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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAY LUTZ,

Plaintiff,

vs.

CBRE GROUP, INC., a Delaware corporation, LOWE SD CALIFORNIA PROPERTY, LLC, a New York limited liability company; ABM SECURITY SERVICES, INC.; MICHELLE ROUSSELLE, an individual; CITY OF SAN DIEGO; San Diego Police Chief WILLIAM LANSDOWNE; Assistant Chief BOYD LONG; Officer TONY LESSA; and DOES 4 - 260, Inclusive.

Defendants.

Case No.: 3:12-CV-2625-JM (DHB)

**ORDER GRANTING IN PART
AND DENYING IN PART
CBRE’S MOTION TO DISMISS
WITHOUT LEAVE TO AMEND**

On October 30, 2012, Plaintiff Ray Lutz filed a complaint against CBRE Group, Inc. (“CBRE”), Lowe SD California Property, LLC, ABM Security Services, Inc. (“ABM”), Michelle Rousselle, the City of San Diego (the “City”), the City’s Police Chief William Lansdowne, the City’s Assistant Chief Boyd Long, and Officer Tony Lessa (collectively, “Defendants”). Lutz later filed for

1 leave to file an amended complaint (“FAC”), which he did on January 22, 2013.
2 On February 4, 2013, CBRE filed a motion to dismiss Lutz’s complaint pursuant
3 to Federal Rule of Civil Procedure (“Rule”) 12(b)(6) for failure to state a claim,
4 which this court granted. On April 30, 2013, Lutz filed a second amended
5 complaint (“SAC”), which CBRE again moved to dismiss on May 14, 2013. Lutz
6 filed an opposition on June 24, 2013. This matter, which was scheduled for
7 hearing on July 7, 2013, was taking under submission on July 1. For the
8 following reasons, the court grants in part and denies in part CBRE’s motion to
9 dismiss the claims against it without leave to amend.

10 **I. BACKGROUND**

11 In the two months immediately prior to this action, a movement known as
12 “Occupy San Diego” sought to raise awareness about the inequities of American
13 society. SAC ¶ 25. As various state and local government agencies are located
14 around Civic Center Plaza, Occupy San Diego frequently protested there in
15 September and October 2011. *Id.* ¶ 25. On October 28, 2011, San Diego Police
16 Department (“SDPD”) officers raided Occupy San Diego’s protest in Civic Center
17 Plaza and arrested 51 individuals. *Id.* ¶ 26. Many witnesses to the raid claimed
18 that the SDPD officers and San Diego sheriff’s deputies used excessive force
19 against individuals who had broken no laws and were not resisting arrest. They
20 further claimed that the individuals were arrested without probable cause. *Id.*
21 ¶ 28. Following this initial raid, the Occupy San Diego protests returned only to
22 be raided again by SDPD officers. *Id.* ¶ 29.

23 On November 28, 2011, Lutz hand-delivered a letter and a copy of
24 Robins v. Pruneyard Shopping Center, 23 Cal. 3d 899, 910 (1979) (holding that
25 California’s constitution protected free speech and petitioning, reasonably

1 exercised, in privately owned shopping centers), to Cyndi Poes, Real Estate
2 Manager for the Civic Center Plaza office building and a CBRE employee. Id.
3 ¶ 33. Lutz’s letter indicated that he planned to register voters in Civic Center
4 Plaza pursuant to his legal right to do so as outlined in the Pruneyard case.

5 The next day, Lutz returned at around noon and began to “set up a small,
6 unobtrusive table in Civic Center Plaza adjacent to the stairs that lead from the
7 bottom area of the plaza to the large raised area on which the Civic Center office
8 building is located.” Id. ¶ 36. The table was approximately 100 feet away from
9 the Civic Center Plaza office building’s entrance. Id.

10 As Lutz was setting up his table to register voters, several City police
11 officers surrounded him. Id. ¶ 37. Lutz explained that the SDPD and the City
12 were upset over the presence of Occupy San Diego protesters in Civic Center
13 Plaza in the weeks prior. Lutz, who had previously been present in Civic Center
14 Plaza when Occupy San Diego was protesting, believes that the Defendants
15 associated him with Occupy San Diego. Id. ¶ 38.

