nugent*, 483 F.3d 1231, 1250–52 (11th Cir. 2007).

The district court relied on a contrary decision by the Third Circuit, which held that the plaintiff's civil rights claims were *Heck*-barred even though he had never been formally convicted in the state criminal proceedings. *See Gilles v. Davis*, 427 F.3d 197, 208–12 (3d Cir. 2005). But for the reasons explained above, we find *Gilles* unpersuasive. Moreover, *Gilles* predated *Wallace*, in which the Supreme Court explicitly rejected an argument that *Gilles* appears to embrace—that § 1983 claims inconsistent with ongoing criminal charges, not just outstanding criminal judgments, could be barred by *Heck*. *See Mitchell*, 28 F.4th at 896. *Compare Wallace*, 549 U.S. at 393–94, *with Gilles*, 427 F.3d at 209.

We recognize the Fifth Circuit has also held "a deferred adjudication order is a conviction for the purposes of *Heck*'s favorable termination rule" because it is "a judicial finding that the evidence substantiates the defendant's guilt" and "a final judicial act." *See DeLeon v. City of Corpus Christi*, 488 F.3d 649, 655–56 (5th Cir. 2007). As explained above, we do not adopt that logic. The final judicial act is either the dismissal of the charges or the imposition of a sentence. Moreover, unlike Duarte, the *DeLeon* plaintiff remained under the conditions of his deferred adjudication agreement and the criminal charges against him had not yet been dismissed. *Id.* at 653. Indeed, the Fifth Circuit explicitly declined to decide

how it would apply *Heck* for a plaintiff who, like Duarte, did satisfy the terms of his agreement. *Id*. at 657 ("We do not decide whether DeLeon can meet the *Heck* conditions . . . by successfully completing his deferred adjudication.").

In sum, *Heck*'s "core" concern is for preventing the circumvention of habeas exhaustion requirements through § 1983. *Martin*, 920 F.3d at 615 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)). More broadly, *Heck* seeks to promote finality and consistency by "refrain[ing] from multiplying avenues for collateral attack on criminal judgments." *McDonough v. Smith*, 139 S. Ct. 2149, 2157 (2019) (collecting cases).

Thus, the *sine qua non* of *Heck* is a judgment of conviction and a resultant sentence. *See Wallace*, 549 U.S. at 392–93 (citing *Heck*, 512 U.S. at 486–87). Challenges that cast doubt on such judgments are the province of direct appeals or habeas—not § 1983. But where, as here, the criminal charges were dismissed and there is no conviction to impugn, the tension with which *Heck* was principally concerned is missing. Also absent are any concerns about finality, consistency, or comity, when there is no order in the state criminal case with which a decision in the federal civil lawsuit could be inconsistent. Because Duarte was never convicted of a crime, his claims should not have been dismissed under *Heck*.

C. Municipal Liability

The district court also erred in dismissing Duarte's claims against the City of Stockton and Stockton Police Department. The Supreme Court first held that

municipal entities, like cities, were "persons" amenable to suit under § 1983 in its seminal decision, *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978). *Monell*'s core holding—that claims for municipal liability are cognizable under the Civil Rights Act—has been affirmed many times over by this Court and the Supreme Court. *See, e.g.*, *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988); *Hervey v. Estes*, 65 F.3d 784, 791 (9th Cir. 1995) ("It is beyond dispute that a local governmental unit or municipality can be sued as a 'person' under section 1983." (citing *Monell*, 436 U.S. at 690)).

As to the Stockton Police Department, we held over thirty years ago that municipal police departments in California "can be sued in federal court for alleged civil rights violations." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988) (citations omitted). More recently, we reaffirmed this holding and extended it to California's county sheriffs' departments. *Streit v. County of Los Angeles*, 236 F.3d 552, 565–66 (9th Cir. 2001). We have never overruled *Karim-Panahi*.

The district court reasoned that *Karim-Panahi* could not be reconciled with a concurring opinion in *United States v. Kama*, 394 F.3d 1236, 1240 (9th Cir. 2005). There, without citing *Karim-Panahi* or *Streit*, a judge commented that "municipal police departments and bureaus are generally not considered 'persons' within the meaning of 42 U.S.C. § 1983." *Kama*, 394 F.3d at 1239–40 (Ferguson, J., concurring).

But "concurring opinions have no binding precedential value." *Pub. Watchdogs v. S. Cal. Edison*

Co., 984 F.3d 744, 757 n.7 (9th Cir. 2020) (citing *Maryland v. Wilson*, 519 U.S. 408, 412–13 (1997)). And "as a general rule, one three-judge panel of this court cannot reconsider or overrule the decision of a prior panel." *Koerner v. Grigas*, 328 F.3d 1039, 1050 (9th Cir. 2003) (quoting *United States v. Gay*, 967 F.2d 322, 327 (9th Cir. 1992)). Therefore, when a subsequent panel makes a "suggestion" that "is inconsistent with earlier opinions of this court," such suggestions are to be disregarded in favor of the earlier, binding holding. *See, e.g.*, *Ass'n of Mexican-Am. Educators v. California*, 231 F.3d 572, 592 (9th Cir. 2000).

Neither a lone concurring judge nor the full *Kama* panel could overrule *Karim-Pahani*. *See Koerner*, 328 F.3d at 1050. Nor can we. *See id.* The district judge's determination that the City of Stockton and Stockton Police Department are not persons within the meaning of § 1983 is reversed.[3]

III. CONCLUSION

We reverse the district court's dismissal of Duarte's false arrest and municipal liability claims. We also reverse the summary judgment in favor of the individual Appellees on Duarte's excessive force claim. We remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

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[3] We decline to reach Appellees' other arguments for dismissal of the municipal liability claims, which were raised for the first time on appeal. *See Henry A. v. Willden*, 678 F.3d 991, 999 n.5 (9th Cir. 2012) (citing *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 974 (9th Cir. 2010)).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. 2:19-cv-00007-MCE-CKD

[Filed October 22, 2021]

FRANCISCO DUARTE and ALEJANDRO GUTIERREZ, Plaintiffs,	)
v.	)
CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC JONES, KEVIN JAYE HACHLER (1641); ERIC B. HOWARD (2448); MICHAEL GANDY (2858); CONNER NELSON (2613); SGT. UNDERWOOD, and DOES 1-100, Defendants.	)

