

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

O

**United States District Court
Central District of California**

BRYAN BARELLO,

Plaintiff,

v.

CITY OF LONG BEACH, LONG
BEACH UNIFIED SCHOOL DISTRICT,
JAMES KROEGER, STEPHAN
RITCHIE, TIMOTHY OLSON, STEVEN
DUONG, DANNY CORONEL,
ERNESTO MORA, and DOES 1 through
10, inclusive,

Defendants.

Case No. 2:18-cv-04286-ODW(EX)

**ORDER DENYING DEFENDANTS’
MOTION TO DISMISS THE
COMPLAINT AGAINST
DEFENDANTS LONG BEACH
UNIFIED SCHOOL DISTRICT,
STEVEN DUONG, DANNY
CORONEL, AND ERNESTO MORA
[28] AND GRANTING
DEFENDANTS’ MOTION TO
STRIKE [29]**

I. INTRODUCTION

Presently before the Court is Defendants Steven Duong, Danny Coronel, Ernesto Mora, and Long Beach Unified School District’s Motion to Dismiss the Complaint for failure to state a claim and Motion to Strike portions of Barello’s Complaint that seek punitive damages. For the reasons discussed below, the Court **DENIES** Defendants’ Motion to Dismiss (ECF No. 28) and **GRANTS** Defendants’ Motion to Strike (ECF No. 29).¹

¹ After carefully considering the papers filed in support of the motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. FACTUAL BACKGROUND²**

2 Plaintiff Bryan Barello (“Barello”) is divorced and claims that he had custody
3 of his five daughters on May 27, 2016. (Compl. ¶ 22, ECF No. 1.) On that day, he
4 picked up his two eldest daughters and was picking up his three younger daughters
5 from a Long Beach preparatory school when his two eldest daughters became upset
6 and got out of his vehicle. (*Id.* ¶¶ 21–23.) One daughter called her mother while the
7 other yelled at Barello. (*Id.* ¶ 24.) The commotion caused other parents to summon
8 school officials, who in turn called the police. (*Id.* ¶ 25.)

9 After the police officers arrived, Officer Stephan Ritchie (“Ritchie”) notified
10 Barello that although he had custody of his daughters that day, the Court order stated
11 that he could not force his oldest daughters to go with him. (*Id.* ¶ 30.) Barello’s ex-
12 wife arrived, and Officer James Kroeger (“Kroeger”) stood with Barello while Officer
13 Ritchie spoke with her. (*Id.* ¶ 31.) Long Beach Unified School District (“LBUSD”)
14 School Safety Officers (“SSO”) Steven Duong (“Duong”), Danny Coronel
15 (“Coronel”), and Ernesto Mora (“Mora”) stood with Officer Kroeger. (*Id.* ¶ 34.)

16 According to Barello, Officer Kroeger and Barello exchanged words and then
17 Officers Ritchie and Kroeger stood shoulder to shoulder to obstruct Barello’s
18 daughters’ view while Officer Ritchie punched him in the upper torso. (*Id.* ¶¶ 36–41.)
19 Officer Kroeger informed Barello that he was being arrested for disturbing the peace,
20 and Officer Ritchie, and SSOs Duong, Coronel, and Mora grabbed Barello as Officer
21 Kroeger handcuffed him. (*Id.* ¶¶ 43–46.) Barello claims that Officers Kroger and
22 Ritchie, with SSOs Duong, Coronel, and Mora, collectively escorted him to the patrol
23 car while one of them deliberately shoved his wrists up behind his back to exert pain
24 upon his shoulders, arms, wrists, and hands. (*Id.* ¶ 47.) The officers placed Barello
25
26

27 ² The facts are drawn from Barello’s Complaint and taken as true at this procedural stage.
28 See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 inside a Long Beach police patrol car, and Officer Kroeger took him to jail. (*Id.*
2 ¶¶ 49, 52.)³

