

1 **I. BACKGROUND**

2 **A. Procedural History**

3 Plaintiff first sued Defendants in the Superior Court of California for the County of
4 Alameda on December 9, 2011. That case was dismissed without prejudice on March 28,
5 2012. Dkt. No. 13 at 2. Plaintiff filed this suit in federal court on February 28, 2012.
6 Dkt. No. 1. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6)
7 on the grounds that Plaintiff’s state law claims were barred by his failure to comply with
8 the California Government Claims Act and that he had failed to allege the essential
9 elements of an equal protection claim. Dkt. No. 10. On June 27, 2012, this Court granted
10 Defendants’ motion, but permitted Plaintiff leave to amend. Dkt. No. 21. On July 16,
11 2012, Plaintiff filed his first amended complaint. Dkt. No. 22.

12 **B. Claims in the First Amended Complaint**

13 The first amended complaint, Dkt. No. 22, alleges that on March 2, 2010, agents of
14 the County of Alameda executed an arrest warrant on Plaintiff in Castro Valley,
15 California. These agents are Defendants Gregory Ahern, James Russell, C. Shepard,
16 Colby Staysa, and David Vandagriff. Plaintiff claims that Defendants Russell, Shepard,
17 Staysa, and Vandagriff (“Defendant Deputies”) employed excessive force while executing
18 the arrest warrant even though Plaintiff “offered no resistance at all.” Plaintiff further
19 contends that the Defendant Deputies made derogatory and discriminatory comments to
20 him on the basis of his sexual orientation. Plaintiff claims that Defendants’ actions caused
21 him to suffer emotional distress and various physical injuries, including a fractured facial
22 orbital bone, a broken leg, and multiple lacerations and contusions to his face, head, and
23 body.

24 Plaintiff claims that prior to filing this action, he complied with the California
25 Government Claims Act by filing an administrative complaint with the Internal Affairs
26 Section of the Alameda Sheriff’s Department on December 7, 2010, a copy of which is
27 attached to the complaint as Exhibit B. The Internal Affairs Section denied his claim in a
28 letter dated February 16, 2011, which also is attached to the complaint as Exhibit C.

1 In the first amended complaint, Plaintiff brings the following federal claims against
2 Defendants: (1) use of excessive force in violation of 42 U.S.C. § 1983; (2) deprivation of
3 equal protection under the Fourteenth Amendment in violation of 42 U.S.C. § 1983;
4 (3) cruel and unusual punishment in violation of 42 U.S.C. § 1983; (4) pattern of abuse;
5 (5) “acting at direction of Sheriff of Alameda”; (6) “acting at direction of County of
6 Alameda”; (7) failure to train, supervise, and instruct by the Sheriff of Alameda; and
7 (8) failure to train, supervise, and instruct by the County of Alameda.¹ He also brings the
8 following state claims: (1) assault and battery; (2) negligence; (3) conspiracy;
9 (4) intentional infliction of emotional distress; (5) negligent infliction of emotional
10 distress; and (6) malicious prosecution.

11 **C. Defendants’ Motion²**

12 Defendants move to dismiss all of the state law claims in Plaintiff’s amended
13 complaint under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 23. Defendants
14 argue that Plaintiff has not alleged facts showing that he complied with the Government
15 Claims Act because he has not shown that the administrative complaint he filed with the
16 Internal Affairs Section of the Alameda County Sheriff’s Office was received by the Clerk
17 of the Alameda County Board of Supervisors. Under California Government Code
18 § 915(a), a claim under the Government Claims Act must be filed with the clerk,
19 secretary, auditor, or governing body of the public entity at issue. Defendants also argue
20 that Plaintiff’s administrative complaint was untimely, as he filed the claim more than six
21 months after the arrest at issue took place. *See* Cal. Gov. Code § 911.2(a) (requiring that
22 claims against a public entity be filed “within six months after the accrual of the cause of
23 action”).

24
25 ¹ The Court construes claims (4)-(8) as “further factual enhancement” that, while having
26 applicability both to Plaintiff’s state law tort claims and his § 1983 claims, makes his federal
27 claims more plausible. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 557 (2007).

28 ² Defendants request judicial notice of the complaint Plaintiff filed in state court and of the state
court’s order dismissing that complaint with leave to amend. Dkt. No. 23, Ex. 1. As the
authenticity of these documents is not subject to reasonable dispute under Federal Rule of
Evidence 201, the Court takes judicial notice of the documents.