MEMORANDUM AND ORDER

Through the present lawsuit, Plaintiffs Francisco Duarte and Alejandro Gutierrez (collectively "Plaintiffs" unless otherwise specified) allege they were subjected to excessive force while being arrested by members of the Stockton Police Department. As presently constituted, Plaintiffs' operative First Amended Complaint ("FAC") contains two causes of

action against Officers Eric Jones, Kevin Hachler, Eric Howard, Michael Gandy, Conner Nelson and Sergeant Underwood (collectively "Defendants" unless otherwise specified), who are named as individual defendants. Both the First and Second Claims are brought under 42 U.S.C. § 1983 ("§ 1983") for excessive force under the Fourth Amendment of the United States Constitution and are separately pled on behalf of Plaintiffs Duarte and Gutierrez, respectively. Now before the Court is Defendants' Motion for Summary Judgment (ECF No. 52) brought on grounds that both of Plaintiffs' claims are barred by the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994) ("Heck"). Defendants' Motion is GRANTED.[1]

BACKGROUND

This case stems from an encounter between Plaintiffs and police officers that occurred on May 5, 2017, at the corner of South Hunter Street and Martin Luther King Boulevard in Stockton, California. A large, and predominantly Mexican-American, crowd had gathered to celebrate the so-called "Cinco de Mayo" holiday. Plaintiffs, who are both Mexican-American, were in attendance but arrived separately. Defs.' Statement of Undisputed Fact ("UF") 1-2, FAC, ¶¶ 2-3, 5. Both claim they went to the intersection to purchase food from a taco truck parked nearby. Plaintiff Duarte estimated that around 100 other individuals were present. UF 3-4.

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[1] Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

Defendants responded to the scene after receiving an anonymous report of shots being fired and so-called "sideshow" activity[2] taking place at the intersection. UF 5. The Stockton Municipal Code, at Ch. 10.56, prohibits spectators at illegal street racing, reckless driving, or illegal demonstrations of speed. UF 7.

According to Defendants, after observing Defendant Gutierrez standing in the street at approximately 11:05 p.m., officers instructed him to get out of the roadway. Once Gutierrez moved to the sidewalk, several officers started to leave the area, but observed Gutierrez going back into the street as they did so. UF 14. One of the responding officers, Defendant Howard, testified at deposition that he then decided to detain Gutierrez for continuing to stand in the roadway despite orders to the contrary. Dep. of Howard, Defs.' Ex. E, 51:19-52:17; 55:19-56:13. When another officer, Nelson, told Gutierrez to "come here," however, Gutierrez ran. Nelson Dep., Defs.' Ex C, 33:22-25. The officers gave chase, and when Gutierrez paused momentarily and pivoted around, he was tackled by Nelson, who, with the assistance of Officer Howard, then handcuffed Gutierrez. UF 27, 29. Once Gutierrez was placed under arrest for resisting, obstructing, and/or delaying a peace officer in contravention of California Penal Code § 148 ("§ 148") and for blocking traffic in violation of Vehicle Code § 21950(b), no officer struck or hit him. UF 33-34.

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[2] "Sideshows" generally refer to an informal and illegal demonstration of automobile stunts. Such stunts usually occur in vacant areas or parking lots, but sometimes take place on public streets. UF 6.

Plaintiff Duarte, for his part, states that he observed police vehicles arrive and block the intersection as he was eating the food he had purchased. UF 38. Curious at why police were present, he walked to the corner and saw Gutierrez in the street. UF 39-41. Duarte then decided to walk back to his nearby vehicle, and, as he walked behind a row of parked cars he states he suddenly came upon Gutierrez and several police officers on the ground. UF 44-45. Since one of the officers was only three or four feet away, Duarte claims he "froze," and denies hearing any officer tell him to "back up" despite the fact that a body camera worn by another responding officer, Defendant Gandy, confirms that Gandy instructed Duarte to back up twice. UF 46, 48-49, 52. Additionally, while Duarte claims he also did not say anything before being taken to the ground by the officers, he confirmed at deposition that a voice on one of the body cams saying "don't push me" in response to an officer telling him to back up was indeed his own. UF 50-51.

Defendant Gandy testified he ultimately took Duarte to the ground after Duarte refused to back up from the ongoing police intervention involving Gutierrez. UF 53-54. Defendant Hachler, who assisted, testified that after observing Duarte struggling and trying to pull his arm away, he told Duarte to "give up his hands" and when he refused to do so, Hachler struck Duarte once on the left leg with his baton, which enabled him to access Duarte's right hand to complete

his handcuffing. See Hachler Dep., Defs.' Ex. D, 77:1-17; 81:10-20; 83:14-21; 85:21-24; 87:4-23.[3]

Like Gutierrez, at no time after being placed in handcuffs was Duarte struck or hit by a police officer. UF 65. Also like Gutierrez, Duarte was arrested for resisting, obstructing or delaying a peace officer under § 148. UF 64.

On May 15, 2017, the San Joaquin County District Attorney's Office filed a criminal complaint, in San Joaquin County Superior Court, against both Plaintiffs in accordance with § 148 for their conduct during the foregoing altercation. UF 66-67. Shortly before Plaintiffs' trial was scheduled to begin on those charges, they changed their prior "not guilty" pleas to pleas of "no contest" to the charges. It was agreed to hold those no contest pleas "in abeyance" pending the completion, by both Gutierrez and Duarte, of ten hours of community service to be performed within six months of the change of plea. Under the terms of that arrangement, the court agreed to later dismiss the no contest pleas provided the requisite community service was completed within the prescribed time. In fact, the cases against both Plaintiffs were ultimately dismissed. See Decl. of Victor Bachand,[4] ECF No. 17-3, pp. 24-26,

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[3] Duarte, on the other hand, estimates he was struck more than six times with the baton. UF 61.

[4] Mr. Bachand was the Deputy District Attorney assigned to prosecute the criminal charges levied against Plaintiffs. Plaintiffs' current counsel in this case, Yolanda Huang, also represented them both throughout the underlying criminal proceedings.

¶¶ 3-7; Misdemeanor Advisement of Rights, Waiver and Plea Forms, Defs.' Exs. J and K.

Plaintiffs instituted the present lawsuit in federal court on December 31, 2018, even before the state court charges against them were dismissed. Plaintiffs' original Complaint (ECF No. 1) included ten different causes of action. On August 28, 2019, Plaintiffs filed a Motion to Amend Complaint (ECF No. 9) which, being unopposed, was granted by Court Order filed October 29, 2019. The currently operative FAC was thereafter filed on November 13, 2019 (ECF No. 16), and, as opposed to its predecessor, contained a streamlined five as opposed to ten claims. In addition to two claims for excessive force under § 1983, both Duarte and Gutierrez also included constitutionally based claims for false arrest and false imprisonment along with a final claim alleging substantive due process violations against Defendants for allegedly filing false police reports.

