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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

TALMADGE ADIB TALIB,
Plaintiff,
v.
JUAN GUERRERO et al.,
Defendants.

Case No. CV 15-3825-JAK (DFM)
MEMORANDUM AND ORDER
DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO
AMEND

DANIEL A. DAVIS,
Plaintiff,
v.
JUAN GUERRERO et al.,
Defendants.

Case No. CV 15-3829-JAK (DFM)
MEMORANDUM AND ORDER
DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO
AMEND

ROLAND LEROY REESE-BEY,
Plaintiff,
v.
JUAN GUERRERO et al.,
Defendants.

Case No. CV 15-3833-JAK (DFM)
MEMORANDUM AND ORDER
DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO
AMEND

1 ROMANÁH HOLMES-BEY,
2 Plaintiff,
3 v.
4 JUAN GUERRERO et al.,
5 Defendants.

} Case No. CV 15-4822-FMO (DFM)
} MEMORANDUM AND ORDER
} DISMISSING COMPLAINT WITH
} LEAVE TO AMEND

7
8 **I.**

9 **INTRODUCTION**

10 These four separate lawsuits arise out of the same incident. Plaintiffs
11 Talmadge Adib Talib (“Talib”), Daniel A. Davis (“Davis”), Roland Leroy
12 Reese-Bey (“Reese”), and Romanáh Holmes-Bey (“Holmes”) (collectively,
13 “Plaintiffs”) have each filed separate but substantially similar pro se civil rights
14 lawsuits against law enforcement officers employed by the Los Angeles
15 County Sheriff’s Department (“LASD”).

16 This Court dismissed the complaints filed by Talib, Davis, and Reese
17 with leave to amend. Each has now filed a first amended complaint. Case No.
18 CV 15-3825, Dkt. 7 (“Talib FAC”); Case No. CV 15-3829, Dkt. 9 (“Davis
19 FAC”); Case No. CV 15-3833, Dkt. 10 (“Reese FAC”). Holmes’s original
20 complaint was filed several weeks after the complaints filed by Talib, Davis,
21 and Reese; she also has now filed a first amended complaint. Case No. 15-
22 4822, Dkt. 8 (“Holmes FAC”).

23 Each of the FACs names the same individual Defendants: (1) Juan
24 Guerrero, (2) Stephen Park, (3) “John Doe” Swanson, (4) “John Doe”
25 Anderson, (5) “John Doe” Romero, (6) “John Doe” Hooper, (7) “Jane Doe”
26 Marchello, (8) “John Doe” Orbe; (9) “John Doe” Will; (10) Alex Gillinets,
27 (11) James North; (12) Rich Kiguelman; (13) “John Doe” Luna; (14) “Jane
28 Doe” Wallace; (15) “Jane Doe” Worrell; (16) “John Doe” Atkins; and (17)

1 “John Doe” Juarez. Talib FAC at 5-16; Davis FAC at 5-16; Reese FAC at at
2 5-16; Holmes FAC at 5-16. All of the Defendants are named in both his or her
3 individual and official capacity. *Id.* Plaintiffs also name the LASD and the
4 County of Los Angeles. Talib FAC at 16-19; Davis FAC at 16-19; Reese FAC
5 at 16-19; Holmes FAC at 16-19.

6 In accordance with 28 U.S.C. § 1915(e)(2), the Court must screen the
7 FACs before ordering service for purposes of determining whether the action is
8 frivolous or malicious; or fails to state a claim on which relief might be
9 granted; or seeks monetary relief against a defendant who is immune from
10 such relief.

11 II.

12 SUMMARY OF PLAINTIFFS’ ALLEGATIONS

13 The four FACs allege a substantially similar version of events.

14 On the evening of July 10, 2013, Plaintiffs attended a meeting in
15 Inglewood. After the meeting, Reese and Holmes agreed to give Davis and
16 Talib a ride home. The four left in Reese’s personal vehicle, which is never
17 completely described but appears to be a pick-up truck with a camper shell in
18 the bed area. Reese, Holmes, and Davis were in the passenger compartment of
19 the truck with Reese driving. Talib rode in the truck bed.

20 At approximately 11:05 p.m., Reese stopped his truck near the
21 intersection at 107th Street and Normandie Avenue after being pulled over by
22 a marked LASD patrol car. From the outset, Davis made a recording of the
23 incident using his phone. Park approached the driver’s window and ordered
24 Reese to turn off the engine. Reese asked Park why they had been stopped.
25 Park cited a case, United States v. Miles, as the basis for the traffic stop.

26 Meanwhile, Guerrero approached the truck’s back window and Talib.
27 Guerrero drew his gun and pointed it in Talib’s face and began yelling at Talib.
28 Stunned by the fact that Guerrero was pointing a gun in his face, Talib froze

1 and initially did not respond to Guerrero's questions. After Guerrero
2 repeatedly asked Talib "do you understand English?", Talib responded by
3 saying, "[y]ou have that gun in my face, you are threaten[ing] my life!" Reese
4 expressed concern to Park about what was going on in the back of the truck.

5 Park then ordered Reese, Holmes, and Davis to put their hands on the
6 dashboard for his safety. Park next asked a series of questions which Reese,
7 Holmes, and Davis apparently refused to answer. Meanwhile, Guerrero
8 ordered Talib to show his left hand, a command that Talib also appeared to
9 refuse, telling Guerrero that he would not move because Guerrero was
10 threatening his life. Guerrero ordered Talib to exit the vehicle. Talib refused,
11 telling Guerrero that he lacked authority and was violating his rights. Guerrero
12 repeated his order, and Talib asked what law compelled him to follow
13 Guerrero's orders. Guerrero told Talib, "United States v. Miles." Talib
14 disputed whether case law was adequate authority.

15 As Park continued to interrogate Reese, Holmes, and Davis, a second
16 patrol car carrying two additional officers came to a screeching stop nearby.
17 One of those officers drew his gun and began pulling Talib from the vehicle.
18 Talib reiterated his demand for authority for the officers' actions. The officers
19 told Talib he was being uncooperative and Talib disagreed, maintaining that
20 he had not committed a crime.

21 Park then ordered Reese to exit the vehicle. Reese asked Park if he was
22 going to handcuff him. Park said he was not but when Reese got out of the car
23 Park handcuffed him. Reese told Park that he did not consent to any physical
24 contact. Park ignored Reese comments and proceeded to search him. Park
25 then put Reese into a patrol car.

