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6 **United States District Court**
7 **Central District of California**
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9 CHRISTOPHER PYLE,
10
11 Plaintiff,

12 v.

13 THE CITY OF REDONDO BEACH
14 POLICE DEPARTMENT, *et al.*,
15 Defendants.

Case No. 2:19-cv-09433-ODW (FFMx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR JUDGMENT ON
THE PLEADINGS [9]**

16 **I. INTRODUCTION**

17 Before the Court is Defendants' Motion for Judgment on the Pleadings (the
18 "Motion"). (Mot. J. on Pleadings ("Mot."), ECF No. 9.) On September 24, 2019,
19 Plaintiff Christopher Pyle initiated this action against Defendants City of Redondo
20 Beach (the "City"), erroneously sued as the City of Redondo Beach Police
21 Department, John Anderson, and Derek Theurer (collectively, "Defendants") in Los
22 Angeles County Superior Court. (Compl., ECF No. 1-2.) On November 1, 2019,
23 Defendants removed this case to federal court. (Notice of Removal, ECF No. 1.) On
24 February 13, 2020, Defendants filed this Motion, which the parties have now fully
25 briefed. (ECF Nos. 9, 13–14.) For the reasons that follow, the Court **GRANTS IN**
26 **PART AND DENIES IN PART** Defendants' Motion.¹

27
28 ¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 Plaintiff further alleges that the police officers used excessive force against him.
2 (Compl. ¶¶ 15–23.) Specifically, Plaintiff claims that three officers pinned him to the
3 ground, twisted his arms behind his back, and put him in an ankle lock after Plaintiff
4 accused the officers of harassment and requested their badge numbers. (Compl.
5 ¶¶ 19–21.) Plaintiff also claims that one officer told him, “[y]ou’re not so tough
6 anymore, are you, screaming like a little girl?” while he was pinned to the ground.
7 (Compl. ¶ 22.) According to Plaintiff, the officers did not look at his identification,
8 did not search the vehicle, and ultimately made no arrests. (Compl. ¶ 25.) After the
9 officers pulled Plaintiff to his feet, they ran name checks on the three men and gave
10 them an opportunity to explain themselves. (Compl. ¶ 25.) Plaintiff and his friends
11 told the officers they had only been “kidding around” and all three men were released.
12 (Compl. ¶ 25.)

13 On September 24, 2019, Plaintiff filed a Complaint against Defendants
14 asserting four claims for: (1) violations of the Federal Civil Rights Act under 42
15 U.S.C. § 1983; (2) violations of the Bane Civil Rights Act under California Civil
16 Procedure Code section 52.1; (3) battery; and (4) negligence. (Compl. ¶¶ 30–54.)
17 Plaintiff alleges that he suffered physical and emotional injuries and has been unable
18 to work as a construction laborer as a result of the police encounter. (Compl. ¶ 28.)

19 IV. LEGAL STANDARD

20 After the pleadings are closed, but within such time as to not delay the trial, any
21 party may move for judgment on the pleadings. Fed. R. Civ P. 12(c). The standard
22 applied to a Rule 12(c) motion is essentially the same as that applied to Rule
23 12(b)(6) motions; a judgment on the pleadings is appropriate when, even if all the
24 allegations in the complaint are true, the moving party is entitled to judgment as a
25 matter of law. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007) (“Factual
26 allegations must be enough to raise a right to relief above the speculative level . . . on
27 the assumption that all the allegations in the complaint are true (even if doubtful in
28

1 fact)” (citations omitted)); *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430
2 F.3d 1036, 1042 (9th Cir. 2005).

3 When ruling on a motion for judgment on the pleadings, a court should construe
4 the facts in the complaint in the light most favorable to the plaintiff, and the movant
5 must clearly establish that no material issue of fact remains to be resolved.
6 *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988). However,
7 “conclusory allegations without more are insufficient to defeat a motion
8 [for judgment on the pleadings].” *Id.* If judgment on the pleadings is appropriate, a
9 court has discretion to grant the non-moving party leave to amend, grant dismissal, or
10 enter a judgment. *See Lonberg v. City of Riverside*, 300 F. Supp. 2d 942, 945 (C.D.
11 Cal. 2004). Leave to amend may be denied when “the court determines that the
12 allegation of other facts consistent with the challenged pleading could not possibly
13 cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d
14 1393, 1401 (9th Cir. 1986). Thus, leave to amend “is properly denied . . . if
15 amendment would be futile.” *Carrico v. City of San Francisco*, 656 F.3d 1002, 1008
16 (9th Cir. 2011).