Defendants moved to dismiss portions of the FAC on November 27, 2019. ECF No. 17. With respect to the First and Second Claims alleging excessive force, Defendants argued that the City of Stockton and the Stockton Police Department were improperly named as Defendants. Additionally, as to the remaining three causes of action, alleging false arrest/imprisonment as to both Plaintiffs and the filing of false police reports against various individually-named Defendants, the Court found those claims to be barred by Heck. By Memorandum and Order issued May 22, 2020 (ECF No. 35), the Court granted Defendants' Motion in its

entirety, leaving at issue only the First and Second Claims as directed against the individual Defendants.

On September 16, 2020, with the benefit of discovery that had been undertaken by both parties, Defendants moved for summary judgment as to the remaining two claims, arguing that they too are precluded by Heck. ECF No. 52.[5] That motion is presently before the Court for adjudication.

STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

In a summary judgment motion, the moving party always bears the initial responsibility of informing the court of the basis for the motion and identifying the portions in the record "which it believes demonstrate the absence of a genuine issue of material fact."

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[5] Plaintiffs appear to argue in opposition that Defendants have failed to provide "fair notice" of their claim that Heck applies because, once the Court granted Defendants' Motion to Dismiss on all claims except the First and Second Claims for excessive force under § 1983, Defendants made those remaining claims at issue by filing the present motion for summary judgment rather than an answer pleading Heck as an affirmative defense. Given those circumstances the Court rejects any claim that Plaintiffs lacked fair notice of the Heck defense.

Celotex, 477 U.S. at 323. If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968).

In attempting to establish the existence or non-existence of a genuine factual dispute, the party must support its assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits[,] or declarations . . . or other materials; or showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also demonstrate that the dispute about a material fact "is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. In other words, the judge needs to answer the preliminary question before the evidence is left to the jury of "not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." Anderson, 477 U.S. at

251 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original). As the Supreme Court explained, "[w]hen the moving party has carried its burden under Rule [56(a)], its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. Therefore, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Id. at 587.

In resolving a summary judgment motion, the evidence of the opposing party is to be believed, and all reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898 (9th Cir. 1987).

ANALYSIS

A. Dismissal of the Charges Against Plaintiffs After Completion of Community Service Does Not Circumvent the Heck Bar.

Plaintiffs' remaining causes of action are barred by Heck. Under that 1994 Supreme Court decision, a plaintiff cannot maintain a lawsuit seeking damages under 42 U.S.C. § 1983 if success in that lawsuit would "necessarily imply" the invalidity of a related prior "conviction or sentence." Heck, 512 U.S. at 487.

Consequently, plaintiffs like Duarte and Gutierrez herein cannot bring an action asserting § 1983 claims which, if successful, would undermine a prior conviction or sentence for the same conduct unless they can prove the underlying conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . ., or called into question by a federal court's issuance of a writ of habeas corpus." Id. at 486-487.

A claim is barred under Heck if the plaintiff "would have to negate an element of the offense" of which he has been convicted or sentenced (id. at 486 n. 6) or make specific factual allegations inconsistent with such criminal conviction or sentence. Cunningham v. Gates, 312 F.3d 1148, 1154 (9th Cir. 2002). Consequently, if a criminal conviction or sentence "arising out of the same facts stands and is fundamentally inconsistent with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed." Smith v. City of Hemet, 394 F.3d 689, 695 (2005), According to Heck, then, a plaintiff cannot bring a § 1983 action unless there has been a "termination of the prior criminal proceeding [on which the § 1983 claim is based] in favor of the accused." Heck, 512 U.S. at 484, 486.

Heck, in keeping with the sweeping language it employs, applies broadly to either "convictions or sentences." Id. at 487. Consequently, on its face Heck would seem to apply to the community-service sentence Plaintiffs received in response to plea of nolo contendere. In addition, case law instructs that the manner of conviction—whether by guilty verdict, guilty

plea, or no contest plea—is immaterial. See Szajer v. City of Los Angeles, 632 F.3d 607, 609, 612 (9th Cir. 2011); Radwan v. County of Orange, 519 F. App'x 490, 490-91 (9th Cir. 2013) ("We have repeatedly found Heck to bar § 1983 claims, even where . . . the plaintiff's prior convictions were the result of guilty or no contest pleas."); Nuno v. San Bernardino County, 58 F. Supp. 2d 1127, 1135 (D.D. Cal. 1999) ("[F]or purposes of the Heck analysis, a plea of nolo contendere in a California criminal action has the same effect as a guilty plea or a jury verdict of guilty."). Significantly for purposes of the present matter, the Nuno court remarked that "under Heck, what is relevant about plaintiff's nolo pleas . . . is the simple fact of their existence." Id. at 1136.

Plaintiffs nonetheless argue that even if they pleaded no contest, they were never actually "convicted" since the criminal charges against them were dismissed following their completion of community service. Therefore, according to Plaintiffs, Heck is not implicated. Although it does not appear that any court within the circuit has reached this particular issue, the Court ultimately finds Plaintiffs' position to be unpersuasive. In Gilles v. Davis, 427 F.3d 197, 210 (3d Cir. 2005), a plaintiff entered into an "Accelerated Rehabilitative Disposition" ("ARD") program, which permitted the expungement of his criminal record upon successful completion of a probationary term. He completed the program and sued law enforcement. Even though, like Duarte and Gutierrez, the plaintiff was never formally convicted, the Third Circuit found that there had been no favorable termination of the underlying criminal

proceedings, and therefore applied Heck. As the court stated:

> [The plaintiff] cannot maintain a § 1983 claim unless successful completion of the ARD program constitutes a "termination of the prior criminal proceeding in favor of the accused." Heck, 512 U.S. at 485, 114 S. Ct. 2364. We have not had occasion to address this issue directly. Our trial courts, [however,] have held that ARD is not a termination favorable for purposes of bringing a subsequent § 1983 . . . claim.

Id.

The situation confronted by the Third Circuit is directly analogous to the circumstances with which this Court is confronted. Both cases were decided in the same procedural context: where criminal charges were ultimately dismissed following completion of diversion programs: here, through prescribed community service and in Gilles through completion of the ARD program.[6] Moreover, like Gilles, Plaintiffs here cannot plausibly argue that completing mandatory community service, after pleading no contest to a charge of resisting law enforcement, can possibly constitute a "favorable termination" of the proceedings on their behalf so as to circumvent the Heck bar.