26 A third patrol car arrived and two more officers went to the back of the
27 truck. North had a camera and began recording the incident. The officers
28 continued to try to get Talib out of the vehicle as he continued to argue. Orbe

1 ordered Talib to show his hands and pointed a gun at Talib.

2 Park returned to the passenger compartment and ordered Holmes to get
3 out of the vehicle. Holmes refused. Park explained that she could be ordered to
4 get out of the vehicle during a traffic stop for officer safety. Holmes disputed
5 whether there was “probable cause” for the traffic stop and Park explained that
6 “I pulled you over because you have someone in the back of the truck.”
7 Holmes contended that they were not endangering anyone. Park explained
8 that having someone in the truck bed was illegal and dangerous. Park
9 explained that having someone riding in the truck bed was a Vehicle Code
10 violation. Holmes argued that there was no one injured and continued to
11 refuse to get out of the vehicle. Park reiterated the basis for the traffic stop.

12 Davis and Holmes then told Park that if he touched them it would be an
13 assault. Davis also argued with Park about the basis for the traffic stop.

14 Guerrero then told Park that “the Sergeant” wanted to speak with him. Park
15 left and Guerrero cautioned Holmes not to make any sudden movements.

16 The officers then asked Holmes to come to the back of the vehicle to
17 speak with Talib, warning her that “you’d better come back here and . . . get
18 him to cooperate or we’re going to spray him with mace.” Holmes asked Talib
19 why he was refusing to get out of the car. Talib explained that the officers had
20 pointed their guns at him and assaulted him.

21 Park and Guerreo then sprayed mace on Talib and forcefully removed
22 him from the vehicle. The fumes from the mace reached the front of the truck
23 and began choking Davis. Talib was handcuffed and placed in a patrol car.

24 North attempted to get a statement from Holmes. She refused to answer
25 any questions, invoking her right to remain silent. A few minutes later,
26 Marchello arrested Holmes and forcefully placed her into Marchello’s patrol
27 car with Park’s assistance. Marchello used excessive force when handcuffing
28 and patting down Holmes.

1 Gillinets attempted to interview Davis while Davis was still inside the
2 truck about what happened. Davis said he could not give a statement. Romero
3 then demanded that Davis get out of the vehicle. After initially refusing, Davis
4 got out of the truck. Romero immediately handcuffed Davis and forcefully put
5 him in the back seat of the same patrol car as Reese.

6 Talib, Reese, Davis, and Holmes were all taken to the South Los
7 Angeles Sheriff's Department Station. All four were patted down again and
8 fingerprinted. Holmes told Luna that she needed to see a doctor. Luna
9 demanded to know why. When Holmes refused to say why, Luna refused
10 Holmes medical treatment and placed Holmes into a cell. Holmes yelled for
11 medical treatment from the cell for two hours. Two deputies took her to
12 Centinela Hospital to see a doctor and then returned her to jail.

13 Wallace told Davis that he was being booked on suspicion of driving a
14 stolen vehicle. Davis questioned how that was possible given that he was in the
15 passenger seat. Davis also asked whether the car was stolen. Wallace
16 responded "that's what we're trying to determine now."

17 All four Plaintiffs remained in custody until the next morning, when
18 they were all released. Talib and Reese were given a citation.

19 III.

20 PLAINTIFFS' CLAIMS

21 The four FACs set forth 23 identical claims for relief against all of the
22 Defendants as follows:

23 (1) "detering, suppressing or breaching freedom of speech" in
24 violation of the First Amendment;

25 (2) "retaliation upon Plaintiff for protected conduct – speech" in
26 violation of the First Amendment;

27 (3) "infringement and desecration of religious rights" in violation of
28 the First Amendment;

- 1 (4) assault with a deadly weapon;
- 2 (5) battery with a deadly weapon;
- 3 (6) unreasonable search of person in violation of the Fourth
- 4 Amendment;
- 5 (7) unreasonable search of property in violation of the Fourth
- 6 Amendment;
- 7 (8) unreasonable seizure of person in violation of the Fourth
- 8 Amendment;
- 9 (9) unreasonable seizure of effects in violation of the Fourth
- 10 Amendment;
- 11 (10) “retaliation upon Plaintiff for protected conduct – silence” in
- 12 violation of the Fifth Amendment;
- 13 (11) denial of liberty without due process of law in violation of the
- 14 Fifth and Fourteenth Amendments;
- 15 (12) denial of equal protection of the laws in violation of the
- 16 Fourteenth Amendment;
- 17 (13) deprivation of Plaintiff’s rights under color of law, 42 U.S.C. §
- 18 1983;
- 19 (14) interference of Plaintiff’s rights by threats, intimidation, and
- 20 coercion, Cal. Civ. Code § 52.1;
- 21 (15) intentional infliction of emotional distress;
- 22 (16) “false arrest—false charges, booking into jail,” California Gov’t
- 23 Code §§ 820.4 and 820.8;
- 24 (17) “false imprisonment—restraint on plaintiff’s freedom,” California
- 25 Gov’t Code § 820.4;
- 26 (18) extortion by wrongful threat of criminal prosecution;
- 27 (19) “human trafficking/slavery-deprivation of Plaintiff’s personal
- 28 liberty,” California Civil Code § 52.5;

1 (20) “abuse of legal process used to harm, injure, extort, [and] coerce”;

2 (21) “neglect to prevent deprivation of rights/abuse of legal process,” in
3 violation of 42 U.S.C. § 1986;

4 (22) Conspiracy to obstruct justice, intimidate party and witnesses, in
5 violation of 42 U.S.C. § 1985(2); and

6 (23) Conspiracy in furtherance of deprivation of Plaintiff’s rights, in
7 violation of 42 U.S.C. § 1985(3).