17 V. DISCUSSION

18 Defendants move for judgment on the pleadings on two grounds. First,
19 Defendants argue that Plaintiff cannot maintain a Bane Act claim because he failed to
20 specifically allege a violation of California Civil Procedure Code section 52.1 in the
21 Government Claim Form he submitted to the City. Second, Defendants contend that
22 Plaintiff alleges insufficient facts to state a negligence claim. The Court addresses
23 each argument in turn.

24 A. Bane Act Violation (Second Cause of Action)

25 Defendants contend that “each cause of action and set of allegations of the
26 complaint must have been presented in the government tort claim,” (Mot. 5
27 (citing *Nelson v. State*, 139 Cal. App. 3d 72, 79 (1982))), whereas Plaintiff’s “tort
28 claim does not include a claim for violation of Civil Code § 52.1,” (Mot. 5). Plaintiff

1 counters that he was not required to specifically identify a violation of the Bane Act in
2 his tort claim to comply with the requirements of the California Tort Claims Act (“Tort
3 Act”). (Pl.’s Opp’n to Mot. (“Opp’n”) 5, ECF No. 13.)

4 To state a tort claim against a California public entity or employee, a plaintiff
5 must allege compliance with the Tort Act. *Beagle v. Schwarzenegger*, 107 F. Supp. 3d
6 1056, 1072 (E.D. Cal. 2014). California’s Tort Act section 945.4 requires a
7 prospective plaintiff to present a written claim to the public entity before filing a
8 lawsuit for damages. Cal. Gov’t Code § 945.4. There are strict procedures for the
9 claim process, including specific factual content that must be in the claim and a time
10 bar of six months for claims related to personal injury. *Id.* §§ 910, 911.2(a). Section
11 910 requires the claim to include: “(c) The date, place and other circumstances of the
12 occurrence or transaction which gave rise to the claim asserted” and “(d) [a] general
13 description of the indebtedness, obligation, injury, damage or loss incurred so far as it
14 may be known at the time of presentation of the claim.” *Id.* § 910(c), (d). A failure to
15 allege facts demonstrating or excusing compliance with the claim presentation
16 requirements of the Tort Act subjects a state law claim against a public entity or
17 employee to dismissal. *McKinney v. City of Hawthorne*, No. CV 08-07-GW (Ex),
18 2008 WL 11338194, at *3 (C.D. Cal. Feb. 11, 2008).

19 “The purpose of [the Tort Act] is ‘to provide the public entity sufficient
20 information to enable it to adequately investigate claims and to settle them, if
21 appropriate, without the expense of litigation.’” *Stockett v. Ass’n of Cal. Water*
22 *Agencies Joint Powers Ins. Auth.*, 34 Cal. 4th 441, 446 (2004) (quoting *City of San*
23 *Jose v. Super. Ct.*, 12 Cal. 3d 447, 455 (1974)). “[A] claim need not contain the detail
24 and specificity required of a pleading, but need only ‘fairly describe what [the] entity
25 is alleged to have done.’” *Id.* (quoting *Shoemaker v. Myers*, 2 Cal. App. 4th 1407,
26 1426 (1992)). “If the claim is rejected and the plaintiff ultimately files a complaint
27 against the public entity, the facts underlying each cause of action in the complaint
28 must have been fairly reflected in a timely claim.” *Id.* at 447. In other words, the

1 claim and the complaint must be “predicated on the same fundamental facts” and a
2 party may not “shift the fundamental facts about her injury.” *White v. Super. Ct.*, 225
3 Cal. App. 3d 1505, 1510–11 (1990). A complaint will be barred “where there has been
4 a complete shift in allegations, usually involving an effort to premise civil liability on
5 acts or omissions committed at different times or by different persons than those
6 described in the claim.” *Stockett*, 34 Cal. 4th at 447 (internal quotation marks
7 omitted). “Where the complaint merely elaborates or adds further detail to a claim,
8 but is predicated on the same fundamental actions or failures to act by the defendants,
9 courts have generally found the claim fairly reflects the facts pled in the complaint.”
10 *Id.*