1 Plaintiff opposes the motion, arguing that he has alleged facts showing that he
2 substantially complied with the Government Claims Act, which is sufficient to survive a
3 12(b)(6) motion. Dkt. No. 24. Plaintiff argues that California courts require only
4 substantial compliance with the Government Claims Act, meaning that a claim may be
5 deemed sufficient “if it substantially complies with all of the statutory requirements for a
6 valid claim even though it is technically deficient in one or more particulars.” *Santee v.*
7 *Santa Clara Cnty. Office of Educ.*, 269 Cal. Rptr. 605, 611 (Cal. Ct. App. 1990). Plaintiff
8 argues that his claim addressed to the Internal Affairs Section of the Sheriff’s Department
9 substantially complied with the requirements of California Government Code § 910. Dkt.
10 No. 22 at 7; Dkt. No. 24 at 3. He also alleges that if his claim was deficient, the Sheriff’s
11 Department had a statutory duty to notify him under California Government Code
12 § 910.8. Dkt. No. 24 at 3. The failure to notify, Plaintiff contends, waives insufficiency
13 of a claim as a defense. Dkt. No. 24 at 3.

14 **D. Jurisdiction**

15 The court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a), and
16 1367(a). All parties consented to the jurisdiction of a magistrate judge under 28 U.S.C.
17 § 636(c). Dkt. Nos. 12, 15.

18 **II. STANDARD OF REVIEW**

19 To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a
20 plaintiff must plead his claim with sufficient specificity to “give the defendant fair notice
21 of what the claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555. “To
22 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
23 as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility
24 when the plaintiff pleads factual content that allows the court to draw the reasonable
25 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556
26 U.S. 662, 663 (2009) (citation and internal quotation marks omitted). A court is not
27 required to accept as true conclusory allegations, unreasonable inferences, or unwarranted
28 deductions of fact. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031

1 (9th Cir. 2008). If a complaint lacks facial plausibility, a court must grant leave to amend
2 unless it is clear that the complaint's deficiencies cannot be cured by amendment.

3 *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002).

4 III. DISCUSSION

5 A. Defendants' Motion to Dismiss the State Claims Is Granted Because Plaintiff's 6 Substantial Compliance with the California Government Claims Act Was 7 Untimely.

8 The California Government Claims Act requires individuals seeking to file a civil
9 action for damages against a public entity to follow certain procedures before doing so.
10 *See* Cal. Gov. Code §§ 810-996.6. Specifically, an individual seeking to bring a state law
11 tort claim against a public entity must file a written claim to the public entity at issue
12 within six months of the date on which the cause of action accrued; this individual may
13 file a civil suit only after the governing body of the public entity acts upon the claim or
14 rejects the claim. *Id.* §§ 911.2, 940.2, 945.4. The claim must contain the claimant's name
15 and address, the date and circumstances that gave rise to the grievance, a general
16 description of injuries and damages, the names of the public employees responsible, and
17 the amount of damages sought if less than \$10,000, *id.* § 910, and must be delivered or
18 mailed "to the clerk, secretary, auditor, or to the governing body at its principal office," *id.*
19 § 915(a)(2).

20 An individual's failure to meet these requirements bars him from bringing a civil
21 action for the same claim in state or federal court. *Karim-Panahi v. Los Angeles Police*
22 *Dep't*, 839 F.2d 621, 627 (9th Cir. 1988) (holding that state law tort claims against public
23 entities and public employees are barred unless the plaintiff pleads facts showing that he
24 filed written claims with the public entity in accordance with the California Government
25 Claims Act). Here, the Government Claims Act applies to Plaintiff's state law tort claims,
26 namely assault and battery, negligence, intentional infliction of emotional distress,
27 negligent infliction of emotional distress, and malicious prosecution.

28 Under the Act, a claim must be submitted within six months of the accrual of the
cause of action. Cal. Gov. Code § 911.2. "[F]ailure to timely present a claim for money

1 or damages to a public entity bars a plaintiff from filing a lawsuit against that entity.”
2 *State v. Superior Court (Bodde)*, 90 P.3d 116, 119 (Cal. 2004). Presenting a claim to the
3 public entity within the statutory window is “a condition precedent to plaintiff’s
4 maintaining an action against defendant.” *Shirk v. Vista Unified Sch. Dist.*, 164 P.3d 630,
5 634 (Cal. 2007) (internal citation omitted). A cause of action accrues for the purposes of
6 the Act on the date on which, if the dispute were between private parties, the statute of
7 limitations would begin to run. *Id.* The statute of limitations begins to run for a tort
8 action when the injury occurs. *Shively v. Bozanich*, 80 P.3d 676, 679 (Cal. 2003).

9 Here, Plaintiff was arrested and his cause of action accrued on March 2, 2010.
10 Plaintiff filed his claim with the Sheriff’s Department on December 7, 2010. This falls
11 outside the six month limitation period to present a claim set by the Act. Cal. Gov. Code
12 § 911.2. His claim was untimely, which bars his action against Defendants.

