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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Kevin Fuciarelli,

Plaintiff,

v.

Aaron B. Good, et al.,

Defendants.

No. CV-14-01078-PHX-GMS

ORDER

Pending before the Court is Defendant City of Scottsdale’s Motion to Dismiss Count Three of Plaintiff’s Complaint. (Doc. 30.) For the following reasons, the Motion is denied.

BACKGROUND

Plaintiff Kevin Fuciarelli alleges that Scottsdale Police Department Officers Aaron B. Good and Edward A. Chrisman restrained him without any reason or provocation and caused him severe injury. Defendant City of Scottsdale (“Scottsdale”) brings the current Motion, claiming that Fuciarelli failed to provide adequate notice, in his required Notice of Claim (“Notice”) under Ariz. Rev. Stat. section 12-821.01(A), of the facts needed to support a negligence claim for failure to use reasonable care in hiring, training, and supervising Defendants Good and Chrisman. Fuciarelli, in his Response, contends that the current Motion should be considered a motion for summary judgment instead of a motion to dismiss, that his Notice was sufficient, and that Scottsdale waived its right to

1 raise the issue of an insufficient Notice.¹

2 DISCUSSION

3 I. Form of the Motion

4 Fuciarreli first claims that the current Motion should have been brought as a
5 motion for summary judgment and not as a motion to dismiss. The few Arizona courts
6 that have addressed this issue support Fuciarelli's contention that a Notice of Claim "is a
7 document outside the pleadings," which should be addressed in a motion for summary
8 judgment. *Jones v. Cochise Cnty.*, 218 Ariz. 372, 375, 187 P.3d 97, 100 (Ct. App. 2008)
9 ("The trial court granted the motion, properly regarding it as a motion for summary
10 judgment pursuant to Rule 56(c), Ariz. R. Civ. P."); *Vasquez v. State*, 220 Ariz. 304, 308,
11 206 P.3d 753, 757 (Ct. App. 2008) ("Because the court considered 'matters outside the
12 pleading,' it should have treated the motion as one for summary judgment."). To convert
13 a motion to dismiss to one for summary judgment, the "parties must be given a
14 reasonable opportunity to present all the material that is pertinent to the motion." Fed. R.
15 Civ. P. 12(d). However, the parties here have already briefed the relevant issue and have
16 no need to provide further factual support because all facts relevant to the current Motion
17 are undisputed and contained in the Notice. Thus, the Court will simply treat the current
18 motion as one for summary judgment.

19 II. Legal Standard

20 Summary judgment is appropriate if the evidence, viewed in the light most
21 favorable to the nonmoving party, demonstrates "that there is no genuine dispute as to
22 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.
23 P. 56(a). Because there are no disputes as to any material facts regarding the Notice, the
24 sole issue to be decided is whether the Notice was sufficient as a matter of law under
25 Ariz. Rev. Stat. section 12-821.01(A).

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28 ¹ Because, as discussed below, Fuciarelli's Notice was adequate under the statute,
the issue of whether Scottsdale waived this defense becomes moot and is not addressed in
this Order.

1 **III. Analysis**

2 Section 12-821.01(A) states that a plaintiff bringing a claim against a public entity
3 or public employee must provide a Notice, which “shall contain facts sufficient to permit
4 the public entity or public employee to understand the basis on which liability is
5 claimed.” Arizona courts have held that plaintiffs who do not strictly comply with section
6 12-821.01(A) are barred from bringing suit. *Salerno v. Espinoza*, 210 Ariz. 586, 588, 115
7 P.3d 626, 628 (Ct. App. 2005); *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 351, 160
8 P.3d 223, 230 (Ct. App. 2007). However, the Arizona Supreme Court has held that (1)
9 section 12-821.01(A) “does not require a claimant to provide an exhaustive list of facts”
10 and (2) “courts should not scrutinize the claimant’s description of facts to determine the
11 ‘sufficiency’ of the factual disclosure.” *Backus v. State*, 220 Ariz. 101, 107, 203 P.3d
12 499, 505 (2009).² Other courts have held that the factual showing required in the Notice
13 is minimal and that a plaintiff’s failure to state a specific theory of liability will not bar
14 the claim so long as the facts in the Notice allow the public entity to anticipate the claim.
15 *See Yollin v. City of Glendale*, 219 Ariz. 24, 32, 191 P.3d 1040, 1048 (Ct. App. 2008)
16 (“The claim statute anticipates that government entities will investigate claims, and the
17 supporting facts requirement is intended to be a relatively light burden on claimants, just
18 enough to facilitate the government’s investigation.”); *Mitchell v. City of Flagstaff*, No.
19 CV 11-8140-PCT-FJM, 2011 WL 5826014, at *3 (D. Ariz. Nov. 18, 2011) (“Although a
20 notice of claim must apprise the public entity of the basis of liability, it need not satisfy
21 the pleading standards of *Twombly* and *Iqbal*.”)