11 Here, Plaintiff’s claim sent to the City states in pertinent part:

12 **How Did the Damage/ Loss/ Injury occur? (Be Specific)**

13 Mr. Pyle was outside his vehicle, telling a friend to leave his car so he
14 could drive to work. As they were speaking, several Redondo Beach
15 police cars pulled up to the scene. Mr. Pyle complied, but remarked
16 on the fact that having guns drawn was unnecessary for the situation,
17 and asked for their badge numbers. This is when an unknown officer
18 twisted Mr. Pyle’s arm into a lock and put his knee on his head,
19 putting his full bodyweight onto Mr. Pyle’s head and neck, while
20 yelling into his ear. “You want my badge number motherfucker?
21 Now you’re crying like a little girl.” Another officer was holding his
22 legs down and also putting them in a lock. The officers held him in
23 this strained position for several minutes, all for no just cause, because
24 Mr. Pyle requested public information from them.

25 **What particular act or omission do you claim caused the Damage/
26 Loss/ Injury?**

27 The officers, in the course and scope of employment, used
28 unreasonable force against Mr. Pyle, who was not committing a crime
or threatening anyone, and wrongfully restrained and detained him.
They committed battery, intentional and negligent infliction of
emotional distress, and a violation of Mr. Pyle’s civil rights. The
Redondo Beach PD failed to properly train the officers.

1 (Government Claim Form 7.) Although Plaintiff’s Government Claim Form only
2 identifies “battery, intentional and negligent infliction of emotional distress, and a
3 violation of Mr. Pyle’s civil rights” without specifying the pertinent statutes, Plaintiff
4 alleges the same “fundamental facts” for all of his claims, which have at their core the
5 officers’ alleged use of unreasonable force against him. *See, e.g., IDC v. City of*
6 *Vallejo*, No. CV 13-1987-DAD, 2013 WL 6670557, at *4 (E.D. Cal. Dec. 18,
7 2013) (citing *White*, 225 Cal. App. 3d at 1511) (concluding that tort claim concerning
8 use of excessive force fairly reflected “the complaint’s claims for false arrest, the
9 intentional and negligent infliction of emotional distress, violation of California Civil
10 [Code] § 51.7, negligence[,] and respondeat superior”). While the Complaint here is
11 sparsely pleaded, as far as the Court can tell, the Bane Act cause of action is rooted in
12 the same fundamental facts regarding the officers’ alleged use of unreasonable force.
13 Accordingly, the facts presented in the underlying Government Claim Form would
14 have put the relevant government entities on notice for purposes of investigating and,
15 if necessary, settling the claim. Thus, the Court finds that the Complaint comports
16 with the claim presentation requirements of the Tort Act and **DENIES** Defendants’
17 Motion as to the second cause of action.

18 **B. Negligence (Fourth Cause of Action)**

19 Plaintiff brings negligence claims against all Defendants. (Compl. ¶¶ 51–54.)
20 The City seeks dismissal because Plaintiff cannot seek direct liability of a public
21 entity unless it is founded on a specific statute. (Mot. 6–7.) Defendants Anderson,
22 Theurer, and Does 1–100 seek dismissal because Plaintiff’s allegations are conclusory
23 and based on insufficient facts. (Mot. 7.)

24 In California, a statutory basis is needed to impose direct liability on a
25 government entity. Cal. Gov’t Code § 815(a). As such, Defendants are correct that a
26 claim of direct liability against a public entity for negligence must be based on a
27 specific statute creating a duty of care rather than on the general tort provisions
28 of California Civil Code section 1714. *See Eastburn v. Reg’l Fire Prot. Auth.*, 31 Cal.