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[6] Although that plaintiff's underlying criminal conduct pertained to disorderly conduct, as opposed to the obstructing/resisting arrest charges present here, both were predicates for later civil claims asserted under § 1983, and the logic employed by the Gilles court is equally applicable here.

B. Given the Disposition of the Charges Against Plaintiffs for Violation of California Penal Code § 148, Their Excessive Force Claims are Barred by Heck.

California law makes it clear that the underlying lawfulness of an arrest is "an essential element of the offense of resisting or obstructing a peace officer" under § 148, since the use of excessive force by a police officer is not considered within the lawful purview of his or her duties. Susag v. City of Lake Forest, 94 Cal. App. 4th 1401 (2002), citing People v. Simons, 42 Cal. App. 4th 1100, 1109 (1996); Nuno, 58 F. Supp. 2d at 1133, citing People v. Olguin, 119 Cal. App. 3d 39, 44 (1981) ("Since the officer must be acting in the performance of his duty, the use of excessive force renders it impossible for an arrestee to violate section 148."). Even more significantly, the Ninth Circuit went on to explain in Nuno, Heck itself recognized "that a successful § 1983 action, premised on a police officer's use of excessive force during an arrest, would necessarily imply the invalidity of a plaintiff's conviction for resisting that arrest in a state [like California], where the lawfulness of the resisted arrest was a prima face element of the resisting-arrest offense." Id., citing Heck, 512 U.S. at 486 n. 6. Therefore, a conviction or sentence for violation of § 148 determines the lawfulness of the underlying arrest, and a § 1983 action alleging that excessive force was employed in the course of the arrest would, if proved, negate the viability of a resisting arrest violation under § 148, and would therefore be barred by Heck. Nuno, 58 F. Supp. 2d at 1133.

In Muhammad v. Garrett, 66 F. Supp. 3d 1287 (E.D. Cal. 2014), the plaintiff was charged, among other things, with resisting arrest in violation of § 148. After a police officer determined that plaintiff appeared to be under the influence of drugs and decided to effectuate an arrest, the plaintiff ignored his order to remain seated, stood up, broke free and began running. Other officers responded and the plaintiff disregarded multiple orders to stop. The officers ultimately had to take plaintiff to the ground and in attempting to subdue him used a baton to ultimately gain control. Id. at 1290-91. Plaintiff was convicted of several crimes including resisting arrest, and then, like Plaintiffs herein, brought a § 1983 action alleging excessive force under the Fourth Amendment despite his § 148 conviction.[7] Also like Gutierrez and Duarte, the plaintiff in Muhammad denied any wrongdoing, claiming that he was always compliant and never offered any resistance whatsoever. Id. at 1298.[8] Significantly, too, neither case involves acts of resistance that were separate from the arrest itself. Instead, as the Muhammad court noted, the excessive force allegations made by the plaintiff in his civil rights action were, like those made by Plaintiffs here, necessarily the same acts underlying the § 148 charges

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[7] While Plaintiffs try to distinguish Muhammad on grounds that the plaintiff there was convicted of a § 148 violation and they were not, for the reasons stated above, that is a distinction without a difference. Nuno, 58 F. Supp. 2d at 1135.

[8] It is undisputed that both Plaintiffs allege they did nothing wrong and that the deputies had no cause whatsoever to arrest them on the night in question. UF 70-71.

for which Muhammad was convicted and Gutierrez and Duarte pled no contest. Id. In other words, "[t]here was no spatial or temporal distinction between the acts for which [they were convicted or sentenced] and the acts of the [police officer]." Id. at 1299, citing Smith, 394 F.3d at 699.

In the present case, for example, neither Plaintiff alleges that they were subjected to any force at all, let alone excessive force, once they were handcuffed. Nor were there any separate acts of resistance apart from those that led directly to the arrest. As a result, the excessive force allegations made here "are not divisible" from those for which Plaintiffs were sentenced under § 148. Muhammad, 66 F. Supp. 3d at 1298 ("Plaintiff does not claim that the conviction for… resisting arrest was based upon acts of resistance… that [were] separate from the arrest itself.").

The cases that do have "divisible" excessive force allegations, and are relied upon by Plaintiff for the proposition that a § 148 conviction does not necessarily bar a subsequent civil rights suit for excessive force under § 1983, are distinguishable. In Hooper v. County of San Diego, 629 F.3d 1127 (9th Cir. 2011), for example, a loss prevention officer handcuffed the plaintiff after suspecting her of petty theft. Once a deputy sheriff arrived, he removed the handcuffs because the plaintiff appeared compliant. After the deputy found methamphetamine in her car and told her she was under arrest for possession, however, she jerked away and a struggle ensued. Although the deputy allegedly succeeded in getting plaintiff under restraint, he nonetheless summoned his German

shepherd, and the dog proceeded to bite plaintiff's head several times and tore off large portions of her scalp. While plaintiff ultimately pled guilty to resisting arrest under § 148, and did not dispute the lawfulness of her arrest, she later brought suit under § 1983 claiming that the force used by the deputy was still excessive. Although the district court found those claims to be barred under Heck, the Ninth Circuit disagreed.

According to the Ninth Circuit, it could distinguish the facts in Hooper's case from other cases because in Hooper it could differentiate between two phases of that plaintiff's encounters with law enforcement. Although the Ninth Circuit found that Hooper's arrest was effectuated during a single continuous chain of events lasting a very brief time (id. at 1131), the Hooper court noted that even such a continuous transaction may still survive Heck scrutiny as long as "at some point" during the same transaction in which the plaintiff unlawfully resisted arrest the officer proceeded to separately "use[] excessive force or [to] otherwise act[] unlawfully." Id. at 1132. In that circumstance, the court reasoned "two isolated factual contexts would exist, the first giving rise to criminal liability on the part of the criminal defendant, and the second giving rise to civil liability on the part of the arresting officer." Id., citing Yount v. City of Sacramento, 43 Cal. 4th 885, 889. Therefore, the viability of a § 148 conviction is not compromised by a later civil rights suit under § 1983 as long as the officer responded lawfully to the resistance using appropriate force, and "[i]t does not matter that the officer might also, at some other time during the same 'continuous transaction,' have acted unlawfully." Id. Consequently,

according to Hooper, as long as the § 148 claims may be based "on different actions" during that same transaction, a § 1983 excessive force claims is not Heck-barred based upon a conviction under § 148. Hooper, 629 F.3d at 1134.