8 The FACs allege that the LASD and the County are liable under Monell
9 v. New York City Dep’t of Social Services, 436 U.S. 658 (1978), as well as
10 California Government Code §§ 815.2(a), 815.3(a) and (b), 815.6, 820, and
11 California Civil Code § 52.1(b). Talib FAC at 17; Davis FAC at 17; Reese
12 FAC at 17; Holmes FAC at 17. Plaintiffs allege that “[i]t is the custom,
13 practice and policy of the [LASD] deputies to engage in misconduct, rights
14 violations and excessive use of force towards ‘people of color.’” Talib FAC at
15 18; Davis FAC at 18; Reese FAC at 18; Holmes FAC at 18. Plaintiffs further
16 allege that “[t]hese actions of violating the rights of protected groups of people
17 (i.e., ‘African-Americans and/or people of color’) are rampant in the LASD all
18 over Los Angeles County.” Talib FAC at 18-19; Davis FAC at 18-19; Reese
19 FAC at 18-19; Holmes FAC at 18-19.

20 IV.

21 STANDARD OF REVIEW

22 The Court’s screening of the FACs is governed by the following
23 standards. A complaint may be dismissed as a matter of law for failure to state
24 a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient
25 facts under a cognizable legal theory. See Balistreri v. Pacifica Police Dep’t,
26 901 F.2d 696, 699 (9th Cir. 1990). In determining whether the complaint states
27 a claim on which relief may be granted, its allegations must be taken as true
28 and construed in the light most favorable to Plaintiff. See Love v. United

1 States, 915 F.2d 1242, 1245 (9th Cir. 1989). Further, since Plaintiff is
2 appearing pro se, the Court must construe the allegations of the complaint
3 liberally and must afford Plaintiff the benefit of any doubt. See Karim-Panahi
4 v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988).

5 However, “the liberal pleading standard . . . applies only to a plaintiff’s
6 factual allegations.” Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A]
7 liberal interpretation of a civil rights complaint may not supply essential
8 elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
9 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents,
10 673 F.2d 266, 268 (9th Cir. 1982)). Moreover, with respect to Plaintiff’s
11 pleading burden, the Supreme Court has held that “a plaintiff’s obligation to
12 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
13 conclusions, and a formulaic recitation of the elements of a cause of action will
14 not do. . . . Factual allegations must be enough to raise a right to relief above
15 the speculative level . . . on the assumption that all the allegations in the
16 complaint are true (even if doubtful in fact).” Bell Atlantic Corp. v. Twombly,
17 550 U.S. 544, 555 (2007) (internal citations omitted, alteration in original); see
18 also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (holding that to avoid
19 dismissal for failure to state a claim, “a complaint must contain sufficient
20 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
21 face.’ A claim has facial plausibility when the plaintiff pleads factual content
22 that allows the court to draw the reasonable inference that the defendant is
23 liable for the misconduct alleged.” (internal citation omitted)).

24 If the Court finds that a complaint should be dismissed for failure to state
25 a claim, the Court has discretion to dismiss with or without leave to amend.
26 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to
27 amend should be granted if it appears possible that the defects in the complaint
28 could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also

1 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that “[a] pro
2 se litigant must be given leave to amend his or her complaint, and some notice
3 of its deficiencies, unless it is absolutely clear that the deficiencies of the
4 complaint could not be cured by amendment”) (citing Noll v. Carlson, 809
5 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is
6 clear that a complaint cannot be cured by amendment, the Court may dismiss
7 without leave to amend. Cato, 70 F.3d at 1105-06; see, e.g., Chaset v.
8 Fleer/Skybox Int’l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that “there is
9 no need to prolong the litigation by permitting further amendment” where the
10 “basic flaw” in the pleading cannot be cured by amendment); Lipton v.
11 Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that
12 “[b]ecause any amendment would be futile, there was no need to prolong the
13 litigation by permitting further amendment”).

14 V.

15 DISCUSSION

16 A. Plaintiffs’ Official-Capacity Claims

17 Plaintiffs name each of the individual Defendants in his or her official
18 capacity. The Supreme Court has held that an “official-capacity suit is, in all
19 respects other than name, to be treated as a suit against the entity.” Kentucky
20 v. Graham, 473 U.S. 159, 166 (1985); see also Brandon v. Holt, 469 U.S. 464,
21 471-72 (1985); Larez v. City of L.A., 946 F.2d 630, 646 (9th Cir. 1991). Such a
22 suit “is not a suit against the official personally, for the real party in interest is
23 the entity.” Graham, 473 U.S. at 166. Official-capacity claims are “another
24 way of pleading an action against an entity of which an officer is an agent.”
25 Hafer v. Melo, 502 U.S. 21, 25 (1991) (quoting Monell, 436 U.S. at 691). If a
26 government entity is named as a defendant, it is not only unnecessary and
27 redundant to name individual officers in their official capacity, but also
28 improper. See Ctr. for Bio-Ethical Reform, Inc. v. L. A. Cnty. Sheriff Dep’t,

1 533 F.3d 780, 799 (9th Cir. 2008). Here, the County and the LASD are named
2 Defendants and each of the individual Defendants is alleged to be an LASD
3 employee at the time of the events in question. Accordingly, Plaintiff's claims
4 against the individual Defendants in their official capacity are subject to
5 dismissal.

6 **B. Plaintiff Does Not Allege Any Personal Participation by Several**
7 **Defendants**

8 In order to state a claim for a civil rights violation under 42 U.S.C. §
9 1983, a plaintiff must allege that a particular defendant, acting under color of
10 state law, deprived plaintiff of a right guaranteed under the U.S. Constitution
11 or a federal statute. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48
12 (1988). Suits against government officials under § 1983 in their individual
13 capacities “seek to impose personal liability upon a government official for
14 actions he takes under color of state law.” Graham, 473 U.S. at 165. “A person
15 deprives another of a constitutional right, within the meaning of section 1983,
16 if he does an affirmative act, participates in another’s affirmative acts, or omits
17 to perform an act which he is legally required to do that causes the deprivation
18 of which [the plaintiff complains].” Johnson v. Duffy, 588 F.2d 740, 743 (9th
19 Cir. 1978).

20 In short, “there must be a showing of personal participation in the
21 alleged rights deprivation.” Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
22 2002) (internal citation omitted); see also Taylor v. List, 880 F.2d 1040, 1045
23 (9th Cir.1989) (“Liability under section 1983 arises only upon a showing of
24 personal participation by the defendant.”). While individual governmental
25 agents may still be held liable for group participation in unlawful conduct,
26 there must be some showing of “individual participation in the unlawful
27 conduct” for imposition of liability under § 1983. Absent such individual
28 participation, an officer cannot be held liable based solely on membership in a

1 group or team that engages in unconstitutional conduct unless each officer was
2 an “integral participant” in the constitutional violation alleged. Chuman v.
3 Wright, 76 F.3d 292, 294 (9th Cir.1996); see also Jones, 297 F.3d at 934.