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23 ² The court in *Backus* held this in relation to another portion of 12-821.01(A),
24 which requires a plaintiff to state in the Notice the specific amount of damages that it
25 claims and also requires, similar to the factual burden at issue here, “facts supporting that
26 amount.” Other courts have considered this factual burden for the amount of damages
27 under section 12-821.01(A) to be sufficiently analogous to the factual burden for a
28 plaintiff’s claims in section 12-821.01(A) that they have applied the holding in *Backus* to
both factual burdens. *See Picht v. Peoria Unified Sch. Dist. No. 11 of Maricopa Cnty.*,
641 F. Supp. 2d 888, 896 (D. Ariz. 2009).

1 In *Mitchell*, the court held that a plaintiff’s Notice sufficiently alerted the City of
2 Flagstaff to a negligent training and supervision claim stemming from the conduct of one
3 of its police officers though the notice of claim did not separately identify negligent
4 training and/or supervision by the city. *Mitchell*, 2011 WL 5826014 at *2-3. The Notice
5 identified the officer as belonging to the city police department and provided specific
6 details of the officer’s “actions and movements from the moment that he arrived at
7 [Mitchell’s] apartment.” *Id.*

8 Similar to the city in *Mitchell*, in the present case, Scottsdale contends that
9 Fuciarelli has provided no facts in his Notice from which it could have anticipated a
10 direct claim for negligence—as opposed to a vicarious liability claim—based on failure
11 to use reasonable care in hiring, training, and supervising Defendants Good and
12 Chrisman. However, as with the Notice in *Mitchell*, the Notice here identifies Officers
13 Good and Chrisman as officers of the Scottsdale Police Department and provides a
14 detailed account of their interactions with Fuciarelli. (Doc. 30, Ex. 1.) For example, the
15 Notice states that Officers Good and Chrisman held Fuciarelli and his father under
16 “investigative detention” without any reason and that, after this, “[s]uddenly, without
17 provocation or warning, Officer Good grabbed [Fuciarelli] from behind, placed him in a
18 chokehold, threw Claimant to the ground, and handcuffed him.” (*Id.*) The Notice also
19 states that Officer Chrisman assisted in restraining Fuciarelli and in taking him down.
20 (*Id.*) Further, the Notice states that neither Officer Good nor Officer Chrisman assisted
21 Fuciarelli despite him “complaining that he was injured,” and that he was only given
22 medical assistance with the arrival of a third officer. (*Id.*) Just as the Notice in *Mitchell*
23 made the city aware of a negligence claim, Fuciarelli’s Notice was “sufficient to place the
24 City on alert that its training or supervision” of the officers involved “might have been
25 negligent.” *Mitchell*, 2011 WL 5826014 at *3. Fuciarelli’s failure to specifically state his
26 theory of liability as one of negligence in the Notice does not alter this conclusion.

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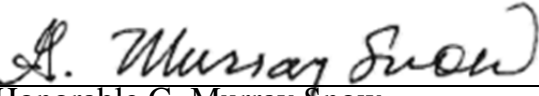
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CONCLUSION

Fuciarelli's Notice was sufficient to alert Scottsdale to a potential negligence claim for failure to use reasonable care in hiring, training, and supervising Defendants Good and Chrisman.

IT IS THEREFORE ORDERED that Defendant City of Scottsdale's Motion to Dismiss Count Three of Plaintiff's Complaint (Doc. 30) is **DENIED**.

Dated this 27th day of January, 2015.



Honorable G. Murray Snow
United States District Judge