1 4th 1175, 1182 (2003). However, public entities are “liable for injury proximately
2 caused by an act or omission of an employee of the public entity within the scope of
3 his employment.” Cal. Gov’t Code § 815.2(a). A public employee is liable for injury
4 to the same extent as a private person “except as otherwise provided by statute.” *Id.*
5 § 820(a). “Thus, the general rule is that public entities are generally liable for the torts
6 of their employees to the same extent as private employers.” *State ex rel. Dep’t of*
7 *Cal. Highway Patrol v. Super. Ct.*, 60 Cal. 4th 1002, 1009 (2015). In other words, in
8 lieu of direct liability, section 815.2(a) provides for vicarious liability against public
9 entities.

10 Plaintiff apparently concedes that he must identify a statute imposing direct
11 liability on the City but argues that the City can be held vicariously liable under state
12 law for the negligence of its employee officers. (Opp’n 6–7.) Indeed, if Plaintiff is
13 permitted to allege negligence claims against Defendants Anderson or Theurer, he
14 should be permitted to allege derivative vicarious liability claims against the City
15 under California Government Code section 815.2(a). *See A.E. ex rel. Hernandez v.*
16 *Cty. of Tulare*, 666 F.3d 631, 638 (9th Cir. 2012) (holding that district court erred in
17 conflating A.E.’s direct and derivative liability claims and dismissing the latter with
18 prejudice because “[a]s long as A.E. is permitted to allege that County employees
19 were negligent, he must also be permitted to allege that the County is derivatively
20 liable”). The Complaint, however, does not make clear whether
21 Plaintiff’s negligence claims against the City are brought under a theory of direct
22 liability, vicarious liability, or both. The entire fourth cause of action lumps together
23 all Defendants and makes no distinction among the three named Defendants in any of
24 the underlying allegations. (*See Compl.* ¶¶ 51–54.) Accordingly, the Court **GRANTS**
25 the Motion as to Plaintiff’s fourth cause of action against the City, **with leave to**
26 **amend**, so that Plaintiff may clarify the bases under which he alleges negligence
27 against the City. *See Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th
28 Cir. 2008) (ruling that leave to amend is proper when amendment is not futile).

1 With respect to the individual Defendants, the Court determines that Plaintiff's
2 allegations are sufficient to maintain his negligence claims. Peace officers have a duty
3 to act reasonably when using force, but the reasonableness of the officer's actions
4 must be determined in light of the totality of the circumstances. *Hayes v. Cty. of San*
5 *Diego*, 57 Cal. 4th 622, 629 (2013). To prevail on a negligence claim, a plaintiff must
6 show that the officers "acted unreasonably and that the unreasonable behavior
7 harmed" the plaintiff. *Price v. Cty. of San Diego*, 990 F. Supp. 1230, 1245 (S.D. Cal.
8 1998); *see also Ortega v. City of Oakland*, No. CV 07-02659-JCS, 2008 WL 4532550,
9 at *14 (N.D. Cal. Oct. 8, 2008).

10 Here, Plaintiff brings Fourth Amendment claims based on the officers' alleged
11 use of excessive force and further alleges negligent use of force under state law.
12 (*See Compl.* ¶¶ 30–36, 53.) Because these civil rights violations suffice to allege the
13 officers breached a duty of care under California law, Plaintiff's negligence claims
14 against the individual officers survive dismissal. Accordingly, the Court **DENIES** the
15 Motion as to Plaintiff's fourth cause of action on that basis.

16 VI. CONCLUSION

17 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN**
18 **PART** Defendants' Motion for Judgment on the Pleadings (ECF No. 9) as follows:

- 19
20 1. The Motion is **GRANTED with leave to amend** as to Plaintiff's fourth
21 cause of action of negligence against the City;
- 22
23 2. The Motion is **DENIED** as to Plaintiff's fourth cause of action of
24 negligence against the remaining Defendants; and
- 25
26 3. The Motion is **DENIED** as to Plaintiff's second cause of action of civil
27 rights violations under the Bane Act.
- 28

1 If Plaintiff chooses to amend his pleadings, he shall file a First Amended
2 Complaint (“FAC”) in conformance with this Order no later than **twenty-one (21)**
3 **days** from the date of this Order. If Plaintiff files a FAC, Defendants shall file a
4 response no later than **fourteen (14) days** from the date of the FAC filing.

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6 **IT IS SO ORDERED.**

7
8 July 20, 2020

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OTIS D. WRIGHT, II
12 **UNITED STATES DISTRICT JUDGE**