4 For several of the individual Defendants, the FACs do not sufficiently
5 allege personal involvement in the alleged constitutional violations and, thus,
6 do not assert viable § 1983 individual-capacity claims. Plaintiffs make no
7 allegations of specific, individual participation by Swanson, Anderson,
8 Hooper, Will, Kiguelman, Worrell, Atkins, or Juarez. Plaintiffs may not rely
9 on general and conclusory allegations against Defendants collectively, without
10 specifying the individual participation of each officer in the events giving rise
11 to each claim. It is not sufficient for Plaintiffs to refer to Defendants as an
12 undifferentiated group. See Jones, 297 F.3d at 934 (holding that police officers
13 could not be held liable under § 1983 for damages caused in an unreasonable
14 search under the Fourth Amendment based on mere membership in a
15 searching party and absent evidence of personal involvement in causing the
16 damages). Plaintiffs’ allegations of misconduct require precise identification of
17 each officer’s participation in bringing about the alleged violations. See Pena v.
18 Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (holding that vague and conclusory
19 allegations of official participation in civil rights violations are not sufficient to
20 state a claim under § 1983) (citing Ivey, 673 F.2d at 268). To the extent
21 Plaintiffs fail to identify any specific act or omission on the part of each
22 Defendant in bringing about the constitutional violations alleged, the FACs fail
23 to state individual-capacity claims. Therefore, the Court finds that Plaintiffs’
24 claims against Swanson, Anderson, Hooper, Will, Kiguelman, Worrell,
25 Atkins, and Juarez are subject to dismissal.

26 **C. Plaintiffs’ Claims against the County and the LASD**

27 The Court finds that the LASD is not a proper Defendant. Under 42
28 U.S.C. § 1983, a plaintiff may pursue claims against “persons” acting under

1 the color of state law. The term “persons” under § 1983 encompasses state and
2 local officials sued in their individual capacity, private individuals and entities
3 which acted under color of state law, and local governmental entities. Vance v.
4 Cnty. of Santa Clara, 928 F. Supp. 993, 995-96 (N.D. Cal. 1996). But
5 “persons” do not include municipal departments like the LASD. Id.; see also
6 United States v. Kama, 394 F.3d 1236, 1239 (9th Cir. 2005) (Ferguson, J.,
7 concurring) (“[M]unicipal police departments and bureaus are generally not
8 considered ‘persons’ within the meaning of 42 U.S.C. § 1983.”); Nichols v.
9 Brown, 859 F. Supp. 2d 1118, 1137 (C.D. Cal. 2012) (dismissing City of
10 Redondo Beach Police Department because “municipal departments are
11 improper defendants in section 1983 suits”); Smith v. Cnty. of Los Angeles,
12 No. 12-02444, 2013 WL 1829821, at *7 (C.D. Cal. Mar. 12, 2013) (dismissing
13 the Sheriff’s Department because it “is a municipal department of the County
14 and is therefore not a properly named defendant in this § 1983 action”). The
15 County is the proper Defendant, not the LASD.

16 Local government entities such as the County “may not be sued under §
17 1983 for an injury inflicted solely by its employees or agents. Instead, it is only
18 when execution of a government’s policy or custom, whether made by its
19 lawmakers or by those whose edicts or acts may fairly be said to represent
20 official policy, inflicts the injury that the government as an entity is responsible
21 under § 1983.” Monell, 436 U.S. at 694. Thus, the County may not be held
22 liable for the alleged actions of the individual Defendants whose alleged
23 conduct gave rise to Plaintiffs’ claims unless “the action that is alleged to be
24 unconstitutional implements or executes a policy statement, ordinance,
25 regulation, or decision officially adopted or promulgated by that body’s
26 officers,” or if the alleged constitutional deprivation was “visited pursuant to
27 governmental ‘custom’ even though such a custom has not received formal
28 approval through the body’s official decisionmaking channels.” Id. at 690-91.

1 Municipal liability may arise when an unwritten custom becomes “so
2 ‘persistent and widespread’ that it constitutes a ‘permanent and well settled
3 [municipal] policy.’” Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)
4 (quoting Monell, 436 U.S. at 691); see Thomas v. Baca, 514 F. Supp. 2d 1201,
5 1212 (C.D. Cal. 2007) (“A custom is a ‘longstanding practice . . . which
6 constitutes the standard operating procedure of the local government entity.’ ”)
7 (quoting Menotti v. City of Seattle, 409 F.3d 1113, 1151 (9th Cir. 2005)).
8 “Isolated or sporadic incidents” are insufficient to establish an improper
9 municipal custom. Trevino, 99 F.3d at 918 (“Liability for improper custom
10 may not be predicated on isolated or sporadic incidents; it must be founded
11 upon practices of sufficient duration, frequency and consistency that the
12 conduct has become a traditional method of carrying out policy.” (internal
13 citations omitted)).

14 The FACs do not identify, as required by Monell, any specific policies or
15 practices in the County that caused Plaintiffs’ injuries. Plaintiffs are cautioned
16 that “[a] plaintiff cannot prove the existence of a municipal policy or custom
17 based solely on the occurrence of a single incident of unconstitutional action
18 by a non-policymaking employee.” Davis v. City of Ellensburg, 869 F.2d 1230,
19 1233 (9th Cir. 1989). Plaintiffs must either identify the specific County policies
20 or practices that caused their injuries or limit their suit to claims against
21 individual Defendants. Accordingly, Plaintiffs’ claims against the County are
22 subject to dismissal.

23 **D. Plaintiffs’ First Amendment Claims**

24 Plaintiffs’ first three claims allege violations of the First Amendment.
25 Plaintiffs’ first claims allege that Defendants’ conduct deterred, suppressed, or
26 breached Plaintiffs’ right to free speech. Plaintiffs’ second claims allege that
27 Defendants retaliated against them for their protected speech. “The First
28 Amendment forbids government officials from retaliating against individuals

1 for speaking out. To recover under § 1983 for such retaliation, a plaintiff must
2 prove: (1) he engaged in constitutionally protected activity; (2) as a result, he
3 was subjected to adverse action by the defendant that would chill a person of
4 ordinary firmness from continuing to engage in the protected activity; and (3)
5 there was a substantial causal relationship between the constitutionally
6 protected activity and the adverse action.” Blair v. Bethel Sch. Dist., 608 F.3d
7 540, 543 (9th Cir. 2010) (citations and footnote omitted).