Hooper and the other cases relied upon by Plaintiffs are distinguishable from the instant matter because they all involved different acts on the part of law enforcement, some of which were in measured response to the plaintiffs' resistance and some arguably were not. The present case, on the other hand, involves no discrete acts by the deputies that can be pegged as unreasonable force separate from the means employed to take both Plaintiffs into custody, which their no contest pleas to § 148 necessarily make lawful. Gutierrez' refusal to follow instructions to "come here," and his decision instead to run, prompted the officer to give chase and to ultimately tackle and handcuff him. Duarte, too, disobeyed directives to back up from an ongoing struggle between officers and Gutierrez before he too was taken to the ground by the officers. The fact that one of the assisting officers had to use a baton in order to get Duarte handcuffed does not detract from the conclusion that all of the police action directed to Duarte (and to Gutierrez as well) was simply to get them initially restrained. Both Plaintiffs admit that they were not subjected to any force thereafter. Thus, denominating the acts of the individual Defendants here as unreasonable cannot be reconciled with Plaintiffs' no-contest pleas,[9] and their claims for

[9] Whether or not Plaintiffs should have pled no contest to the § 148 charges pled against them is not a matter on which this Court will

excessive force in contravention of 42 U.S.C. § 1983 are barred by Heck.[10] Defendants are therefore entitled to judgment as a matter of law on Plaintiffs' remaining First and Second Causes of Action.

CONCLUSION

For all the above reasons, Defendants' Motion for Summary Judgment (ECF No. 52) is GRANTED, in its entirety.[11] Because this terminates the case, the Clerk

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opine. The fact remains that they did so, while represented by the same counsel representing them in these proceedings, and since their pleas amounted to a concession that the force used to arrest them for violating § 148 was reasonable, that is the only dispositive factor here.

[10] Having determined that Plaintiffs' remaining First and Second Claims are barred by Heck, the Court need not determine the merit of Defendants' alternative arguments that the force they employed was objectively reasonable or that they are entitled to qualified immunity under the circumstances of this matter in any event. Accordingly, it declines to do so. Moreover, it is equally unnecessary for the Court to determine whether any Defendant had any supervisorial liability, or any custom, practice or policy liability under Monell as to the excessive force allegations pled by Plaintiffs, since the claims themselves are barred in the first instance.

[11] The Court notes that Defendants have filed formal objections (ECF No. 62-3) to certain evidence proffered by Plaintiffs. To the extent that the declaration submitted by Plaintiff Gutierrez is inconsistent with his deposition testimony, the declaration is a "sham" and cannot be used to avoid summary judgment. See, e.g., Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 267 (9th Cir. 1991). Defendants' objection to the Gutierrez declaration is accordingly sustained on that basis. Because the remaining evidentiary items to which objections were interposed have not been relied upon in

of Court is accordingly directed to enter judgment in Defendants' favor and against Plaintiffs and to close the file.

IT IS SO ORDERED.

DATED: October 22, 2021

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE

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reaching the foregoing decision, they need not be ruled upon at this time and the Court declines to do so.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. 2:19-cv-00007-MCE-CKD

[Filed May 22, 2020]

FRANCISCO DUARTE and ALEJANDRO GUTIERREZ, Plaintiffs,	)
v.	)
CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC JONES, KEVIN JAYE HACHLER (1641); ERIC B. HOWARD (2448); MICHAEL GANDY (2858); CONNER NELSON (2613); SGT. UNDERWOOD, and DOES 1-50, Defendants.	)

MEMORANDUM AND ORDER

Through the present lawsuit, Plaintiffs Francisco Duarte and Alejandro Gutierrez (collectively "Plaintiffs" unless otherwise specified) allege they were wrongfully arrested, and subject to excessive force in the process, by members of the Stockton Police Department. Plaintiffs' operative pleading the First Amended Complaint ("FAC") names both the City of

Stockton and the Stockton Police Department as Defendants, along with Officers Eric Jones, Kevin Hachler, Eric Howard, Michael Gandy, Conner Nelson and Sergeant Underwood.[1] The FAC includes four separate claims for violations of 42 U.S.C. § 1983, as well as federal substantive due process claims on grounds that the police reports prepared as a result of the subject incident included false information in order to justify Defendants' arrest of Plaintiffs and to "cover up and excuse [their[excessive force." Pls.' First Amended Complaint ("FAC"), ECF No. 16, ¶ 62.

Presently before the Court is Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), on grounds the FAC fails to state a viable claim for two reasons. First, Defendants argue that three of Plaintiffs' five Counts are barred by the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994). Secondly, Defendants aver that the City of Stockton and the Stockton Police Department are improperly named as Defendants in Plaintiffs' First and Second Claims, which both allege excessive force in contravention of 42 U.S.C. § 1983.[2]

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[1] This Memorandum and Order will also refer to said Defendants collectively unless otherwise noted.

[2] Defendants also included a third ground for their motion; namely that the allegations of Claims One through Four, to the extent they are predicated on alleged Fourteenth Amendment violations, are improper. Defendants have conceded that issue and, consequently, it will not be further analyzed in this Memorandum and Order.

As set forth below, Defendants' Motion is GRANTED.[3]

BACKGROUND[4]

This case stems from an encounter between Plaintiffs and police officers on May 5, 2017, at the corner of South Hunter Street and Martin Luther King Boulevard in Stockton, California. A large, and predominantly Mexican-American, crowd had gathered to celebrate the so-called "Cinco de Mayo" holiday. Plaintiffs, who are both Mexican-American, were in attendance.

According to the FAC, after Plaintiff Gutierrez had ordered food from a taco truck at the corner he went across the street to purchase a soda. Gutierrez claims that as he traversed the cross walk, a police car pulled up rapidly and waved, which he interpreted as a directive to return to the taco truck. At some point Plaintiff Duarte, who is also Mexican-American, arrived separately and had also ordered food from the same truck.

According to Plaintiffs, a number of Stockton Police officers subsequently arrived and "plann[ed] a violent attack against some Mexican-American members of the crowd" in order "to demonstrate the power and

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[3] Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

[4] Unless otherwise indicated, the facts set forth in this Section are taken, at times verbatim, from the allegations contained in Plaintiffs' FAC. ECF No. 16.

dominance of the Stockton Police against Mexcian Americans, to demonstrate disdain for Mexican American culture and to effectively disrupt, prevent, and break-up celebrations of Mexican American culture." Pls.' FAC, ¶ 7. They pulled out wooden batons and one of the officers, Defendant Gandy, allegedly ran up to Plaintiff Duarte, grabbed him by the right shoulder, and threw him, face forward, to the ground. Duarte claims that Officer Gandy placed his knees on Duarte's neck and head before another officer, Defendant Hachler, hit Duarte multiple times on the back and leg with his baton.