3 On May 21, 2018, Barello filed his Complaint against the City of Long Beach
4 and Long Beach Police Officers Kroeger, Ritchie, and Timothy Olson (collectively,
5 “LBPD Defendants”), as well as LBUSD and LBUSD SSOs Duong, Coronel, and
6 Mora (collectively, “LBUSD Defendants”). (*See generally id.*) Barello brought
7 causes of action for (1) unreasonable seizure of person – unlawful arrest without
8 warrant or probable cause under the Fourth Amendment (42 U.S.C. § 1983);
9 (2) excessive and unreasonable use of force on person under the Fourth Amendment
10 (42 U.S.C. § 1983); (3) violation of First Amendment rights (42 U.S.C. § 1983); and
11 (4) loss of parent-child relationship without Due Process of the law under the Fourth
12 and Fourteenth Amendments (42 U.S.C. § 1983). (*Id.*)

13 LBUSD Defendants move to dismiss all claims against them on the basis that
14 Barello has failed to state a claim against them. (Mot. to Dismiss (“Mot.”), ECF
15 No. 28.) LBUSD Defendants also move to strike portions of Barello’s Complaint
16 seeking punitive damages. (Mot. to Strike (“MTS”), ECF No. 29.) Barello opposes
17 the motion to dismiss. (Opp’n, ECF No. 34.) Both motions are before this Court for
18 consideration.

19 III. MOTION TO DISMISS

20 A. LEGAL STANDARD

21 A court may dismiss a complaint pursuant to Rule 12(b)(6) for “lack of a
22 cognizable legal theory or . . . [in]sufficient facts alleged under a cognizable legal
23 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To
24 survive a motion to dismiss, a complaint need only satisfy “the minimal notice
25 pleading requirements of Rule 8(a)(2)”: a short and plain statement of the claim.

26
27 ³ Barello asserts additional factual allegations as to the LBPD Defendants following his arrest. (*See*
28 *id.* ¶¶ 52–59.) The Court does not recite those allegations here, as they are irrelevant to disposition
of the LBUSD Defendants’ motions.

1 *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The “[f]actual allegations must be
2 enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v.*
3 *Twombly*, 550 U.S. 544, 555 (2007). That is, the “complaint must contain sufficient
4 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
5 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.*, 550 U.S. at
6 570)).

7 The determination of whether a complaint satisfies the plausibility standard is a
8 “context-specific task that requires the reviewing court to draw on its judicial
9 experience and common sense.” *Id.* at 679. A court is generally limited to the
10 pleadings and must construe “[a]ll factual allegations set forth in the complaint . . . ‘as
11 true and . . . in the light most favorable’” to the plaintiff. *Lee v. City of Los Angeles*,
12 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Epstein v. Wash. Energy Co.*, 83 F.3d
13 1136, 1140 (9th Cir. 1996)). But a court need not blindly accept “allegations that are
14 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”
15 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

16 **B. UNREASONABLE SEIZURE OF PERSON – UNLAWFUL ARREST WITHOUT**
17 **WARRANT OR PROBABLE CAUSE UNDER FOURTH AMENDMENT**
18 **(42 U.S.C. § 1983)**

19 LBUSD Defendants move to dismiss Barello’s first cause of action on the basis
20 that they are SSOs, not law enforcement officers, and could not have effected the
21 allegedly unlawful arrest. (Mot. 3.) However, Barello’s first cause of action is for
22 “unreasonable seizure of person—unlawful arrest without warrant or probable cause,”
23 not only unlawful arrest. (Compl. 9.) Taking all factual allegations as true and in the
24 light most favorable to Barello, he sufficiently pled a claim for unreasonable seizure
25 under 42 U.S.C. § 1983 against LBUSD Defendants.

26 To establish a claim under 42 U.S.C. § 1983, plaintiffs must plead that (1) the
27 defendants acting under color of state law (2) deprived plaintiffs of rights secured by
28 the Constitution or federal statutes. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th

1 Cir. 1986). “A public employee acts under color of state law while acting in his
2 official capacity or while exercising his responsibilities pursuant to state law.” *West v.*
3 *Atkins*, 487 U.S. 42, 49 (1988). “[T]he plaintiff must also demonstrate that the
4 defendant’s conduct was the actionable cause of the claimed injury.” *Harper v. City*
5 *of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). In addition to the preliminary §
6 1983 requirements, a claim of unreasonable seizure of person requires “government
7 actors [to] have, ‘by means of physical force or show of authority, . . . in some way
8 restrained the liberty of a citizen.’” *Graham v. Connor*, 490 U.S. 386, 395 n.10
9 (1989) (omissions in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)).