8 Plaintiffs do not allege a causal relationship between any constitutionally
9 protected activity and Defendants’ adverse actions. In the absence of such
10 allegations, Plaintiffs do not state a claim for violations of their First
11 Amendment right to freedom of speech. Plaintiffs’ first and second claims are
12 therefore subject to dismissal.

13 Plaintiffs’ third claims allege that Defendants interfered with the free
14 exercise of their religion. To the extent that Plaintiffs are attempting to bring a
15 claim for violation of the Free Exercise Clause of the First Amendment,
16 Plaintiffs must show that the government action at issue burdened a belief that
17 is both sincerely held and rooted in religious belief. Shakur v. Schriro, 514 F.3d
18 878, 884-85 (9th Cir. 2008). Each plaintiff also “must show (1) that defendants
19 burdened the practice of his [or her] religion by preventing him [or her] from
20 engaging in conduct mandated by his [or her] faith, (2) without any
21 justification reasonably related to legitimate penological interests.” Freeman v.
22 Arpaio, 125 F.3d 732, 736 (9th Cir.1997) (footnote omitted) (citing Turner v.
23 Safley, 482 U.S. 78, 89 (1987)).

24 The FACs mention religious belief only once, stating that “[t]he religious
25 garments and ornaments worn by [Plaintiffs] were disrespected with conscious
26 indifference by the defendants including the supervising officers during these
27 actions in violation of [Plaintiffs’] rights.” Plaintiffs do not specify what these
28 garments and ornaments were or how the Defendants disrespected them.

1 Plaintiffs' allegations are wholly conclusory and do not state any facts
2 demonstrating that Defendants violated the First Amendment. Plaintiffs' third
3 claims are thus subject to dismissal.

4 **E. Plaintiffs' Fourth Amendment and Assault and Battery Claims**

5 Plaintiffs' fourth and fifth claims allege assault and battery. Plaintiffs'
6 sixth through ninth claims allege violations of the Fourth Amendment. "The
7 Fourth Amendment protects individuals from unreasonable searches and
8 seizures conducted by the Government." Nat'l Treasury Emps. Union v. Von
9 Raab, 489 U.S. 656, 665 (1989). The law is clear that all claims for excessive
10 force in an arrest, investigatory stop, or other seizure of a free person must be
11 brought under the Fourth Amendment and analyzed under its objective
12 "reasonableness" standard. Graham v. Connor, 490 U.S. 386, 388 (1989). The
13 reasonableness of an officer's actions "must be judged from the perspective of a
14 reasonable officer on the scene, rather than with the 20/20 vision of
15 hindsight." Id. at 396. The determination of whether an officer's use of force
16 was "reasonable" under the Fourth Amendment "requires a careful balancing
17 of the nature and quality of the intrusion on the individual's Fourth
18 Amendment interests against the countervailing government interests at
19 stake." Id. (internal quotations omitted); see also Deorle v. Rutherford, 272
20 F.3d 1272, 1279 (9th Cir. 2001) (as amended) (holding that the force which is
21 applied must be balanced against the need for that force). Such an analysis
22 requires "careful attention to the facts and circumstances in each particular
23 case, including the severity of the crime at issue, whether the suspect poses an
24 immediate threat to the safety of the officers or others, and whether he is
25 actively resisting arrest or attempting to evade arrest by flight." Graham, 490
26 U.S. at 396; see also Tennessee v. Garner, 471 U.S. 1, 8-9 (1985) (whether a
27 seizure is reasonable under the Fourth Amendment is judged by the "totality of
28 the circumstances"). Moreover, the Supreme Court has held that, in

1 determining whether the force used to affect a particular seizure is
2 “reasonable” under the Fourth Amendment, “the question is whether the
3 officers’ actions are ‘objectively reasonable’ in light of the facts and
4 circumstances confronting them, without regard to their underlying intent or
5 motivation.” Graham, 490 U.S. at 397.

6 Proving claims for assault and for battery against a police officer
7 effectuating an arrest requires a showing that the officer used unreasonable
8 force. Edson v. City of Anaheim, 63 Cal. App. 4th 1269, 1273 (1998). The test
9 applied under California law to determine if the force used was unreasonable is
10 identical to the test applied under federal law. See Saman v. Robbins, 173 F.3d
11 1150, 1156 n. 6 (9th Cir.1999) (applying the same standard for excessive force
12 under both federal and California law); Edson, 63 Cal. App. 4th at 1273 (citing
13 to the Graham reasonableness standard in resolution of state law assault and
14 battery claim against a police officer). In other words, Plaintiffs’ claims for
15 assault and battery under California law meet the same fate as Plaintiffs’ §
16 1983 claims for unreasonable force under the Fourth Amendment. See Nelson
17 v. City of Davis, 709 F. Supp. 2d 978, 992 (E.D. Cal.2010) (“Because the same
18 standards apply to both state law assault and battery and Section 1983 claims
19 premised on constitutionally prohibited excessive force, the fact that Plaintiff’s
20 § 1983 claims under the Fourth Amendment survive summary judgment also
21 mandates that the assault and battery claims similarly survive.”).

22 Generally speaking, Plaintiffs’ factual allegations are arguably sufficient
23 to allege that they were subjected to unreasonable force in violation of the
24 Fourth Amendment. However, in order to hold individual Defendants liable,
25 Plaintiffs must allege personal participation in the excessive force by each
26 defendant. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)
27 (“Liability under § 1983 must be based on the personal involvement of the
28 defendant.”). Even where Plaintiffs make some allegations of personal

1 involvement by individual Defendants, some of those allegations do not
2 include allegations of personal participation in the excessive force. In
3 particular, Plaintiffs' allegations against Luna and Wallace do not include any
4 involvement in excessive force. Plaintiffs' Fourth Amendment and
5 assault/battery claims are thus subject to dismissal as to Luna and Wallace.