Plaintiff Gutierrez, for his part, after "seeing the phalanx of police officers approaching the crowd with batons out and swinging, decided he should leave" and began to jog away. Id. at ¶ 17. He states the police chased him and that after he stopped, Officer Nelson tackled him, with Officer Howard subsequently also striking Gutierrez multiple times with his wooden baton.

Not surprisingly, the police officers' version of events is strikingly different. The FAC quotes extensively from the reports prepared as a result of the incident. Officer Gandy wrote that Plaintiff Duarte had been ordered to leave the area. When he did not, and after interfering with another suspect being taken into custody, the reports state that Officer Gandy took Duarte to the ground. Officer Hachler helped gain control of Duarte after he continued to struggle with Officer Gandy and in the process used his baton to gain compliance. Id. at ¶ 20.

Similarly, with respect to Plaintiff Gutierrez, the reports claim that Gutierrez yelled at the officer, clenched his fists and assumed a fighting stance indicative of wanting to fight the officers before he too was taken down after he refused to stop. Id. at ¶ 19.

Plaintiffs claim these allegations were false and that body-worn camera footage contradict the Officers' statements. Plaintiffs were nonetheless taken into custody and charged by the San Joaquin County District Attorney's office with misdemeanor violations of California Penal Code § 148(a)(1), resisting arrest. According to the FAC, on the day of trial those charges were dismissed as to both Plaintiffs "in exchange for 10 hours of community service time" to be performed by both men, which they allegedly satisfied. Id. at ¶ 23.

In connection with the present Motion to Dismiss, Defendants have requested that the Court judicially notice certain documents, including the police reports, the criminal complaint lodged against the Defendants, and records from the criminal proceedings, including the pleas and dismissal entered in both cases.[5] The

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[5] Defendants' Request for Judicial Notice, ECF No. 17-3 ("RJN") is made on grounds that since the materials at issue are public records and pertain to court proceedings, they are properly subject to judicial notice. Bias v. Moynihan, 508 F.3d 121, 1225 (9th Cir. 2007). With regard to the police reports, the RJN makes it clear that the request does not extend to the truth of the matters asserted therein, but only for purposes of establishing the basis for Plaintiffs' subsequent incident-related convictions. RJN, 2:22-24. Plaintiffs nonetheless object to inclusion of both the reports and certain court documents, alleging that the police reports are "subject to reasonable dispute", and that some of the court documents were not properly docketed so as to be noted as official

Court records show that both Defendants changed their pleas to the resisting arrest charges to "no contest" on July 12, 2018, which, as the FAC avers and as the Declaration of Victor Bachand also attests, was the day trial was scheduled to begin. The state court judge accepted the no contest pleas, but held them in abeyance provided Plaintiffs completed 10 hours of community service within the next six months. See RJN, Exs. B, E to Bachand Decl. The "nolo" pleas were memorialized by Minute Orders prepared the same day (id. at Exs. C. F) and both cases were subsequently dismissed on January 14, 2019, in the interests of justice once the requisite community service had been performed. Id. at Exs. D. G.

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court records of the criminal proceedings. Those contentions are misplaced. First, as Defendants specifically note in the RJN itself, the police reports are offered only for foundational purposes and not to prove the truth of the matters asserted therein. Second, with respect to the court records, Plaintiffs object only to consideration of the plea forms they both executed. The Court is satisfied that those documents are indeed court records. Even if they were not, disposition of criminal charges is specifically discussed at ¶ 23 of the FAC, and as indicated above, the FAC also recites at length from the police reports themselves. Plaintiffs' counsel herself points to authority permitting a court to judicially notice matters beyond the four corners of the complaint either as public records or where the complaint relies on material not attached thereto. See Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001). Notwithstanding whether police reports and plea forms qualify as public records, they may be judicially noticed here as having been relied upon in the Complaint. Defendants' RJN is accordingly GRANTED.

STANDARD

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotations omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain something more than "a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

Furthermore, "Rule 8(a)(2) . . . requires a showing, rather than a blanket assertion, of entitlement to

relief." Twombly, 550 U.S. at 555 n.3 (internal citations and quotations omitted). Thus, "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing Wright & Miller, supra, at 94, 95). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A court granting a motion to dismiss a complaint must then decide whether to grant leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment . . . ." Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party . . . carries the greatest weight." Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any

amendment." Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) ("Leave need not be granted where the amendment of the complaint . . . constitutes an exercise in futility . . . .")).

ANALYSIS

A. Plaintiffs' Third, Fourth and Fifth Claims are Barred by Heck

Under the Supreme Court's 1994 decision in Heck v. Humphrey, a plaintiff cannot maintain a lawsuit seeking damages under 42 U.S.C. § 1983 if success in that lawsuit would "necessarily imply" the invalidity of a related prior criminal conviction, Heck, 512 U.S. at 487. Consequently, Plaintiffs like Duarte and Gutierrez herein cannot bring an action asserting § 1983 claims which, if successful, would undermine a prior conviction for the same conduct unless they can prove the underlying conviction has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . ., or called into question by a federal court's issuance of a writ of habeas corpus." Heck, 512 U.S. at 486-477.

A claim is barred under Heck if the plaintiff "would have to negate an element of the offense of which he has been convicted" (id. at 486 n. 6) or make specific factual allegations inconsistent with his criminal conviction. Cunningham v. Gates, 312 F.3d 1148, 1154 (9th Cir. 2002). "[If] a criminal conviction arising out of the same facts stands and is fundamentally

inconsistent with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed." Smith v. City of Hemet, 394 F.3d 689, 695 (2005). According to Heck, then, a plaintiff cannot bring a § 1983 action unless there has been a "termination of the prior criminal proceeding [on which the 1983 claim is based] in favor of the accused." Heck, 512 U.S. 484.