10 Here, Barello sufficiently pled a cause of action for unreasonable seizure
11 against the LBUSD Defendants under § 1983. Barello alleges that LBUSD
12 Defendants Duong, Coronel, and Mora acted under color of state law because LBUSD
13 employed them as SSOs and they acted within the scope of their employment when
14 they assisted LBPD Defendant Officers Ritchie and Kroeger. (Compl. ¶¶ 9–11.)
15 Barello also alleges that the acts of LBUSD Defendants Duong, Coronel, and Mora
16 deprived him of his constitutional rights because they unreasonably seized him and
17 applied excessive force against him under the Fourth Amendment (*id.* ¶¶ 43, 47, 66,
18 70, 71), suppressed Barello’s freedom of speech under the First Amendment (*id.*
19 ¶¶ 76, 79), and deprived him of his parent-child relationship under the Fourteenth
20 Amendment (*id.* ¶¶ 91, 93). Moreover, Barello alleges that LBUSD Defendants’ acts
21 caused him harm. (*Id.* ¶¶ 58, 73, 88, 93.) Defendant Officers Kroeger and Ritchie,
22 together with LBUSD Defendants Duong, Coronel and Mora “grabbed” Barello when
23 Kroeger notified Barello that he was under arrest, and they all “escorted” him to the
24 waiting patrol car. (*Id.* ¶¶ 43, 47.) Barello alleges that as they “escorted” him, “one
25 of the those [sic] and/or DOE officers [was] jamming and shoving [Barello’s] wrists
26 up behind his back with great force,” inflicting “pain upon [Barello’s] shoulders,
27 arms, wrists and hands.” (*Id.* ¶ 47.) Finally, accepting Barello’s allegations as true,
28

1 LBUSD Defendants “grabbed” Barello and “escorted” him to the waiting patrol car,
2 thereby restraining his liberty.

3 As Barello has sufficiently alleged a cause of action for unreasonable seizure
4 under § 1983, the Court **DENIES** LBUSD Defendants’ motion to dismiss Barello’s
5 first cause of action.

6 **C. EXCESSIVE/UNREASONABLE USE OF FORCE ON PERSON – VIOLATION OF**
7 **FOURTH AMENDMENT RIGHTS (42 U.S.C. § 1983)**

8 LBUSD Defendants move to dismiss Barello’s second cause of action on the
9 basis that Barello asserts no allegations that LBUSD Defendants detained Barello, and
10 that the only allegations of excessive force are against LBPD Defendants, for instance
11 when Ritchie punched Barello. (Mot. 4.) However, taking all factual allegations as
12 true and in the light most favorable to Barello, Barello sufficiently pled an excessive
13 use of force claim against LBUSD Defendants.

14 In addition to the preliminary § 1983 requirements addressed above, a cause of
15 action for excessive force is adjudicated under the Fourth Amendment’s “objective
16 reasonableness” standard. *Graham*, 490 U.S. at 399. Application of this
17 reasonableness test requires considering the factual circumstances and a multitude of
18 factors, “including the severity of the crime at issue, whether the suspect poses an
19 immediate threat to the safety of the officers or others, and whether he [was] actively
20 resisting arrest or attempting to evade arrest by flight.” *Id.*

21 Here, Barello’s allegations address both the relevant factual circumstances and
22 the *Graham* factors. Barello alleges that he never “assaulted, battered, threatened,
23 resisted, or evaded” Defendants, and that Defendants, including LBUSD Defendants,
24 had no reason to believe he posed a threat. (Compl. ¶¶ 61–62.) Nonetheless,
25 according to Barello, LBUSD Defendants “grabbed” Barello and “escorted” him to
26 the patrol vehicle while pulling his “wrists up behind his back to deliberately inflict
27 pain upon [his] shoulders, arms, wrists and hands.” (*Id.* ¶¶ 43, 47, 66–67.)

28

1 Therefore, Barello sufficiently pled a cause of action for unreasonable use of
2 force under § 1983. Accordingly, the Court **DENIES** LBUSD Defendants’ motion to
3 dismiss Barello’s second cause of action.