6 **F. Fifth Amendment Retaliation**

7 Plaintiffs' tenth claims appear to assert that their Fifth Amendment
8 rights against incrimination were violated because Defendants retaliated
9 against their invocation of their right to remain silent. The Fifth Amendment
10 privilege protects an individual "against being involuntarily called as a witness
11 against [herself] in a criminal proceeding" and moreover privileges her "not to
12 answer official questions put to [her] in any other proceeding, civil or criminal,
13 formal or informal, where the answers might incriminate [her] in future
14 criminal proceedings." Lefkowitz v. Turley, 414 U.S. 70, 77 (1973). However,
15 the Supreme Court has held that "a violation of the constitutional right against
16 self-incrimination occurs only if one has been compelled to be a witness
17 against [herself] in a criminal case." Chavez v. Martinez, 538 U.S. 760, 770
18 (2003); Stoot v. City of Everett, 582 F.3d 910, 923 (9th Cir. 2009) ("[T]he Fifth
19 Amendment was not violated unless and until allegedly coerced statements
20 were used against the suspect in a criminal case.").

21 Plaintiffs do not allege that they were compelled to be a witness in any
22 subsequent criminal case against themselves. Under Chavez, the facts in the
23 FACs are insufficient to allege a plausible violation of Plaintiff's Fifth
24 Amendment rights. 538 U.S. at 770. Plaintiffs' Fifth Amendment retaliation
25 claims are therefore subject to dismissal.

26 **G. Fifth and Fourteenth Amendment Due Process**

27 Plaintiffs' eleventh claims allege a denial of liberty without due process
28 of law under the Fifth and Fourteenth Amendments. As an initial matter,

1 Plaintiffs' reliance on the Fifth Amendment is legally flawed because the Fifth
2 Amendment's Due Process Clause only applies to the federal government. See
3 Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008).

4 The Fourteenth Amendment protects against deprivations of liberty
5 accomplished "without due process of law." Baker v. McCollan, 443 U.S. 137,
6 145 (1979). "Liberty is protected from unlawful state deprivation by the due
7 process clause of the Fourteenth Amendment." Haygood v. Younger, 769 F.2d
8 1350, 1354 (9th Cir. 1985) (en banc). "[A] detainee has 'a constitutional right
9 to be free from continued detention after it was or should have been known
10 that the detainee was entitled to release.'" Lee v. City of L.A., 250 F.3d 668,
11 683-85 (9th Cir. 2001) (denying motion to dismiss plaintiff's substantive due
12 process claim because plaintiff sufficiently alleged that he was incarcerated for
13 one day and the arresting police officers should have known that he was not
14 the fugitive). The Ninth Circuit has recently held that in the context of a § 1983
15 suit against police officers for a due process violation, official conduct "shocks
16 the conscience" when the officer "either consciously or through complete
17 indifference disregards the risk of an unjustified deprivation of liberty." Tatum
18 v. Moody, 768 F.3d 806, 820-21 (9th Cir. 2014) (quoting Gantt v. City of Los
19 Angeles, 717 F.3d 702, 707 (9th Cir. 2013)).

20 Plaintiffs have not alleged that any individual Defendant knew or should
21 have known that they were entitled to be released. Indeed, it appears from the
22 face of the FACs that Plaintiffs were released within several hours of being
23 taken into custody. Plaintiffs make no allegations that any of the Defendants
24 made a false statement, withheld information, or engaged in any conduct to
25 prolong their detention. Cf. Shay v. Cnty. of L.A., No. 15-4607, 2015 WL
26 6513632, at *4 (C.D. Cal. Oct. 26, 2015) (finding adequate allegations that
27 official conduct "shocked the conscience" where officer's false statements led
28 to plaintiff's incarceration for 11 days). The Court therefore finds that

1 Plaintiffs' eleventh claims for violation of due process are subject to dismissal.

2 **H. Equal Protection**

3 Plaintiffs' twelfth claims allege a violation of the Equal Protection
4 Clause. The Equal Protection Clause requires that persons who are similarly
5 situated be treated alike. City of Cleburne v. Cleburne Living Ctr., Inc., 473
6 U.S. 432, 439 (1985). An equal protection claim may be established in two
7 ways. First, a plaintiff may establish an equal protection claim by showing that
8 the defendants acted with an intent or purpose to discriminate against the
9 plaintiff based upon the plaintiff's membership in a protected class. See, e.g.,
10 Thornton v. City of St. Helens, 425 F.3d 1158, 1167 (9th Cir. 2005); Lee, 250
11 F.3d at 686. Second, a plaintiff may establish an equal protection claim by
12 showing that similarly situated individuals were intentionally treated
13 differently without a rational relationship to a legitimate state purpose (or a
14 compelling need in a case involving a suspect class or a fundamental right).
15 Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); SeaRiver Maritime
16 Fin. Holdings, Inc. v. Mineta, 309 F.3d 662, 679 (9th Cir. 2002).

17 Plaintiffs allege that Defendants' acts were "racially, religiously, socio-
18 economically and socio-politically discriminatory" as Plaintiffs are African-
19 Americans. These conclusory allegations are not enough. The allegations in
20 the SACs are not sufficient to raise an inference that any Defendant acted with
21 a discriminatory purpose. See Iqbal, 556 U.S. at 683 (finding "respondent's
22 complaint does not contain any factual allegations sufficient to plausibly
23 suggest Petitioner's discriminatory state of mind"). Plaintiffs allege no facts
24 indicating that their membership in a protected class was the reason for
25 Defendants' actions. The SACs contain no allegation that any Defendants
26 made a racial remark or even that any speech or conduct was unreasonably
27 condescending. Even a liberal construction of a complaint cannot supply
28 essential elements of a claim that have not been pleaded. See Ivey, 673 F.2d at

1 268. Accordingly, Plaintiffs have failed to set forth an equal protection claim
2 against Defendants.

3 **I. Plaintiff's "Color of Law" Claim**

4 Plaintiffs' thirteenth claims allege deprivation of Plaintiffs' rights under
5 color of law but do not specify any specific right. As noted above, acting under
6 color of state law is an element of any § 1983 claim. But Plaintiffs must also
7 allege they were deprived of a right guaranteed under the U.S. Constitution or
8 a federal statute. Thus, Plaintiffs' thirteenth claims are subject to dismissal.

