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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

<b>PATRICK WHITE,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>2:13-cv-00397 JWS</b>
	)	
<b>vs.</b>	)	<b>ORDER AND OPINION</b>
	)	
<b>DAVID M. STIERS, et al.,</b>	)	<b>[Re: Motion at docket 6]</b>
	)	
<b>Defendants.</b>	)	
	)	

**I. MOTION PRESENTED**

At docket 6 defendants David M. Stiers (“Stiers”), Frank Milstead (“Milstead”), and the City of Mesa (“City”) (collectively “Defendants”) move to dismiss the Amended Complaint filed by plaintiff Patrick White (“White”) pursuant to Fed. R. Civ. P. 12(b)(6). White responds at docket 7, and Defendants reply at docket 10. Oral argument was heard on July 10, 2013.

**II. BACKGROUND**

According to White’s Amended Complaint, during the summer of 2010 another man exposed himself in front of four different women on a total of six occasions in the vicinity of the La Costa Apartment Complex at Dobson Ranch (“La Costa”). Stiers, who was employed as a police detective by the City, was placed in charge of the City’s

1 investigation. Providing information separately, all four women described the  
2 perpetrator as an athletic looking man about 6 feet tall, weighing 165 to 200 pounds  
3 with a balding head of blondish hair of an age in his 30's or 40's who had exposed  
4 himself between 5:30 and 6:30 AM in the vicinity of La Costa. The similar descriptions  
5 supported a conclusion that the same man was involved in each incident. White was a  
6 little over 6 feet tall, weighed more than 220 pounds, lacked an athletic build, and had a  
7 full head of black hair with some gray on the sides of his head. After listing numerous  
8 questionable actions and failures to act by Stiers, the Amended Complaint alleges that  
9 Stiers wrongfully arrested White at his law office on January 14, 2011, for exposing  
10 himself to the women. The City's prosecutor then filed three misdemeanor charges  
11 against White connected to the incidents at La Costa. All charges against White were  
12 dismissed by the prosecutor on November 10, 2011, after being advised of Stiers'  
13 conduct and other information uncovered by White's lawyer.

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16       The Amended Complaint alleges four counts brought pursuant to 42 U.S.C.  
17 § 1983. The first seeks compensatory damages from Stiers in both his official and his  
18 individual capacities and punitive damages from Stiers in his individual capacity for  
19 arresting White in violation of the Fourth and Fourteenth Amendment protections  
20 against unreasonable searches and seizures. The second seeks compensatory  
21 damages from Stiers in both his official and individual capacities and punitive damages  
22 from Stiers in his individual capacity based on a denial of substantive due process  
23 arising from Stiers' knowing and intentional provision of false information to the city  
24 prosecutors and his knowing and intentional concealment of exculpatory evidence.  
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26 The third count is a stand alone demand for punitive damages against Stiers in his  
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1 individual capacity. The fourth count seeks compensatory damages from the City and  
2 Chief of Police Milstead acting in his official capacity for violation of the Fourth and  
3 Fourteenth Amendments arising from policies which resulted in a failure to adequately  
4 train and supervise Stiers and encouraged his conduct.

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6 White's original Complaint was filed on February 25, 2013. The Amended  
7 Complaint was filed on March 4, 2013. In addition to his claims for compensatory and  
8 punitive damages, White seeks an award of costs and attorneys' fees pursuant to 42  
9 U.S.C. § 1988.

### 10 **III. STANDARD OF REVIEW**

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12 Rule 12(b)(6) tests the legal sufficiency of a plaintiff's claims. In reviewing such  
13 a motion, "[a]ll allegations of material fact in the complaint are taken as true and  
14 construed in the light most favorable to the nonmoving party."<sup>1</sup> Dismissal for failure to  
15 state a claim can be based on either "the lack of a cognizable legal theory or the  
16 absence of sufficient facts alleged under a cognizable legal theory."<sup>2</sup> "Conclusory  
17 allegations of law . . . are insufficient to defeat a motion to dismiss."<sup>3</sup>

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19 To avoid dismissal, a plaintiff must plead facts sufficient to "state a claim to relief  
20 that is plausible on its face."<sup>4</sup> "A claim has facial plausibility when the plaintiff pleads  
21 factual content that allows the court to draw the reasonable inference that the  
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23 <sup>1</sup>*Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).

24 <sup>2</sup>*Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

25 <sup>3</sup>*Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001).

26 <sup>4</sup>*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
27 U.S. 544, 570 (2007)).

1 defendant is liable for the misconduct alleged.”<sup>5</sup> “The plausibility standard is not akin to  
2 a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant  
3 has acted unlawfully.”<sup>6</sup> “Where a complaint pleads facts that are ‘merely consistent’  
4 with a defendant’s liability, it ‘stops short of the line between possibility and plausibility  
5 of entitlement to relief.’”<sup>7</sup> “In sum, for a complaint to survive a motion to dismiss, the  
6 non-conclusory ‘factual content,’ and reasonable inferences from that content, must be  
7 plausibly suggestive of a claim entitling the plaintiff to relief.”<sup>8</sup>

#### 8 **IV. DISCUSSION**

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10 White does not oppose dismissal of his third count, nor does he oppose  
11 dismissal of the official capacity claims. The only claim against Milstead was pled as an  
12 official capacity claim, so the complaint will be dismissed as to Milstead. White  
13 opposes dismissal of the individual capacity claims against Stiers in the first and second  
14 counts, and the claim against the City in the fourth count.