16 Officer Lessa advised Lutz that he could not set up his table in that location.
17 Id. ¶ 39. Lutz responded that he had a legal right to be present to register voters
18 and handed Officer Lessa a copy of the Pruneyard case. Id. ¶ 39. Lutz further
19 informed Officer Lessa that he had delivered a letter and copy of the Pruneyard
20 case explaining this right to Poes the previous day. Id. ¶ 40. Officer Lessa
21 responded that he did not believe that Lutz had delivered the aforementioned letter
22 and then went inside the Civic Center Plaza office building. Id. ¶ 40.

23 When Officer Lessa returned, he was accompanied by a woman named
24 Michelle Rousselle, an ABM employee who claimed to be the manager at the
25 Civic Center Plaza office building, and a still-unidentified male referred to in the

1 SAC as “Doe 10.” Id. ¶ 42. ABM allegedly provided security on behalf of
2 CBRE. Lutz had already registered several voters and three people were waiting
3 in line to register. Id. ¶ 43. Rousselle asked Lutz to move his table six feet south
4 of his current location into a public area of Civic Center Plaza. Id. ¶ 44.

5 Lutz did not want to move his table because he “knew” officers were
6 arresting individuals who set up tables in the suggested location and he did not
7 want to be arrested. Id. ¶ 44. He was also only planning on staying for one hour
8 and had parked in a one-hour spot nearby. Id. ¶ 46. Knowing that he had a legal
9 right to be present, Lutz refused to move. Id. ¶ 47. Lutz also asked why his table
10 could not be there, and Officer Lessa only replied that they didn’t want tables in
11 that area. Id. ¶ 50. Officer Lessa provided him with no legal authority. Id.

12 After refusing to move, Lutz was arrested. Id. ¶ 52. When concerned
13 bystanders inquired why Lessa was being arrested, SDPD officers replied,
14 “trespassing.” Id. On information and belief, Lutz alleges that Rousselle or Doe
15 10 had initiated a citizen’s arrest by reporting Plaintiff’s alleged offense to Officer
16 Lessa and other SDPD officers and requested that they arrest him. Id. ¶ 53.
17 Rousselle and/or Doe 10 also allegedly executed a document with the SDPD
18 attesting to the fact that they had conducted a “citizen’s arrest” of Lutz. Id.

19 Lutz was placed in handcuffs, which were applied too tightly, although he
20 requested that SDPD officers, including Officer Lessa, loosen his handcuffs. Id.
21 ¶ 56. These constrictive handcuffs allegedly caused Lutz to suffer wrist pain for
22 weeks after his arrest. Id. ¶ 65.

23 Lutz was also forced to remain in a police vehicle for an excessive time,
24 where he allegedly became fearful for his safety due to the violent behavior of an
25 unidentified male arrestee in the police vehicle next to him. Id. ¶ 58. Once he

1 was finally driven to the Central Jail, he was left in the police vehicle for
2 approximately one hour. Id. ¶ 59.

3 He was later placed in a holding cell at Central Jail where he remained until
4 approximately midnight on November 20, 2012, about 11 hours after his arrest.
5 Id. ¶ 64. Lutz claims physical and emotional injuries as well as damage to his
6 reputation. Id. ¶ 71.

7 Lutz alleges that CBRE is the actual agent of Lowe, who owns the Civic
8 Center Plaza building and employs CBRE to manage it. Id. ¶ 74. Lutz further
9 alleges that either CBRE or Lowe hired ABM to perform security services for the
10 Civic Center Plaza building and is therefore an agent of either CBRE or Lowe. Id.
11 ¶¶ 75, 76. Lutz alleges that Rousselle, as an ABM employee, is thereby an agent
12 for ABM, CBRE, and Lowe. Id. ¶ 77.