9 **J. California Civil Code § 52.1**

10 Plaintiffs' fourteenth claims allege interference of Plaintiffs' rights by
11 threats, intimidation, and coercion in violation of California Civil Code § 52.1,
12 also known as the Bane Act. That statute provides a right to relief when
13 someone "interferes by threats, intimidation, or coercion . . . with the exercise
14 or enjoyment by any individual or individuals of rights secured by the
15 Constitution or laws of the United States, or of the rights secured by the
16 Constitution or laws of [California]." Cal. Civ. Code § 52.1. To prevail on a §
17 52.1 claim, a plaintiff must therefore prove (1) a violation of a constitutional or
18 statutory right (2) by intimidation, threats or coercion. Venegas v. Cnty. of Los
19 Angeles, 153 Cal. App. 4th 1230, 1242 (2007). The Ninth Circuit recently held
20 that liability under § 52.1 can be based on the same facts as an underlying
21 constitutional violation. Chaudhry v. City of L.A., 751 F.3d 1096, 1105-06
22 (9th Cir. 2014). However, "[t]he act of interference with a constitutional right
23 must itself be deliberate or spiteful." Shoyoye v. Cnty. of L.A., 203 Cal. App.
24 4th 947, 959 (2012). Thus, "where coercion is inherent in the constitutional
25 violation alleged . . . the statutory requirement of 'threats, intimidation, or
26 coercion' is not met." Id. In such cases, "[t]he statute requires a showing of
27 coercion independent from the coercion inherent in the wrongful detention
28 itself." Id.

1 Therefore, Plaintiffs must allege facts showing that Defendants engaged
2 in wrongful conduct or employed threats, intimidation, or coercion
3 independent of the wrongful detention. The FACs do not contain any such
4 allegations. Plaintiffs do not allege any facts suggesting that Defendants
5 engaged in independent wrongful conduct. As a result, Plaintiffs' § 52.1 claims
6 are subject to dismissal.

7 **K. Intentional Infliction of Emotional Distress**

8 Plaintiffs' fifteenth causes of action allege a claim of intentional infliction
9 of emotional distress. Under California law, intentional infliction of emotional
10 distress requires "(1) extreme and outrageous conduct by the defendant with
11 the intention of causing, or reckless disregard of the probability of causing,
12 emotional distress; (2) the plaintiff's suffering severe or extreme emotional
13 distress; and (3) actual and proximate causation of the emotional distress by
14 the defendant's outrageous conduct." Davidson v. City of Westminster, 32
15 Cal.3d 197, 209 (1982). The conduct "must be so extreme as to exceed all
16 bounds of that usually tolerated in a civilized society." Id.

17 Even if the Court assumes that Plaintiffs' allegations are sufficient to
18 show extreme and outrageous conduct, Plaintiffs do not allege sufficient facts
19 to show either (a) that any Defendant acted with the intent of causing, or
20 reckless disregard of causing, emotional distress, or (b) that any Plaintiff in fact
21 actually suffered severe or extreme emotional distress. As a result, Plaintiffs'
22 fifteenth cause of action fails to state a claim for relief.

23 **L. False Arrest/Imprisonment**

24 Plaintiffs' sixteenth and seventeenth claims seek to assert state-law
25 claims of false arrest and false imprisonment. Under California law, a police
26 officer may be held liable for false arrest and false imprisonment. Cal. Gov't
27 Code § 820.4 ("A public employee is not liable for his act or omission,
28 exercising due care, in the execution or enforcement of any law. Nothing in

1 this section exonerates a public employee from liability for false arrest or false
2 imprisonment.”). False imprisonment under California law is the “unlawful
3 violation of the personal liberty of another.” Asgari v. City of L.A., 15 Cal.4th
4 744, 757 (1997). False arrest is not a different tort; it is merely “one way of
5 committing a false imprisonment.” Collins v. City & Cnty of San Francisco, 50
6 Cal. App. 3d 671, 673 (1975). To establish a claim of false arrest or false
7 imprisonment, Plaintiffs must prove: (1) Defendants intentionally deprived
8 Plaintiffs of their freedom of movement by use of physical barrier, force, or
9 threat of force, or other unreasonable duress, (2) without Plaintiffs’ consent, (3)
10 which harmed Plaintiffs, and (4) that the harm was substantially caused by the
11 Defendants’ conduct. Fermino v. Fedco, Inc., 7 Cal.4th 701, 715-16 (1994).

12 For purposes of screening the FACs, the Court finds that Plaintiffs have
13 arguable pleaded adequate claims of false imprisonment based on their
14 allegations that Defendants Guerrero, Park, Romero, Marchello, Orbe,
15 Gillinets, and North acted without legal justification by placing them under
16 arrest and transporting them to jail where there were detained overnight.

17 **M. Extortion**

18 Plaintiffs’ eighteenth claims allege extortion by wrongful threat of
19 criminal prosecution. California law defines extortion as “the obtaining of
20 property from another, with his consent, or the obtaining of an official act of a
21 public officer, induced by a wrongful use of force or fear, or under color of
22 official right.” Cal. Penal Code § 518.2; see also Monex Deposit Co. v.
23 Gilliam, 666 F. Supp. 2d 1135, 1136 (C.D. Cal. 2009). California has
24 recognized a civil cause of action for the recovery of money obtained by the
25 wrongful threat of criminal prosecution, whether the claim is denominated as
26 wrongful threat of criminal or civil prosecution. Fuhrman v. Cal. Satellite Sys.,
27 Inc., 179 Cal. App. 3d 408, 426 (1986); Monex Deposit Co., 666 F. Supp. 2d at
28 1136. The Court construes Plaintiffs’ eighteenth claims as claims for civil

1 extortion. However, the FACs do not adequately allege that Defendants
2 obtained property or money from Plaintiffs with their consent, at least in part
3 induced by wrongful use of fear, or that Defendants at any time threatened
4 criminal or civil prosecution. Plaintiffs' extortion claims are therefore subject
5 to dismissal.

6 **N. California Civil Code § 52.5**

7 Plaintiffs' nineteenth claims allege human trafficking, slavery, and
8 deprivation of Plaintiffs' personal liberty in violation of California Civil Code §
9 52.5. This statute provides a civil cause of action for victims of human
10 trafficking. Human trafficking is defined under California law as follows:

11 Any person who deprives or violates the
12 personal liberty of another with the intent to . . .
13 obtain forced labor or services, is guilty of human
14 trafficking.