In now moving to dismiss, Defendants argue that any relief granted pursuant to Plaintiffs' Third, Fourth and Fifth Claims (for false arrest and imprisonment under § 1983 and for filing false police reports in alleged contravention of Plaintiffs' due process rights), would undermine any "conviction" for Heck purposes as to the charges levied against Plaintiffs for resisting a police officer. To the extent that Plaintiffs were indeed "convicted" as to the resisting charges, it seems axiomatic that any finding that they were falsely arrested, falsely imprisoned or were subject to false police reports would fly in the face of any such conviction. The salient issue thus becomes whether Plaintiffs' no contest pleas to the charges qualify as a Heck conviction.

Defendants argue that Heck applies broadly to convictions and that the manner of conviction—whether by guilty verdict, guilty plea, or no contest plea—is immaterial. The Court agrees. See Szajer v. City of Los Angeles, 632 F.3d 607, 609, 612 (9th Cir. 2011); Radwan v. County of Orange, 519 F. App'x 490, 490-91 (9th Cir. 2013) ("We have repeatedly found Heck to bar § 1983 claims, even where . . . the plaintiff's prior convictions were the result of guilty or

no contest pleas."); Nuño v. San Bernardino County, 58 F. Supp. 2d 1127, 1135 (C.D. Cal. 1999) ("[F]or purposes of the Heck analysis, a plea of nolo contendere in a California criminal action has the same effect as a guilty plea or a jury verdict of guilty."). Significantly for purposes of the present matter, the Nuño court remarked that "under Heck, what is relevant about plaintiff's nolo pleas and [his] resulting.. . convictions is the simple fact of their existence." Id. at 1136.

Plaintiffs try to distinguish this authority by alleging that even if they pleaded no contest, they were never actually "convicted" since the criminal charges against them were dismissed following their completion of community service; indeed, they go so far as to allege this amounted not to a conviction but to a "favorable termination" in their favor under Heck. Pls.' Opp., 7: 16-18. According to Plaintiffs, Heck cannot apply since "a conviction was never entered, and they received no sentence." Id. at 7: 25-26.

Although it does not appear that any court within the circuit has reached this particular issue, the Court ultimately finds Plaintiffs' position to be unpersuasive. The Court agrees with Defendants and finds the Third Circuit's decision in Gilles v. Davis, 427 F.3d 197, 210 (3d Cir. 2005), instructive in resolving the question. There, plaintiff Petit entered into an "Accelerated Rehabilitative Disposition" ("ARD") program, which permitted the expungement of his criminal record upon successful completion of a probationary term. He completed the program and sued law enforcement. Even though, like Duarte and Gutierrez, he was never formally convicted, the Third Circuit found that there

had been no favorable termination of the underlying criminal proceedings, and therefore applied Heck. As the court stated:

> Petit cannot maintain a § 1983 claim unless successful completion of the ARD program constitutes a "termination of the prior criminal proceeding in favor of the accused." Heck, 512 U.S. at 485, 114 S.Ct. 2364. We have not had occasion to address this issue directly. Our trial courts, [however,] have held that ARD is not a termination favorable for purposes of bringing a subsequent § 1983 . . . claim.

Id.

The situation confronted by the Third Circuit is directly analogous to the circumstances with which this Court is confronted. Both instances deal with situations wherein criminal charges were ultimately dismissed following completion of diversion programs: here, through prescribed community service and in Giles through completion of the ARD program. Moreover, like Gilles, Plaintiffs here cannot plausibly argue that completing mandatory community service, after pleading no contest to a charge of resisting law enforcement, can possibly constitute a "favorable termination" of the proceedings for them. Consequently, Defendants' Motion to Dismiss the Third, Fourth and Fifth Claims as barred by Heck is GRANTED.

B. The Municipal Defendants are Improperly Named in Plaintiffs' First and Second Claims

In addition to moving to dismiss portions of Plaintiffs' lawsuit on Heck grounds, Defendants City of Stockton and the Stockton Police Department, also seek dismissal of Plaintiffs' First and Second Claims, for excessive force in violation of 42 U.S.C. § 1983, on grounds that they cannot be considered "persons" subject to § 1983 liability. Section 1983 permits a "person" to be sued for the deprivation of federal rights, and municipalities or other governmental bodies can qualify as a "person" in that regard under the Supreme Court's decision in Monell v. Dept. of Social Servs. Of City of New York, 436 U.S. 658, 690 (1978). Nonetheless, according to Defendants, the Ninth Circuit has determined that qualifying governmental entities in that regard do not include police departments, since "municipal police departments and bureaus are generally not considered 'persons' within the meaning of 42 U.S.C. § 1983." United States v. Kama, 394 F.3d 1236, 1240 (9th Cir. 2005); see also Vance v. County of Santa Clara, 928 F. Supp. 993, 996 (N.D. Cal. 1996) ("[T]he term 'persons' does not encompass municipal departments."). Importantly, the rationale of Kama has been adopted by several judges within this district, including the undersigned. See, e.g., Sanders v. Aranas, No. 1:06-cv-1574, 2008 WL 268972 at 2-3 (E.D. Cal. 2008); Brockmeier v. Solano County Sheriff's Dept., No. 2:05-cv-2090 MCE EFB PS, 2006 WL 3760276 at *4 (E.D. Cal. 2006).

Plaintiffs, in opposition, contend the matter is not nearly as clear-cut as Defendants suggest. They argue that the Kama decision relied on by Defendants is a concurring opinion. While conceding that several district courts have relied on Kama to dismiss police and sheriff departments as improper § 1983 defendants, Plaintiffs argue that another line of cases has found otherwise following a Ninth Circuit case decided prior to Kama, Streit v. County of Los Angeles, 236 F. 3d 552 565 (9th Cir. 2001). While it is true that other district courts, including Courts within the Eastern District, have relied on the 2001 Streit decision, it represents an earlier pronouncement of Ninth Circuit authority than the 2005 Kama opinion, and relies on case law from the 1980s, including Karim Panahi v. L.A. Police Dep't, 839 F.2d 621, 624 n.2 (9th Cir. 1986) and Shaw v. Cal. Dep't of Alcoholic Beverage Control, 788 F.2d 600, 604 (9th Cir.1986).

Because the Kama case represents the Ninth Circuit's most recent pronouncement on the liability of a police department under 42 U.S.C. § 1983, this Court believes it should be followed. Defendants' Motion to Dismiss the Stockton Police Department and the City of Stockton, under which the police department operates, is accordingly GRANTED.[6]

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[6] Plaintiffs' Opposition is directly solely to the Stockton Police Department and contains no specific argument, besides that directed to the police department, that the City of Stockton is a viable party. Therefore, Defendants' Motion is GRANTED as to the City of Stockton as well.