13 In addition, Lutz alleges that the City, Officer Lessa, and Doe defendant
14 SDPD officers who arrested, handcuffed, and transported him are also agents of
15 ABM, CBRE, and Lowe because they are members of the San Diego Downtown
16 Partnership (“Downtown Partnership”). Id. ¶¶ 78-81. To participate in the
17 Downtown Partnership, Lowe, CBRE, and/or ABM executed an agreement
18 entitled “Letter of Agency” and filed it with the SDPD and/or the city. Lutz
19 “alleges, on information and belief, that the Letter of Agency authorizes SDPD to
20 act on behalf of Defendants LOWE, CBRE, and/or ABM and subject to said
21 Defendants’ control on the grounds of the Civic Center Plaza office building.” Id.
22 ¶ 83. Lutz further claims that “[s]aid letter empowers SDPD to bind the principal,
23 Defendants LOWE, CBRE, and ABM, in a citizen’s arrest and attendant
24 responsibilities and liabilities.” Id. ¶ 84.

1 Lutz is now asserting ten causes of action: (1) unlawful seizure, arrest,
2 detention, and imprisonment under 42 U.S.C. § 1983 against Lessa; (2) unlawful
3 retaliation under 42 U.S.C. § 1983 against Lessa; (3) excessive force under
4 42 U.S.C. § 1983 against Lessa; (4) Monell claim under 42 U.S.C. § 1983 against
5 the City, Landsdowne, and Long; (5) failure to train under 42 U.S.C. § 1983
6 against the City, Landsdowne, and Long; (6) violation of the California Civil
7 Rights Act (“Bane Act”) (California Civil Code §§ 52 and 52.1) against all
8 Defendants; (7) false imprisonment against Rousselle, Lowe, CBRE, ABM, Lessa,
9 and the City; (8) battery against Rousselle, Lowe, CBRE, ABM, Lessa, and the
10 City; (9) negligence against all Defendants; and (10) declaratory and injunctive
11 relief against the City, Lowe, CBRE, and ABM. In sum, Lutz only brought five of
12 his ten claims against CBRE: (1) violation of the Bane Act; (2) false
13 imprisonment; (3) battery; (4) negligence for breaching California Civil Code
14 §1714; and (5) declaratory and injunctive relief. Lutz requests general and special
15 compensatory damages, presumed damages, and nominal damages, past and
16 future medical expenses (to be determined by the trier of fact), three times the
17 actual damages, a civil penalty of \$25,000 for each violation the Bane Act, and
18 reasonable attorney’s fees. Only those claims Lutz asserted against CBRE are
19 discussed herein.

20 **II. LEGAL STANDARD**

21 A Rule 12(b)(6) motion to dismiss challenges the legal sufficiency of the
22 pleadings. See De La Cruz v. Tormey, 582 F.2d 45, 48 (9th Cir. 1978). In
23 evaluating the motion, the court must construe the pleadings in the light most
24 favorable to the non-moving party, accepting as true all material allegations in the
25 complaint and any reasonable inferences drawn therefrom. See, e.g., Broam v.

1 Bogan, 320 F.3d 1023, 1028 (9th Cir. 2003). While a Rule 12(b)(6) dismissal is
2 proper only in “extraordinary” cases, United States v. Redwood City, 640 F.2d
3 963, 966 (9th Cir. 1981), the complaint’s “[f]actual allegations must be enough to
4 raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly,
5 550 U.S. 544, 555 (2007). The court should grant Rule 12(b)(6) relief only if the
6 complaint lacks either a “cognizable legal theory” or facts sufficient to support a
7 cognizable legal theory. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699
8 (9th Cir. 1990).

9 **III. DISCUSSION**

10 **A. Violation of Bane Act**

11 A claim filed under the Bane Act requires a showing of “an attempted or
12 completed act of interference with a legal right, accompanied by a form of
13 coercion.” Jones v. Kmart Corp., 17 Cal. 4th 329, 334 (1998). “In pursuing relief
14 for constitutional violations under Cal. Civ. Code § 52.1, plaintiffs need not allege
15 that defendants acted with discriminatory animus or intent, so long as those acts
16 were accompanied by the requisite threats, intimidation, or coercion.” Venegas v.
17 County of Los Angeles, 32 Cal. 4th 820, 843 (2004).