13 Plaintiff argues that Defendants waived their defenses under the Act—including as
14 to the timeliness of his claim—because they failed to notify him of the deficiencies of his
15 complaint. The Act requires a public entity to notify a claimant if a claim does not satisfy
16 the statutory requirements of § 910. Cal. Gov. Code § 910.8. The failure of the public
17 entity to do so waives “any defense as to the sufficiency of the claim.” *Id.* § 911.
18 However, Plaintiff’s reliance on §§ 910.8 and 911 is misplaced. Where a claim
19 substantially complies with the elements of § 910, the entity’s duty to notify, and the
20 corresponding waiver of defenses for the failure to notify, are inapplicable. *Id.* § 910.8;
21 *City of Stockton v. Superior Court*, 171 P.3d 20, 30 (Cal. 2007); *Phillips v. Desert Hosp.*
22 *Dist.*, 780 P.2d 349, 356 (Cal. 1989) (“[S]ections 910.8, 911 and 911.3 . . . become
23 significant only when the claim as presented does not substantially comply with sections
24 910 and 910.2.”).

25 Because “the purpose of [the Government Claims Act] is to provide the public
26 entity sufficient information to enable it to adequately investigate claims and to settle
27 them, if appropriate, without the expense of litigation,” *City of San Jose v. Superior*
28 *Court*, 525 P.2d 701, 706 (Cal. 1974), “a claim need not contain the detail and specificity

1 required of a pleading, but need only fairly describe what [the] entity is alleged to have
2 done,” *Connelly v. Cnty. of Fresno*, 52 Cal. Rptr. 3d 720, 726 (Cal. Ct. App. 2006). Here,
3 Plaintiff’s letter notified the Department of his claim and gave it an opportunity to
4 investigate Plaintiff’s allegations and address his claims outside of court. It identified the
5 public employees involved and described the serious injuries Plaintiff sustained, for which
6 he wanted to sue the Department. Plaintiff has alleged sufficient facts to demonstrate
7 “some compliance with all of the statutory requirements” of § 910. *San Jose*, 525 P.2d at
8 707. Accordingly, Defendants had no duty to notify him of defects, and thus did not
9 waive the defenses of sufficiency or timeliness. Plaintiff’s claim was late, and
10 amendment will not make it timely. Therefore, Defendants’ motion to dismiss the state
11 law claims is GRANTED WITHOUT LEAVE TO AMEND.

12 **B. Plaintiff’s § 1983 Claims Survive This Motion Because the Government**
13 **Claims Act Does Not Apply to Them.**

14 A plaintiff does not need to comply with the claim requirements of the Government
15 Claims Act before bringing a federal claim under the Civil Rights Act. *Williams v.*
16 *Horvath*, 548 P.2d 1125, 1130 (Cal. 1976) (holding that § 911.2 is inapplicable to § 1983
17 claims and that “the purposes underlying § 1983 . . . may not be frustrated by state
18 substantive limitations couched in procedural language”); *California Corr. Peace Officers*
19 *Ass’n v. Virga*, 103 Cal. Rptr. 3d 699, 706 (Cal. Ct. App. 2010) (holding the Government
20 Claims Act inapplicable to § 1983 claims and noting the “decades of case law holding that
21 section 1983 actions are not subject to the Claims Act”); *Gatto v. Cnty. of Sonoma*, 120
22 Cal. Rptr. 2d 550, 565 (2002) (“Section 1983 claims are exempt from the state claims
23 requirements because the supremacy clause of the United States Constitution does not
24 permit a state law to alter or restrict federally created rights.”); *Robinson v. Alameda*
25 *Cnty.*, No. 12-cv-00730 JCS, 2012 WL 2367821, at *11, — F. Supp. 2d — (N.D. Cal.
26 June 21, 2012) (“The filing requirement [of the Government Claims Act] does not apply
27 to . . . causes of action based upon federal law.”).

1 Defendants move to dismiss Plaintiff's complaint based solely on his failure to
2 comply with the Government Claims Act. Dkt. Nos. 23, 25. The requirements of the Act
3 are inapplicable, however, to claims brought under § 1983 or other federally created
4 rights. Therefore, Plaintiff's § 1983 claims survive the motion.

5 **IV. CONCLUSION**

6 Because Plaintiff's claim under the Government Claims Act was untimely,
7 Defendants' motion to dismiss the six state law tort claims is GRANTED WITHOUT
8 LEAVE TO AMEND. Defendants must serve an answer to the federal law claims,
9 including the allegations in claims (4) through (8) to the extent that they apply to
10 Plaintiff's claims under § 1983, within twenty-one days of the date this order is filed. A
11 case management conference will be held on October 10, 2012, at 10:00 a.m.

12 IT IS SO ORDERED.

13 Date: September 13, 2012

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15 _____
16 Nathanael M. Cousins
17 United States Magistrate Judge