CONCLUSION

For all the above reasons, Defendants' Motion to Dismiss (ECF No. 17) is GRANTED as follows:

1. As Plaintiffs have conceded, the First, Second, Third and Fourth Claims are DISMISSED to the extent they are predicated on alleged Fourteenth Amendment violations;

2. Plaintiffs' Third, Fourth and Fifth Claims dismissed on grounds that they are barred by Heck, and because the Court believes further leave to amend would be futile, that dismissal is without leave to amend;

3. Defendants' Motion to Dismiss Defendants City of Stockton and the Stockton Police Department from the First and Second Claims is GRANTED also without leave to amend.

4. This case shall proceed on Plaintiffs' remaining claims.

IT IS SO ORDERED.

Dated: May 21, 2020

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN

Case No. CR-0017-6464

[Dated July 12, 2018]

PEOPLE OF THE STATE OF CALIFORNIA	)
	)
vs	)
	)
Francisco Duarte	)
	)

MISDEMEANOR ADVISEMENT OF RIGHTS, WAIVER AND PLEA FORM

1. I hereby freely and voluntarily plead ____ guilty or __✓__ no contest to: _____ FD

   _____ FD

2. I understand that a plea of no contest (nolo contendere) will have exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit. FD

3. I understand that if I am not a citizen, a plea of guilty or no contest can and will result in my deportation, exclusion from admission to this country or denial of naturalization. I also understand that if I am a foreign national, I have the right to have my consular representative contacted and I hereby waive that right. FD

4. I have been advised of, understand and knowingly and intelligently waive each of the following constitutional rights: FD

    a. To an attorney to represent me at all stages of the proceeding. If I cannot afford to hire an attorney, the court will appoint one to represent me free of charge. FD

    b. To have a speedy and public trial by court or by jury. At the trial I am presumed to be innocent and the prosecution has the burden of proving me guilty beyond reasonable doubt. FD

    c. To confront and cross-examine all witnesses testifying against me. FD

    d. To present evidence and to have the Court issue subpoenas to bring into court witnesses or evidence favorable to me, at no cost. FD

    e. To testify on my own behalf if I choose, or to remain silent and not incriminate myself. By pleading guilty or no contest I am incriminating myself. FD

5.	I understand the charge(s) against me and the possible pleas and defenses.	FD
6.	I understand the minimum and maximum penalties for the offense(s) I am charge with.	FD
7.	My decision to enter this plea has been made freely and voluntarily. No promises or inducements have been made in connection with this plea except: plea & abeyance - 10 hours community service at any non-profit of my choice, 6 months [illegible] vacate plea and dismissal on Jan. 12, 2019 - if I fail to do the 10 hours of community service, then CTS & 3 years informal probation.	___
8.	I understand that this conviction could be used against me in the future as a prior conviction, to increase any penalties for future convictions, or could be used to violate my probation or parole which has been granted in another case.	FD
9.	If applicable - I understand that I have the right to enter my plea before, and to be sentenced by, a Judge. I give up this right and agree to enter my plea before, and be sentenced by, a Superior Court Commissioner.	FD

DEFENDANT'S STATEMENT

I am aware of and understand each of the above items. I have initialed those items as proof thereof. I hereby

freely and voluntarily waive my rights and enter a plea to the listed charge(s).

Defendant's signature: Francisco Duarte Jr.
Dated: 7/12/18

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form (and addendum if applicable) with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have also discussed the facts of the case with the defendant, explained the consequences of. this plea, the elements of the offense(s) and the possible defenses. I concur in this plea and in the defendant's decision to waive his or her constitutional rights.

Attorney signature: Yolanda Huang
Dated: 7/12/18

Type or print name: Yolanda Huang

INTERPRETER'S STATEMENT (If applicable)

I certify that I translated this form to the defendant in ___ Spanish ___ Other: ____ and that the defendant stated (s)he understood the contents of the form and then initialed and signed the form in my presence.

Interpreter's signature: _____
Dated: _____

Type or print name: _____

COURT'S FINDINGS AND ORDER

The Court finds that the defendant has expressly, knowingly, voluntarily and intelligently waived his or her constitutional rights. The Court finds that the defendant's plea(s) and admission(s) are freely and voluntarily made and that there is a factual basis for the plea(s). The Court accepts the defendant's plea(s) and admission(s), if any, and orders this form and any applicable addendum filed and incorporated in the docket by reference.

Michael N. Garrigan _____ Dated: _____
Judge of the Superior Court

APPENDIX E

Superior Court of California,
County of San Joaquin

STK-CR-MICOD-2017-0006464

[Dated July 12, 2018]

MINUTE ORDER

Date: 07/12/2018 08:30 AM
Case Number: STK-CR-MICOD-2017-0006464
People of the State of California vs. Francisco Duarte 08/01/1995
Event Type: Readiness **Department:** 7C

Appearances: Presiding Judicial Officer: Michael N. Garrigan, Judge. Prosecution appears by Prosecution Attorney, Victor Bachand. Private Attorney Yolanda Huang appears with Defendant, Alejandro Barajas Gutierrez. Also attending: M.G. Court Clerk.

Defendant present

Defendant pleads Nolo Contendre to: 1, PC 148(A)(1) Obstruct/Resist/Etc Public/Peace Officer/ Emergency Med Tech, a Misdemeanor. Court's acceptance of plea held in abeyance.

Future Court Dates: Monday January 14, 2019 at 8:30 AM in Department 3A for Plea Held in Abeyance;

Obey all laws.

Do not commit same or similar offense.

Defendant to complete 10 hours of community service through non profit agency by next court appearance.

Defendant enters Arbuckle waiver.

Defendant not ordered present if in compliance with orders/conditions.

Defendant's Waiver of Rights form in file.

:07/20/18 court date vacated

APPENDIX F

Superior Court of California,
County of San Joaquin

STK-CR-MICOD-2017-0006464

[Dated January 14, 2019]

MINUTE ORDER

Date: 01/14/2019 08:30 AM
Case Number: STK-CR-MICOD-2017-0006464
People of the State of California vs. Francisco Duarte 08/01/1995
Event Type: Plea Held in Abeyance **Department:** 3A

Appearances: Presiding Judicial Officer: Erin G. Castillo, Commissioner. Prosecution appears by Prosecution Attorney, William Van Fields. Defendant, Francisco Duarte not required to appear. Defendant's Counsel Private Attorney Yolanda Huang did not appear. Also attending: H.R. Court Clerk.

Case dismissed upon motion of DDA, interest of justice.