18 CBRE argues that Rousselle, who initiated the citizen’s arrest, and the
19 arresting police officer were not agents of CBRE. See MTD at 8. At best,
20 Rousselle was an agent of ABM Security who, in any event, exceeded her scope
21 of authority to act on behalf of CBRE. See id. Similarly, the police officer had no
22 such authority from CBRE.

23 Lutz counters that his illegal arrest prevented him from participating in the
24 political process by peacefully registering voters. See id. at 12. “Thus, the acts of
25 CBRE’s agents and employees, described in detail above, violated Plaintiff’s

1 Fourth Amendment rights and directly infringed upon Plaintiff's First Amendment
2 rights of freedom of speech and peaceable assembly. These coercive threats by
3 CBRE's agents were made in both conduct and speech, and satisfy the pleading
4 requirements for a Bane Act claim." Id.

5 Here, Lutz has adequately pled that his constitutional right to register voters
6 under California's constitution was violated. This court also notes that other
7 courts have found that the use of law enforcement authority to effectuate a stop,
8 detention (including use of handcuffs), and search may constitute interference by
9 "threat[], intimidation, or coercion" under the Bane Act. See Cole v. Doe, 387 F.
10 Supp. 2d 1084, 1103 (N.D. Cal. 2005) (holding that the stop and detention of an
11 individual without probable cause could violate the Bane Act); Cuviello v. City of
12 Stockton, 2009 U.S. Dist. LEXIS 4896, *55-61 (E.D. Cal. 2009) (finding that a
13 jury could reasonably find that police had violated the Bane Act claim by
14 threatening to arrest plaintiffs as that was a coercive action that prevented
15 plaintiffs from exercising their freedom of speech).

16 The only remaining issue is whether Lutz may assert a claim against CBRE
17 for hiring ABM, which hired Rousselle. Under the doctrine of respondeat
18 superior, an employer may be liable for torts its employee commits while acting
19 within the scope of his employment. To determine whether an employee's acts
20 were committed during the scope of employment includes (1) whether the act was
21 either required by the employer or "incidental" to the employee's duties; and (2)
22 whether the employee's misconduct was reasonably foreseeable by the employer
23 (even if not "required" or "incidental"). See Yamaguchi v. Harnsmut, 106 Cal.
24 App. 4th 472, 481-82 (2003); Alma W. v. Oakland Unified School Dist., 123 Cal.
25 App. 3d 133, 139 (1981).

1 Although CBRE argues that Lutz’s claim fails to meet this test, the court
2 notes that Rousselle was a security officer who logically would have been able to
3 engage in a citizen’s arrest pursuant to the normal scope of her duties. At least
4 one court has used the doctrine of respondeat superior to determine whether a
5 security guard, the security guard company, and the property management
6 company could be held liable for negligence and negligent hiring, retention,
7 supervision, and training. See Rezek v. Tustin, 2012 U.S. Dist. LEXIS 164257
8 (C.D. Cal. 2012) (involving the assault of an individual by a security guard and
9 two police officers). That court found that the security guard company and the
10 property management company could be held liable under the doctrine of
11 respondeat superior. See id. at *20 (“Given that [p]laintiff has adequately stated a
12 claim against [the security guard] for violation of the Bane Act, [p]laintiff has also
13 adequately stated a claim against [the security guard’s] employers, given that
14 employers can be vicariously liable for the acts of their employees.”).

15 Plaintiff has properly alleged facts which may allow the jury to reasonably
16 conclude that Rousselle’s employer and the property management company,
17 CBRE, may be held liable under the Bane Act pursuant to the doctrine of
18 respondeat superior. CBRE’s motion to dismiss Lutz’s Bane Act claim is
19 therefore denied.

20 **B. False Arrest and Imprisonment**

21 “The tort of false imprisonment is the nonconsensual, intentional
22 confinement of a person without lawful privilege for an appreciable length of
23 time, however short.” City of Newport Beach v. Sasse, 9 Cal. App. 3d 803, 810
24 (1970). “False arrest is not a different tort but merely one way of committing the
25 tort of false imprisonment.” Hamburg v. Wal-Mart Stores, Inc., 116 Cal. App. 4th

1 497, 503 (2004) (citing Asgari v. City of Los Angeles, 15 Cal.4th 744, 752 n. 3
2 (1997); Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir.
3 2001)). “A cause of action for false imprisonment based on unlawful arrest is
4 stated where it is alleged that there was an arrest without process, followed by
5 imprisonment and damages.” Dragna v. White, 45 Cal. 2d 469, 471 (1955).

