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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE CORTEZ, an individual,)	Case No. CV 11-03274 DDP (AGRx)
)	
Plaintiff,)	ORDER DENYING IN PART AND
)	GRANTING IN PART DEFENDANTS'
v.)	MOTION FOR SUMMARY JUDGMENT
)	
LEROY D. BACA, SHERIFF OF)	[Docket No. 34]
THE LOS ANGELES COUNTY)	
SHERIFF'S DEPARTMENT; THE)	
COUNTY OF LOS ANGELES, a)	
Municipal corporation; LOS)	
ANGELES COUNTY DEPUTY)	
SHERIFF CASTLE, BADGE NO.)	
515174, an individual; AND)	
LOS ANGELES COUNTY DEPUTY)	
SHERIFF BRADEN, BADGE NO.)	
405667, an individual,)	
)	
Defendants.)	
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Presently before the court is Defendants' Motion for Summary Judgment, or in the Alternative Summary Adjudication of Issues ("Motion"). Having reviewed the parties' moving papers and heard oral argument, the court denies the Motion in part, grants the Motion in part, and adopts the following Order.

1 **I. BACKGROUND**

2 Defendant Los Angeles County Deputy Sheriff Castle ("Deputy
3 Castle") handcuffed Plaintiff Jose Cortez ("Cortez") during a
4 traffic stop on April 23, 2010. Defendant Deputy Sheriff Braden
5 ("Deputy Braden") was present at the time and acting as Deputy
6 Castle's field training officer.

7 Cortez filed a First Amended Complaint on April 10, 2012,
8 alleging the following federal claims: 1) constitutional violations
9 of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments; 2)
10 racial discrimination, in violation of 42 U.S.C. § 1981; and 3) use
11 of excessive force, in violation of 42 U.S.C. § 1983. Cortez also
12 alleges state law claims for battery, false imprisonment,
13 intentional infliction of emotional distress, and negligence.

14 Defendants filed this Motion on June 4, 2012, arguing that
15 they are entitled to judgment as a matter of law on all of Cortez's
16 claims.

17 **II. LEGAL STANDARD**

18 Summary judgment is appropriate where "the movant shows that
19 there is no genuine dispute as to any material fact and the movant
20 is entitled to a judgment as a matter of law." Fed. R. Civ. P.
21 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).
22 In deciding a motion for summary judgment, the evidence is viewed
23 in the light most favorable to the non-moving party, and all
24 justifiable inferences are drawn in its favor. Anderson v. Liberty
25 Lobby, Inc., 477 U.S. 242, 255 (1986).

26 A genuine issue exists if "the evidence is such that a
27 reasonable jury could return a verdict for the nonmoving party,"
28 and material facts are those "that might affect the outcome of the

1 suit under the governing law." Id. at 248. No genuine issue of
2 fact exists "[w]here the record taken as a whole could not lead a
3 rational trier of fact to find for the non-moving party."
4 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
5 587 (1986).

6 It is not enough for a party opposing summary judgment to
7 "rest on mere allegations or denials of his pleadings." Anderson,
8 477 U.S. at 259. Instead, the nonmoving party must go beyond the
9 pleadings to designate specific facts showing that there is a
10 genuine issue for trial. Celotex, 477 U.S. at 324. The "mere
11 existence of a scintilla of evidence" in support of the nonmoving
12 party's claim is insufficient to defeat summary judgment.
13 Anderson, 477 U.S. at 252. But "[c]redibility determinations, the
14 weighing of the evidence, and the drawing of legitimate inferences
15 from the facts are jury functions, not those of a judge," when he
16 or she is ruling on a motion for summary judgment. Id. at 255.

17 **III. DISCUSSION**

18 **A. Undisputed Claims**

19 As an initial matter, Cortez concedes that Defendants are
20 entitled to summary judgment on his claims for constitutional
21 violations of the First, Fifth, and Eight Amendments, and all
22 claims against Defendant Sheriff Leroy D. Baca. The court
23 therefore grants Defendants' Motion as to these claims.

24 **B. Excessive Force Claims**

25 Defendants also argue that they are each entitled to summary
26 judgment on Cortez's excessive force claims under the Fourth and
27 Fourteenth Amendments and 42 U.S.C. § 1983. The court disagrees.