15  
16 Defendants’ first argument for dismissal is that the claims are time barred,  
17 because the complaint was filed more than two years after White’s arrest on  
18 January 14, 2011. The parties agree that the applicable statute of limitation is the two-  
19 year Arizona limitation on tort actions for personal injuries. Defendants contend that  
20 White’s claims necessarily accrued on the day he was arrested. White maintains that  
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23 <sup>5</sup>*Id.*

24 <sup>6</sup>*Id.* (citing *Twombly*, 550 U.S. at 556).

25 <sup>7</sup>*Id.* (quoting *Twombly*, 550 U.S. at 557).

26 <sup>8</sup>*Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009); *see also Starr v. Baca*,  
27 652 F.3d 1202, 1216 (9th Cir. 2011).

1 his claims did not accrue until November 7, 2011. On that date, White asserts he first  
2 learned of the facts giving rise to his claim that “a constitutionally deficient investigation  
3 [which relied] on information that was clearly and demonstrably false [to support  
4 White’s] arrest”<sup>9</sup> resulted in an unreasonable seizure of his person.  
5

6 While the statute of limitation for claims brought pursuant to 42 U.S.C. § 1983 is  
7 borrowed from state law, the time when a claim accrues is decided under federal law as  
8 explained by the Supreme Court in *Wallace v. Kato*.<sup>10</sup> In *Wallace*, the Supreme Court  
9 also said that the statute of limitation for a claim of false arrest would normally run from  
10 the date of the arrest, because the plaintiff could file suit at that time. However, the  
11 court found that the particular claim before it was better characterized as a claim for  
12 false imprisonment, a claim that “is subject to a distinctive rule—dictated, perhaps, by  
13 the reality that the victim may not be able to sue while he is still imprisoned.”<sup>11</sup> The  
14 Court held that the statute of limitation on a claim of false imprisonment begins to run  
15 when the imprisonment ends.  
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17 Defendants rely on *Wallace* and this district’s decision in *Wilson v. Yavapai*  
18 *County Sheriff’s Office*<sup>12</sup> to establish the proposition that claims based on a false arrest  
19 accrue at the time the plaintiff is detained. This court does not find *Wallace* to be  
20 controlling on the issue to be resolved here. *Wallace* noted that the statute of limitation  
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24 <sup>9</sup>Doc. 7 at p. 6.

25 <sup>10</sup>549 U.S. 384, 387-88 (2007).

26 <sup>11</sup>*Id.* at 389.

27 <sup>12</sup>2012 WL 1067959, at \*5 (D. Ariz. Mar. 29, 2012).  
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1 for a claim of false arrest would “normally” begin to run at the time of the arrest, and  
2 then went on to find an exception to the normal rule for the case before it which it  
3 characterized as a claim for false imprisonment. *Wallace* did not concern a case such  
4 as the one at bar in which the claim based on seizure of White’s person is not  
5 predicated on the mere arrest of an innocent person, but rather, on an innocent  
6 person’s arrest caused by what is alleged to be a constitutionally deficient investigation.  
7 *Wilson* provides no more focused guidance. The *Wilson* court simply cited *Wallace* and  
8 found the two-year statute on a claim for false arrest began running on the date of the  
9 arrest. As in *Wallace* there is no discussion of the possibility that what made the arrest  
10 false was a constitutionally defective investigation, a subject that would not ordinarily  
11 be—and certainly was not here—known to the arrested person at the time of the arrest.  
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14 White relies on the proposition that a § 1983 claim accrues when the plaintiff  
15 knows or should know of his injury, citing *Maldonado v. Harris*.<sup>13</sup> However, like the  
16 cases relied upon by Defendants, *Maldonado* did not deal with facts that are analogous  
17 to those presented here. Yet, the general proposition that a claim accrues when the  
18 plaintiff knows of or has reason to know of his injury provides guidance. Here, the injury  
19 of which White complains is the seizure of his person caused by what he charges was a  
20 constitutionally defective investigation. While the court is doubtful that White was “in  
21 the dark” until November 7, 2011, given the letter his lawyer wrote on August 22, 2011,  
22 outlining most of the defects in the investigation, the lawsuit was filed considerably less  
23 than two years after the August date.  
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27 <sup>13</sup>370 F.3d 945, 955 (9th Cir. 2004).



1 Defendants are attacking a procedural due process claim, but as pled, the  
2 second count makes a substantive due process claim. The Supreme Court has  
3 explained that substantive due process claims that involve conduct which “is covered by  
4 a specific constitutional provision, such as the Fourth or Eighth Amendment, . . . must  
5 be analyzed under the standard appropriate to that specific provision, not under the  
6 rubric of substantive due process.”<sup>15</sup> That is precisely the situation here. The  
7 underlying harm to White flows from an allegedly unreasonable seizure of his person,  
8 the very subject matter of the Fourth Amendment. The court concludes that the second  
9 count should be dismissed without prejudice to the first count. It must be added that in  
10 deciding to analyze Stiers’ actions under the Fourth Amendment, the court is not  
11 suggesting that evidence of Stiers’ allegedly knowing and intentional provision of  
12 misinformation to the prosecutors and allegedly knowing and intentional withholding of  
13 information—accusations made in the text of the second count—should not be  
14 considered in determining whether to award punitive damages on the first count.  
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17 Defendants contend that the fourth count should be dismissed. Their sole  
18 argument to support the request is that there is no viable underlying claim in the first or  
19 second counts.<sup>16</sup> The court having found the claim in the first count viable, this  
20 argument fails.  
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25 <sup>15</sup>*County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998) (quoting *United States v.*  
26 *Lanier*, 520 U.S. 259, 272 n.7 (1997)).

27 <sup>16</sup>Doc. 6 at pp. 5-6; doc. 10 at p. 11.