6 A person falsely arrested by a citizen may assert a false imprisonment claim
7 against that citizen. See Kinney v. County of Contra Costa, 8 Cal. App. 3d 761,
8 769 (1970) (“It is noted that a person falsely arrested by a citizen has his remedy,
9 as successfully pursued here, against the offending citizen.”). Although a police
10 officer may arrest a person without a warrant when he or she has probable cause
11 to believe that the arrestee committed a misdemeanor in his or her presence, “a
12 private person may only arrest someone for a misdemeanor when the offense
13 actually has been committed or attempted in his presence.” Tekle v. United
14 States, 511 F.3d 839, 854 (9th Cir. 2007).

15 CBRE contends that the vague “conspiracy” allegation in the FAC has now
16 morphed into vague “agency” allegations in the SAC. See MTD at 4. CBRE
17 asserts that Lutz’s allegations of agency are the same claims that allegedly put
18 CBRE on notice that Lutz’s arrest was the result of an agreement between agents
19 or employees of CBRE and SDPD officers as in the FAC. See id.

20 Lutz counters that he has now identified who Rousselle is and clarified
21 significant details regarding how Rousselle and Doe 10 were acting as the agents
22 and/or employees of CBRE when they performed the arrest. See Opp. MTD at
23 5-6. Specifically, in the section addressing CBRE’s liability, Lutz claims that he
24 “connects CBRE to the chain of events that led to his false arrest: ‘When
25 Defendants ROUSSELLE and DOE 10 initiated/conducted the wrongful citizen’s

1 arrest of Plaintiff, ROUSSELLE was the employee of ABM, Defendant DOE 10
2 was the employee of either CBRE or ABM, and both were the agents of LOWE
3 and CBRE.’’ Opp. MTD (citing SAC ¶ 61).

4 The court concludes that Lutz’s false arrest claim has met the necessary
5 pleading requirements because Lutz has described the agency relationship and
6 explained how the alleged citizen’s arrest was effected. CBRE is on notice that
7 Rousselle was an employee of ABM, which was performing security on behalf of
8 CBRE at the Civic Center Plaza building. As such, CBRE’s motion to dismiss the
9 false arrest and imprisonment claim is denied.

10 C. Battery

11 “A battery is a violation of an individual’s interest in freedom from
12 intentional unlawful, harmful or offensive unconsented contacts with his or her
13 person.” Rains v. Superior Court, 150 Cal. App. 3d 93, 938 (1984). A civil
14 battery claim requires a showing that (1) the defendant intentionally did an act that
15 resulted in a harmful or offensive contact with the plaintiff’s person; (2) the
16 plaintiff did not consent to the contact; and (3) the harmful or offensive contact
17 caused injury, damage, loss, or harm to the plaintiff. See Piedra v. Dugan, 123
18 Cal. App. 4th 1483, 1495 (2004); Cal. Penal Code § 242.

19 Under California law, a prima facie case for battery committed by a police
20 officer during an arrest requires a plaintiff to prove that an officer “used
21 unreasonable force against him to make a lawful arrest or detention.” Saman v.
22 Robbins, 173 F.3d 1150, 1157 (9th Cir. 2003). For example, the Ninth Circuit has
23 held that pointing a gun at a child’s head may constitute excessive force. See,
24 e.g., Tekle v. United States, 511 F.3d 839, 847 (9th Cir. 2007) (citing Robinson v.
25 Solano County, 278 F.3d 1007, 1014 (9th Cir. 2002)) (concluding that pointing

1 several guns at an unarmed and cooperative eleven-year-old child constituted
2 excessive force); see also Uganda Knapps v. City of Oakland, 647 F. Supp. 2d
3 1129, 1166-67 (N.D. Cal. 2009) (holding that a police officer using a “carotid
4 hold” on an unarmed citizen who was not resisting the police officer constituted
5 excessive force).