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An excessive force claim turns on whether the officer's "use of force was objectively reasonable under the circumstances," balancing the plaintiff's liberty interest with the government interests at stake. Santos v. Gates, 287 F.3d 846, 853 (9th Cir. 2002) (citing Graham v. Connor, 490 U.S. 386, 396 (1989)). Thus, "even where some force is justified, the amount actually used may be excessive." Santos, 287 F.3d at 853. Because this analysis almost always "requires a jury to sift through disputed factual contentions, and to draw inferences therefrom," summary judgment "should be granted sparingly" in excessive force cases. Id.

Here, the parties dispute a number of facts regarding the incident, such as whether a warrant check returned a felony or a misdemeanor warrant for an individual who turned out to be a different "Jose Cortez." But the court only needs to address one factual question to resolve this Motion: whether Defendant Castle used excessive force in his manner of handcuffing Cortez. On the one hand, Defendants contend that Deputy Castle conducted a routine and reasonable handcuffing of Cortez. Cortez, however, has provided evidence to the contrary.

According to Cortez's own deposition, Deputy Castle first "came up and shoved" Cortez into "the back of [his] truck." Deputy Castle then "kicked [Cortez's] feet open" - kicking each foot "at least three" times - and pulled both of Cortez's arms back until his "hands were crossed." In doing so, Deputy Castle "pulled [Cortez's right hand] back three times," pulling it "real hard" each time. Cortez felt pain in his shoulder with each pull and indicated his pain by moaning "[a]t least two times," loud enough

1 for Deputy Castle to hear. Cortez made gestures with his face as
2 well, so that "anyone looking at [him] . . . would have known that
3 [he] was in pain." Deputy Castle ultimately placed the handcuffs
4 only on Cortez's left wrist. While he was being handcuffed, Cortez
5 also asked Deputy Castle if he could use the bathroom. Deputy
6 Castle did not respond and Cortez eventually urinated on himself,
7 while he was still in handcuffs. (Decl. of Kenneth J. Sargoy in
8 Supp. of Mot. ("Sargoy Decl.") ¶ 3, Ex. A.)

9 Cortez went to the hospital two days later, where he told
10 doctors that he was injured by the handcuffing. A doctor diagnosed
11 Cortez with a "right proximal biceps tendon rupture" and provided
12 prescription pain medicine. (Id. ¶ 8, Ex. F.) An orthopedist has
13 since recommended arthroscopic surgery, noting a "tear of the long
14 head of the biceps tendon" and a "[p]artial thickness rotator cuff
15 tear." (Id. ¶ 12, Ex. J.)

16 A passenger riding with Cortez at the time of the incident
17 also testified at deposition. According to the passenger, Deputy
18 Castle "moved . . . Cortez's feet" using a "drastic[]" amount of
19 force. Deputy Castle also pulled Cortez's arm back "harshly" and
20 "not gentl[y]," although not "violent[ly]." (Id. ¶ 4, Ex. B.)

21 Finally, Deputy Braden testified at deposition that he was
22 Deputy Castle's "field training officer" and "supervisor" at the
23 time of the incident. He also stated that he was "[s]tanding two
24 feet from" Deputy Castle and Cortez, while "Deputy Castle applied
25 [the] handcuffs." (Id. ¶ 5, Ex. C at 2-3, 14-15.)

26 In short, viewing the evidence in the light most favorable to
27 Cortez, Deputy Castle used the following force against "a
28 cooperative, non-resisting 66-year old man," during a traffic stop

1 for a "minor vehicle code violation": 1) he pushed Cortez into the
2 back of Cortez's truck; and 2) kicked Cortez's legs multiple times
3 in a harsh manner; then 3) yanked Cortez's right arm back multiple
4 times, hard enough to cause serious injury to Cortez's shoulder and
5 biceps; while 4) Cortez moaned and made facial gestures to indicate
6 his pain to Deputy Castle, each time that Deputy Castle pulled his
7 arm. (Opp'n at 8.) Whether or not the Deputies had a valid reason
8 to handcuff Cortez in the first place - based on the misdemeanor or
9 felony warrant information - a reasonable jury could find that
10 Deputy Castle used excessive force in how he went about handcuffing
11 Cortez.

12 In addition, Deputy Braden could be liable for Deputy Castle's
13 alleged conduct - as Deputy's Castle's immediate supervisor,
14 standing two feet away during the incident, but taking no steps to
15 intervene. See, e.g., Taylor v. List, 880 F.2d 1040, 1045 (9th
16 Cir. 1989) (explaining that, although there is no respondeat
17 superior liability under § 1983, a supervisor can be "liable for
18 constitutional violations of his subordinates if the supervisor . .
19 . knew of the violations and failed to act to prevent them").

20 Finally, the court finds that neither Deputy is entitled to
21 qualified immunity on Cortez's excessive force claims. As
22 discussed, taking the evidence in the light most favorable to
23 Cortez, the Deputies violated his constitutional rights by using
24 excessive force during the handcuffing. Also, under these
25 particular circumstances, a reasonable officer would have known
26 that force sufficient to cause a tendon rupture was
27 unconstitutional. It is clearly established - and Defendants do
28 not dispute - that pulling an individual's arm multiple times and

1 forcefully enough to cause serious injury while the individual
2 expresses pain, without any apparent justification for doing so, is
3 unconstitutional. It is also clearly established that it is
4 unconstitutional for a supervisor to fail to act to prevent such
5 obvious constitutional violations, when the supervisor is present
6 and directly observing the violation.

7 For all of these reasons, Deputies Castle and Braden are not
8 entitled to summary judgment on Cortez's excessive force claims.

9 **C. 42 U.S.C. § 1981 Claim**

10 As Defendants correctly explain, however, Cortez has provided
11 no evidence that Defendants' alleged actions were racially
12 motivated. In arguing to the contrary, Cortez notes only that: 1)
13 the Deputies knew of Cortez's Hispanic ancestry; and 2) they used
14 excessive force against him. What is missing is any evidence -
15 circumstantial or otherwise - that the Deputies' alleged excessive
16 force was connected to their awareness of Cortez's race.
17 Defendants are therefore entitled to summary judgment on Cortez's §
18 1981 claim.

19 **D. Monell Liability**

20 Similarly, Cortez has not provided any evidence of a County of
21 Los Angeles ("County") custom or policy from which a reasonable
22 trier of fact could find Monell liability against the County on his
23 federal claims. Cortez's only argument for such liability is that
24 Deputy Braden's "single egregious act" of "deliberate indifference
25 to the rights of" Cortez is "sufficient to render the County liable
26 under Monell." Cortez provides one case cite for this proposition,
27 involving very different circumstances. The court finds that
28 Monell liability cannot be inferred solely from the single incident

1 at issue here. The County is therefore entitled to summary
2 judgment on all of Cortez's federal claims.

3 **E. State Law Claims**

4 Finally, Defendants argue that the County is entitled to
5 summary judgment on Cortez's state law tort claims, because "public
6 entities do not face common law liability." In response, Cortez
7 cites to the Ninth Circuit's decision addressing similar claims in
8 Robinson v. Solano County, 278 F.3d 1007, 1016 (9th Cir. 2002). As
9 the Circuit explained: under California law, a county's immunity to
10 such tort claims turns on whether the individual officers are
11 immune; and California denies immunity to officers who use
12 excessive force. See id. Thus, neither the Deputies nor the
13 County are entitled to summary judgment on Cortez's state law tort
14 claims here.

15 **IV. CONCLUSION**

16 For all of these reasons, the court hereby DENIES Defendants'
17 Motion for Summary Judgment as to: 1) Plaintiff's excessive force
18 claims against Deputies Castle and Braden; and 2) Plaintiff's state
19 law tort claims against the Deputies and the County. The court,
20 however, GRANTS summary judgment for: 1) Defendant Baca on all of
21 Plaintiff's claims; 2) the County on all of Plaintiff's federal
22 claims; and 3) all Defendants on Plaintiff's § 1981 and First,
23 Fifth, and Eighth Amendment claims.

24 IT IS SO ORDERED.

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26 Dated: September 7, 2012

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DEAN D. PREGERSON
United States District Judge