15 . . .

16 For purposes of this section, 'forced labor or
17 services' means labor or services that are performed or
18 provided by a person and are obtained or maintained
19 through force, fraud, or coercion, or equivalent
20 conduct that would reasonably overbear the will of the
21 person.

22 Cal. Penal Code § 236.1(a), (e).

23 Here, even if the Court accepts the premise that Plaintiffs' allegations are
24 sufficient to show that Defendants deprived or violated their personal liberty,
25 there is no allegation that Defendants acted with the intent to obtain forced
26 labor or services as defined by California law. As a result, Plaintiffs' California
27 Civil Code § 52.5 claims are subject to dismissal.

28 ///

1 **O. 42 U.S.C. §§ 1985(2) and (3), 1986**

2 Plaintiffs' final three claims purport to set forth violations of 42 U.S.C. §
3 1986, 1985(2), and 1985(3). All three claims are subject to dismissal.

4 To state a claim under both 42 U.S.C. §§ 1985(2) or 1985(3), Plaintiff
5 must allege a conspiracy motivated by class-based, invidious animus. See Bray
6 v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-68 (1993) (section
7 1985(3)); Griffin v. Breckenridge, 403 U.S. 88, 101-02 (1971) (same); Butler v.
8 Elle, 281 F.3d 1014, 1028 (9th Cir. 2002) (same); Portman v. Cty. of Santa
9 Clara, 995 F.2d 898, 909 (9th Cir. 1993) (section 1985(2)). "To state a claim
10 for conspiracy to violate constitutional rights, the plaintiff must state specific
11 facts to support the existence of the claimed conspiracy." Olsen v. Idaho State
12 Bd. of Medicine, 363 F.3d 916, 929 (9th Cir.2004) (citation and internal
13 quotations omitted).

14 Here, Plaintiffs' allegations are insufficient to state either a section
15 1985(2) or 1985(3) conspiracy. Plaintiffs fail to allege any facts which
16 demonstrate that there was a conspiracy, or that any deprivation of rights was
17 racial or class-based in motivation. Mere allegations of conspiracy without
18 factual specificity are insufficient. See Iqbal, 556 U.S. at 679 ("Threadbare
19 recitals of the elements of a cause of action, supported by mere conclusory
20 statements, do not suffice."); Olsen, 363 F.3d at 929 (holding dismissal of §
21 1985(2) claim proper where plaintiff "failed to allege sufficiently that the
22 appellees conspired to violate her civil rights"; conclusory allegations that
23 defendants discriminated against plaintiff on account of "religion, race, and/or
24 national origin" are insufficient).

25 Section 1986 imposes liability on every person who knows of an
26 impending violation of 42 U.S.C. § 1985 but neglects or refuses to prevent the
27 violation. However, "a cause of action is not provided under 42 U.S.C. § 1986
28 absent a valid claim for relief under section 1985." Trelice v. Pedersen, 769

1 F.2d 1398, 1403 (9th Cir. 1985); Rasmussen v. City of Redondo Beach, No.
2 07-7743, 2008 WL 4450322, at *9 (C.D. Cal. Sept. 29, 2008).

3 **VI.**

4 **CONCLUSION**

5 To summarize, the Court finds that: (1) Plaintiffs' official-capacity
6 claims are subject to dismissal; (2) all of Plaintiffs' claims against Defendants
7 Swanson, Anderson, Hooper, Will, Kiguelman, Worrell, Atkins, or Juarez are
8 subject to dismissal; (3) all of Plaintiffs' claims against the LASD are subject to
9 dismissal; (4) Plaintiffs' Monell claims against the County are subject to
10 dismissal; (5) Plaintiffs' First Amendment claims are subject to dismissal; (6)
11 Plaintiffs' assault and battery and Fourth Amendment claims against
12 Defendants Luna and Wallace are subject to dismissal; (7) Plaintiffs' Fifth
13 Amendment retaliation claims are subject to dismissal; (8) Plaintiffs' due
14 process claims are subject to dismissal; (9) Plaintiffs' equal protection claims
15 are subject to dismissal; (10) Plaintiffs' color of law claims are subject to
16 dismissal; (11) Plaintiffs' claims for violations of California Civil Code § 52.1
17 are subject to dismissal; (12) Plaintiffs' claims of intentional infliction of
18 emotional distress are subject to dismissal; (13) Plaintiffs' extortion claims are
19 subject to dismissal; (14) Plaintiffs' extortion claims are subject to dismissal;
20 (15) Plaintiffs' claims for violations of California Civil Code § 52.5 are subject
21 to dismissal; and (16) Plaintiffs' claims for violations of 42 U.S.C. § 1986,
22 1985(2), and 1985(3) are subject to dismissal.¹

23
24 _____
25 ¹ The Court thus finds that Plaintiffs have adequately pleaded claims of
26 assault and battery, Fourth Amendment violations, and false
27 arrest/imprisonment against Defendants Guerrero, Park, Romero, Marchello,
28 Orbe, Gillinets, and North. To the extent Plaintiffs decide to file a Second
Amended Complaint that is limited to those claims against those Defendants
in their individual capacity, the Court will order service of the Second

1 For the reasons discussed above, the FACs are subject to dismissal.
2 Because it is not absolutely clear that at least some of Plaintiffs' pleading
3 deficiencies cannot be cured by amendment, such dismissal will be with leave
4 to amend. Accordingly, if Plaintiffs still desire to pursue their claims, each
5 shall file a Second Amended Complaint within thirty-five (35) days of the date
6 of this Order remedying the deficiencies discussed above. Plaintiffs should
7 omit claims that lack a legal basis. Each Second Amended Complaint should
8 bear the docket number assigned in the applicable case; be labeled "Second
9 Amended Complaint"; and be complete in and of itself without reference to
10 the prior complaints or any other pleading, attachment or document.

11 **Plaintiffs are admonished that, if any or all of them fails to timely file**
12 **a Second Amended Complaint, the Court will recommend that any such**
13 **action be dismissed with prejudice for failure to diligently prosecute.**

14
15 Dated: November 20, 2015



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17 DOUGLAS F. McCORMICK
18 United States Magistrate Judge
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26
27 Amended Complaint by the United States Marshal's Service on those named
28 Defendants.