6 Lutz again asserts that CBRE and the other Defendants conspired to
7 commit a battery against him. See Opp. MTD at 9. Lutz acknowledges that this
8 legal theory is a question of first impression but argues that the court nevertheless
9 should permit it to proceed with its claim. Lutz also argues that battery is implicit
10 in any false arrest because battery is broadly defined to include any harmful or
11 offensive touching.

12 Citing the court’s prior order granting CBRE’s motion to dismiss, CBRE
13 counters that it had nothing to do with the placement of the handcuffs and any
14 argument that CBRE is liable for excessive force in connection with the
15 handcuffing process cannot be predicated on the deficient agency and/or
16 conspiracy allegations. See MTD at 5. CBRE argues that, even if it made a
17 proper citizen’s arrest, it is not liable for the excessive force used by a law
18 enforcement officer thereafter. See id.

19 The court concludes, at this juncture, that insufficient facts have been pled
20 for a viable claim of battery against CBRE. Absent participation or direction by
21 the citizen in the use of cuffs, or prior knowledge that in this particular instance
22 the cuffing process would cause injury, the battery claim against CBRE is
23 defective.

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1 **D. Negligence for Breaching California Civil Code § 1714**

2 California Civil Code § 1714 (“§ 1714”) provides that “[e]veryone is
3 responsible, not only for the result of his or her willful acts, but also for an injury
4 occasioned to another by his or her want of ordinary care or skill in the
5 management of his or her property or person, except so far as the latter has,
6 willfully or by want of ordinary care, brought the injury upon himself or herself.”
7 The elements of a negligence claim are (1) a legal duty to use due care; (2) a
8 breach of such legal duty; and (3) the breach as the proximate or legal cause of the
9 resulting injury. See Ladd v. County of San Mateo, 12 Cal. 4th 913, 918 (1996).

10 Lutz’s negligence claim alleges that the agents and/or employees of CBRE
11 “should reasonably have anticipated that some individual might attempt to use the
12 privately owned portion of the Plaza for peaceful political activities.” FAC ¶ 195.
13 Lutz further argues that CBRE had a duty to train its agents and employees
14 regarding the ability of individuals to register voters and engage in other protected
15 activities and that CBRE was negligent for failing to comply with this duty. See
16 id. To support his claim, Lutz notes that the plain language of San Diego
17 Municipal Code (“SDMC”) § 52.80.01(c) provides an exception to the trespassing
18 statute for individuals who, like Plaintiff, are engaged in peaceful political
19 activities. See Opp. MTD at 11.

20 CBRE contends that it did not owe Lutz a legal duty to use due care
21 because Lutz has not alleged that CBRE knew that ABM , Rousselle, or any other
22 ABM employee “posed a risk of harm or would be likely to hurt others in
23 performing security for the building.” MTD at 7. CBRE further argues that Lutz
24 has not pled any facts “that CBRE hired ABM Security [or] that CBRE failed to
25 take care in selecting ABM Security” Reply MTD at 4.

1 Lutz counters that “CBRE was the manager of the Civic Center Plaza office
2 building and controlled and supervised the conduct of ROUSSELLE and all other
3 employees of ABM Security while said individuals were working on the
4 premises.” Opp. MTD at 11. Lutz further explains that CBRE misunderstands its
5 claim, which is that CBRE failed to train and control its employees, not that it
6 negligently hired its employees. See Opp. MTD at 12.

7 The court generally agrees that § 1714 creates a duty on the part of CBRE
8 to maintain and manage the Civic Center Plaza without negligently causing injury
9 to another. The court notes that CBRE’s stated grounds for dismissal ignores
10 Lutz’s claim that it failed to train its employees and agents regarding the ability of
11 citizens to register voters on private property. Having stated no proper grounds
12 for dismissal, the court denies CBRE’s motion to dismiss Lutz’s negligence claim.

13 **E. Declaratory and Injunctive Relief**

14 Lutz first expresses his concern that he may be arrested for trespassing
15 again if he attempts to register voters. Lutz also claims that he is concerned that
16 he will again be denied the liberty interest codified in California Penal Code
17 §853.6¹ and will be detained until his arraignment unless and until he posts a
18 monetary bond. See FAC ¶ 209. Lutz explains that he is seeking an injunction to
19 “prevent[] individuals engaged in peaceful political activity (including, but not
20 limited to, voter registration) on the private portion of the Civic Center Plaza
21 owned by Defendant LOWE (and managed by Defendant CBRE and for which
22 security is provided by Defendant ABM) from being arrested and/or falsely
23

24 ¹ Permitting a law enforcement officer to release a person suspected of violating a
25 misdemeanor if he signs a written promise to appear before a magistrate judge on a
specified date.

1 imprisoned by agents or employees of Defendants CITY, LOWE, CBRE, ABM,
2 and/or DOES 31-60.” See id. Lutz also seeks a declaration of rights with respect
3 to this controversy. See id. ¶ 211.

4 CBRE argues that Lutz’s injunctive and declaratory relief claims are based
5 on past wrongs and are “wholly derivative” of the substantive claims he has
6 asserted. See MTD at 11. However, Lutz emphasizes that he is seeking
7 declaratory and injunctive relief so that he and other individuals may engage in
8 peaceful political activity, including voter registration, on the private portion of
9 Civic Center Plaza. See Opp. MTD 13-14.

10 “The fundamental basis of declaratory relief is the existence of an actual,
11 present controversy over a proper subject.” City of Cotati v. Cashman, 29 Cal. 4th
12 69, 79 (2002) (quotation omitted). Declaratory relief is prospective, operating to
13 put controversies at rest before the wrongs must be redressed and not merely for
14 the redress of past wrongs. See Babb v. Superior Court, 3 Cal. 3d 841, 848
15 (1971). To ascertain whether declaratory relief is appropriate, a court must
16 determine: “(1) whether the dispute is sufficiently concrete that declaratory relief
17 is appropriate; and (2) whether withholding judicial consideration will result in the
18 parties suffering hardship.” Stonehouse Homes v. City of Sierra Madre, 167 Cal.
19 App. 4th 531, 540 (2008) (citations omitted).

20 Here, Lutz has indicated that he and others may seek to engage in political
21 activities in the future, including the registration of voters. The ability of
22 individuals to engage in such political activity on private property would be
23 appropriate for declaratory relief if sought prior to engaging in that activity. Here,
24 this declaratory relief does not clarify the parties’ interests or relieve uncertainty
25

1 beyond the other claims Lutz has asserted and withholding judicial consideration
2 would not result in hardship.

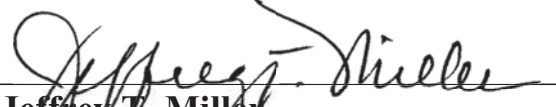
3 However, the court notes that injunctive relief is a remedy, not a cause of
4 action. See, e.g., Roberts v. Los Angeles County Bar Assn., 105 Cal. App. 4th
5 604, 618 (2003) (citing McDowell v. Watson, 59 Cal. App. 4th 1155, 1159 (1997)
6 (noting plaintiff's non-opposition to argument that cause of action for injunction
7 was improper because an injunction is a remedy rather than a cause of action). As
8 injunctive relief is a type of relief, CBRE's motion is granted without leave to
9 amend as to this "claim." This decision does not affect the availability of this
10 remedy if Plaintiff is successful on valid causes of action.

11 **IV. CONCLUSION**

12 For the aforementioned reasons, the court grants CBRE's motion to dismiss
13 the battery, declaratory relief, and injunctive relief claims without leave to amend.
14 Lutz, however, may still seek injunctive relief as a remedy if he is able to succeed
15 on other claims and establishes that injunctive relief is appropriate and warranted.
16 The court denies CBRE's motion to dismiss Lutz's Bane Act, false arrest and
17 imprisonment, and negligence claims.

18 **IT IS SO ORDERED.**

19 DATED: August 13, 2013

20 
21 **Jeffrey T. Miller**
22 **United States District Judge**