4 **D. VIOLATION OF FIRST AMENDMENT RIGHTS AND PARENT-CHILD**
5 **RELATIONSHIP (42 U.S.C. § 1983)**

6 LBUSD Defendants move to dismiss Barello’s third and fourth causes of action
7 solely on the basis that they did not arrest Barello, so they cannot be liable for
8 Barello’s alleged losses. (Mot. 4–5.) However, Barello’s allegations regarding the
9 suppression of speech and loss of parent-child relationship are premised on LBUSD
10 Defendants’ unreasonable seizure and use of excessive force. (See Compl. ¶¶ 79–80,
11 93.) As discussed above, the Court finds that Barello sufficiently pled his first and
12 second causes of action against LBUSD Defendants. Although Barello’s factual
13 allegations here are thin, LBUSD Defendants argue only that these claims fail because
14 Barello’s first two causes of action fail. (Mot. 4–5.) Accordingly, the Court **DENIES**
15 LBUSD Defendants’ motion to dismiss Barello’s third and fourth causes of action.

16 **E. CONCLUSION ON MOTION TO DISMISS**

17 For the reasons discussed above, the Court **DENIES** LBUSD Defendants’
18 motion to dismiss Barello’s Complaint as to them. (ECF No. 28.)

19 **IV. MOTION TO STRIKE**

20 LBUSD Defendants also move to strike portions of Barello’s Complaint
21 seeking punitive damages. (See MTS 4–5.) Barello filed a document entitled
22 “Plaintiff’s Corrected Memorandum of Points and Authorities In Opposition to
23 Defendants’ Motion to Dismiss and Motion to Strike Complaint for Damages.”
24 (Opp’n 1.)

25 “[A] court may strike from a pleading an insufficient defense or any redundant,
26 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Additionally,
27 the failure to oppose a motion “may be deemed consent to the granting or denial of the
28 motion.” C.D. Cal. L.R. 7-12; *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

1 Although Plaintiff filed one opposition to both the motion to dismiss and
2 motion to strike, Plaintiff’s opposition did not substantively address the motion to
3 strike. Instead, the “Opposition” contains headings and arguments that relate only to
4 the motion to dismiss, and not the motion to strike. (*See generally id.*) In fact, the
5 conclusion requests only that the Court deny the motion to dismiss. (*Id.* at 6.)
6 Accordingly, the Court finds that the “Opposition” is an opposition in name only, and
7 Barello failed to oppose the motion to strike.

8 Accordingly, the Court **GRANTS** LBUSD Defendants’ motion to strike the
9 portions of Barello’s Complaint specifically seeking punitive damages.

10 The following portions are hereby struck from Barello’s Complaint:

- 11 • Complaint ¶ 59: “sufficient for an award of punitive damages against said
12 defendants (save CITY and LBUSD); in an amount to be shown at trial, in
13 excessive of \$5,000,000.00.”;
- 14 • Complaint ¶ 74: “sufficient for an award of punitive / exemplary damages
15 against all defendants and each of them, save defendants CITY and LBUSD,
16 in an amount to be proven at trial which is in excess of \$5,000,000.00.”;
- 17 • Complaint ¶ 89: “sufficient for an award of punitive/ exemplary damages
18 against all defendants and each of them, save defendants CITY and LBUSD,
19 in an amount to be proven at trial which is in excess of \$5,000,000.00.”;
- 20 • Complaint ¶ 94: “sufficient for an award of punitive damages against said
21 defendants (save CITY and LBUSD); all in an amount to be shown at trial,
22 in excess of \$5,000,000.00.”; and
- 23 • Complaint p.27–28, Prayer for Relief ¶ 2: “For an award of punitive /
24 exemplary damages in an amount to be shown at trial against all defendants,
25 save defendants CITY and LBUSD, in an amount to be shown at trial, in
26 excess of \$5,000,000.00.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the reasons discussed above, the Court **DENIES** LBUSD Defendants' Motion to Dismiss (ECF No. 28) and **GRANTS** LBUSD Defendants' Motion to Strike (ECF No. 29).



IT IS SO ORDERED.

December 6, 2018

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE