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

CHRISTOPHER STONE,  
Plaintiff,  
v.  
CITY OF LOS ANGELES et al.,  
Defendants.

Case № 2:22-cv-01150-ODW (RAOx)  
**ORDER GRANTING COUNTY’S  
MOTION TO DISMISS [21] AND  
CITY’S MOTION TO DISMISS [24]**

**I. INTRODUCTION**

On March 18, 2022, pro se Plaintiff Christopher Stone filed the operative First Amended Complaint (“FAC”) against the City of Los Angeles (the “City”); Los Angeles Police Department (“LAPD”) Chief Michael Moore, Los Angeles City Attorney Mike Feuer, the County of Los Angeles (the “County”); County Sheriff Alex Villanueva; and Herman Thomas (“Thomas”)—for violations of state and federal law arising from an attempt to serve and enforce certain restraining orders. (See FAC, ECF No. 16.) The County and City each filed a separate motion to dismiss pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). The County moves to dismiss all claims Stone asserts against it. (County Mot. Dismiss (“County Mot.”), ECF No. 21.) The City moves to dismiss the sole claim Stone asserts against it. (City Mot. Dismiss (“City Mot.”), ECF No. 24.) As explained below, the Court **GRANTS** both

1 motions.<sup>1</sup>

## 2 II. BACKGROUND

3 This action arises from difficulties Stone encountered when attempting to serve  
4 and later to enforce certain permanent restraining orders against third parties Kareem  
5 Thomas<sup>2</sup> (“K. Thomas”) and Michael Stover. For purposes of these Rule 12(b)(6)  
6 motions, the Court accepts Stone’s well-pleaded allegations as true. *Lee v. City of Los*  
7 *Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

### 8 A. Stone’s Restraining Order Against K. Thomas

9 Defendant Herman Thomas is the father of K. Thomas and lives in the same  
10 apartment building as Stone. (FAC ¶¶ 4, 16.) K. Thomas is homeless and on at least  
11 two occasions, has been placed under a Lanterman-Petris-Short conservatorship in the  
12 care of the Los Angeles County Department of Mental Health, Office of the Public  
13 Guardian. (FAC ¶¶ 1, 21.)

14 In October of 2016, while entering his apartment building, Stone had an  
15 altercation with K. Thomas. (FAC ¶ 13.) K. Thomas yelled at Stone and forcefully  
16 swung open the apartment gate, hurting Stone’s hand. (*Id.*) Stone had several  
17 subsequent interactions with K. Thomas that he characterizes as “terrifying,” and in  
18 February 2018, Stone obtained a permanent restraining order against K. Thomas.  
19 (FAC ¶¶ 15, 19.) The City Attorney’s Office prosecuted K. Thomas “multiple times”  
20 for violating Stone’s restraining order. (FAC ¶ 20.)

21 Sometime in early 2021, Stone’s restraining order against K. Thomas was set  
22 to expire, and Stone set out to renew it. (FAC ¶¶ 34–36.) Stone obtained a temporary  
23 restraining order from the Los Angeles Superior Court, which he needed to serve on  
24 K. Thomas. Believing that K. Thomas was a conservatee in the care of the Director of  
25 the Los Angeles County Department of Mental Health (the “Director”), on  
26 February 19, 2021, Stone filed a public records request with the County asking where

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

<sup>2</sup> Also known as Kaureem Thomas.

1 to serve the Director.<sup>3</sup> (FAC ¶¶ 22, 34–35.) Deputy County Counsel José Silva  
2 emailed Stone and informed him that “[t]his office represents the Office of the Public  
3 Guardian of the County of Los Angeles[] and is authorized to receive service of  
4 process on behalf of the [Director] in the above-referenced matter with respect to the  
5 Temporary Restraining Order issued against the conservatee,” K. Thomas. (FAC  
6 ¶ 35.)

7 Pursuant to these instructions, Stone hired a third party to serve the Director  
8 with the temporary restraining order by effecting service on the County Counsel.  
9 (FAC ¶ 36.) At the hearing to renew Stone’s permanent restraining order, a Los  
10 Angeles Superior Court Judge found the service of the temporary restraining order to  
11 be “proper and valid,” and on March 9, 2021, Stone’s permanent restraining order  
12 against K. Thomas was renewed. (*Id.*)

13 Stone filed the permanent restraining order with the County Sheriff’s  
14 Department, instructing the Sheriff to serve the restraining order on the County  
15 Counsel pursuant to California Code of Civil Procedure section 416.70, in order to  
16 effect service on K. Thomas.<sup>4</sup> (FAC ¶ 37.) Thereafter, Stone received a letter from  
17 the Sheriff’s Department rejecting the filing and informing Stone that the Sheriff  
18 Department does not “subserve restraining orders” because as the “order states[,]”  
19 respondent must be personally served” and California Code of Civil Procedure  
20 section 416.70 refers to a summons and complaint order and not a restraining order.  
21 (FAC ¶ 38.) Then, on April 1, 2021, Stone received a letter in response to his earlier  
22 public records request from another Deputy County Counsel, Emily Issa, that read:

23 This is in response to your February 19, 2021 request for the address  
24 for service of legal process on the [Director]. Service of legal process

25 \_\_\_\_\_  
26 <sup>3</sup> In its Motion, the County stated that “conservatees are actually conservatees of the Public  
Guardian, not the Director of the Department of Mental Health.” (County Mot. 4.)

27 <sup>4</sup> “A summons may be served on a person . . . for whom a guardian, conservator, or similar fiduciary  
28 has been appointed by delivering a copy of the summons and of the complaint to his guardian,  
conservator, or similar fiduciary and to such person . . . the court in which the action is pending may  
dispense with delivery to such person.” Cal. Code Civ. Pro. § 416.70.

1 for any County department may be made with the Executive Office of  
2 the Board of Supervisors at 500 W. Temple Street, Los Angeles,  
3 California, 90012. The building is currently closed to the public;  
4 however, upon arrival at the entrance, process servers should notify  
5 security the reason for their visit, and someone from the Executive  
6 Office of the Board of Supervisors will meet them to accept service.

7 (FAC ¶ 39.) After the Sheriff’s Department refused to serve his permanent  
8 restraining order, Stone contacted the County Counsel, who informed him that the  
9 County Counsel was in the process of moving offices and suggested that Stone serve  
10 the Executive Office of the County’s Board of Supervisors (“Executive Office”) as  
11 Emily Issa advised in her letter. (FAC ¶ 40.)

12 On May 11, 2021, Stone received a *Tarasoff* warning<sup>5</sup> from a Public Guardian  
13 Deputy Linda Martinez, informing him that K. Thomas had left treatment without his  
14 conservator’s approval. (FAC ¶ 22.) Still attempting to serve the permanent  
15 restraining order on K. Thomas, Stone contacted the Executive Office, and a staff  
16 member informed him that he could make an appointment for someone to meet  
17 Stone’s process servers, but when Stone informed the staff member that he was  
18 serving a permanent restraining order, the staff member refused to schedule an  
19 appointment, stating that the County only accepted claims for damages. (FAC ¶ 41.)  
20 “Desperate to serve the restraining order,” Stone told his process server to call the  
21 Executive Office and “falsely tell them he would serve a claim for damages.” (FAC  
22 ¶ 42.) Stone’s process server followed Stone’s instruction and served the Executive  
23 Office with the renewed permanent restraining order against K. Thomas on May 13,  
24 2021. (*Id.*) Stone recorded a video of the service on his cellphone. (*Id.*)

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26 <sup>5</sup> “*Tarasoff* warning” refers to the California Supreme Court case *Tarasoff v. Regents of Univ. of*  
27 *California*, 17 Cal. 3d 425 (1976), where the Court recognized that therapists may have a duty to  
28 protect intended victim from dangers posed by their patients, which could include a duty to warn the  
intended victim of the danger. *Id.* at 431. A *Tarasoff* warning therefore refers to the therapist’s  
notification, to the intended victim, that the patient may be a threat to the intended victim’s life.

1           **B. Stone’s Restraining Order Against Stover**

2           At some unknown time, Stone also obtained a restraining order against  
3 nonparty Michael Stover. (FAC ¶ 27.) Stone does not provide any further allegations  
4 regarding his relationship to Stover or the circumstances of this restraining order.

5           **C. Stone’s Attempts to Enforce His Restraining Orders**

6           On March 31, 2021, Stone called LAPD and reported that Stover was violating  
7 his restraining order. (*Id.*) When officers arrived, Stone showed them his restraining  
8 order and a video recording of a third-party serving Stover the restraining order. (*Id.*)  
9 The officers did not arrest Stover, informing Stone that the process server needs to  
10 read aloud the terms of the order to a restrained person. (*Id.*) The officers then read  
11 the restraining order terms out loud to Stover and allowed him to walk away. (*Id.*)  
12 An officer explained to Stone that “for service to be valid, they have to be served and  
13 read the order. Basically, they have to acknowledge and understand that they’ve been  
14 served with the order and are aware of the limitations the order basically presents.”  
15 (*Id.* (internal quotation marks omitted).) Another officer informed Stone that “he”  
16 (presumably Stover), “wasn’t aware before of the details of [the order] but we made it  
17 like [sic] we said more than crystal clear for him.” (*Id.*)

18           On September 17, 2021, Stone observed K. Thomas outside of his apartment in  
19 violation of Stone’s restraining order. (FAC ¶ 28.) Stone called the LAPD, who  
20 dispatched officers to Stone’s apartment building. (*Id.*) Stone showed the officers a  
21 copy of the restraining order. (*Id.*) The officers “inquired into the manner of service  
22 of the restraining order” and Stone explained that K. Thomas was a conservatee and  
23 that K. Thomas’ conservator was served, showing the officers the video recording of  
24 Stone’s process server serving the Executive Office. (*Id.*) The officers “refused to  
25 execute the order” and instead, Sergeant Kevin Austin “read aloud the terms of the  
26 order” to K. Thomas and then allowed K. Thomas to walk away. (*Id.*) Sergeant  
27 Austin then provided Stone with a new proof of service. (*Id.*)

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1 According to Stone, the City “has a policy of avoiding the arrest of homeless  
2 individuals, especially for misdemeanors” and “the City’s police officers follow this  
3 policy by disputing the validity of service of process orders.” (FAC ¶ 26.)

4 **D. Stone’s FAC**

5 Stone originally filed this action in state court but on February 18, 2022, the  
6 City removed the action to this Court. (*See* Notice Removal, ECF No. 1.) On  
7 March 18, 2022, Stone filed the operative FAC. (*See* FAC.)

8 Under the FAC’s header “First Claim for Relief (Violation of Due Process[]),”  
9 Stone alleges that he was “denied due process of law” when LAPD officers refused to  
10 accept the validity of the service of his restraining orders and when the County refused  
11 to accept service of his restraining order against K. Thomas. (FAC ¶ 44.)

12 Under the header “Third Claim for Relief (Negligent Infliction of Emotional  
13 Distress)” Stone alleges that under California Penal Code section 836(c)(1), LAPD  
14 officers had a duty to execute his restraining orders because the officers had probable  
15 cause to believe the restrained persons “had valid notice” of the restraining order(s)  
16 and were in violation of the order(s). (FAC ¶ 50.) Stone also alleges that the  
17 County’s Executive Office had a duty to receive service of restraining orders under  
18 California Government Code section 960.8, and that the County breached that duty by  
19 refusing to accept service of the restraining order against K. Thomas. (FAC ¶ 52.)  
20 Finally, Stone alleges that the County is liable for the acts and omissions of the Sheriff  
21 and the Executive Office staff under California Government Code section 815.2.  
22 (FAC ¶ 54.) Specifically, Stone alleges that the County Sheriff had the duty to serve  
23 Stone’s restraining order under California Government Code section 26608 and that  
24 the Sheriff breached that duty when the Sheriff refused to serve the restraining order  
25 on K. Thomas’s conservator. (FAC ¶ 53.)

26 Stone seeks a declaratory judgment that the LAPD officers have a duty “to  
27 execute restraining orders when a victim presents them with a restraining order  
28 bearing a court seal and signed proof of serv[ice] and the restrained person is in the

1 presence of the victim, and for injunctive relief enjoining” the LAPD Police Chief “to  
2 issue a policy directive of this duty.” (FAC Prayer for Relief ¶ 1.) Stone further seeks  
3 a declaratory judgement that the County has a duty to accept service of restraining  
4 orders on behalf of conservatees of the Director of Mental Health at the address  
5 published in the Roster of Public Entities. (*Id.* ¶ 3.)

6 The County now moves to dismiss all claims asserted against the County, and  
7 the City moves to dismiss Stone’s due process claim as asserted against the City. (*See*  
8 *City Mot.*; *County Mot.*) Stone did not file an opposition or respond to either motion.

### 9 III. LEGAL STANDARD

10 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable  
11 legal theory or insufficient facts pleaded to support an otherwise cognizable legal  
12 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To  
13 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading  
14 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*  
15 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to  
16 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,  
17 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual  
18 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*,  
19 556 U.S. at 678 (internal quotation marks omitted).

20 The determination of whether a complaint satisfies the plausibility standard is a  
21 “context-specific task that requires the reviewing court to draw on its judicial  
22 experience and common sense.” *Id.* at 679. A court is generally limited to the  
23 pleadings and must construe all “factual allegations set forth in the complaint . . . as  
24 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,  
25 250 F.3d 668, 679 (9th Cir. 2001). However, a court need not blindly accept  
26 conclusory allegations, unwarranted deductions of fact, and unreasonable inferences.  
27 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

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1           Additionally, when a plaintiff appears pro se, the court has an obligation to  
2 construe the plaintiff’s complaint liberally. *See Bernhardt v. Los Angeles County*, 339  
3 F.3d 920, 925 (9th Cir. 2003); *Jackson v. Carey*, 353 F.3d 750, 757 (9th Cir. 2003)  
4 (“Pro se complaints are held to less stringent standards than formal pleadings drafted  
5 by lawyers.”). In particular, “[a] pro se litigant must be given leave to amend his or  
6 her complaint unless it is ‘absolutely clear that the deficiencies of the complaint could  
7 not be cured by amendment.’” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987),  
8 *superseded by statute on other grounds as recognized in Lopez v. Smith*, 203 F.3d  
9 1122 (9th Cir. 2000) (en banc). However, “[p]ro se litigants must follow the same  
10 rules of procedure that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th  
11 Cir. 1987), *overruled on other grounds by Lacey v. Maricopa County*, 693 F.3d 896  
12 (9th Cir. 2012) (en banc); Local Rule 83-2.2.3 (requiring pro se litigants to comply  
13 with Local Rules, Federal Rules of Civil Procedure, and Federal Rules of Evidence).

#### 14           **IV.    STONE’S FAILURE TO OPPOSE WARRANTS DISMISSAL**

15           Central District of California Local Rule 7-12 provides that the Court “may  
16 decline to consider any memorandum or other document not filed within the deadline  
17 set by order or local rule.” C.D. Cal. L.R. 7-12 (“The failure to file [a responsive  
18 document], or the failure to file it within the deadline, may be deemed consent to the  
19 granting or denial of the motion. . . .”); *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.  
20 1995) (affirming dismissal on the basis of unopposed motion pursuant to local rule).  
21 Prior to dismissing an action pursuant to a local rule, courts must weigh: “(1) the  
22 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage  
23 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
24 disposition of cases o[n] their merits; and (5) the availability of less drastic sanctions.”  
25 *Ghazali*, 46 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.  
26 1986)). In *Ghazali*, the Ninth Circuit found these factors supported dismissal where  
27 the plaintiff received notice of the motion, had “ample opportunity to respond,” yet  
28 failed to do so. *See Ghazali*, 46 F.3d at 54. Even so, “[e]xplicit findings with respect



1 to these factors are not required.” *Ismail v. County of Orange*, SACV 10-00901 VBF  
2 (AJW), 2012 WL 12964893, at \*1 (C.D. Cal. Nov. 7, 2012) (citing *Henderson*, 779  
3 F.2d at 1424; *accord*, *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 129 (9th Cir. 1987),  
4 *cert. denied*, 488 U.S. 819 (1988)).

5 Here, Stone received notice of both motions and had ample opportunity to  
6 respond yet failed to do so. Although Stone is not represented by counsel, he is a  
7 registered CM/ECF user who receives notice of electronic filings in this action. (*See*  
8 ECF Nos. 17, 19.) Further, counsel for the City and the County met and conferred  
9 with Stone regarding the instant motions. (County Mot. 17, Decl. Renee E.  
10 Jensen ¶ 3; City Mot. 2.) Finally, in response to the Court’s order to show cause, on  
11 June 9, 2022, Stone used CM/ECF to file a declaration and requests for summons in  
12 order to serve his First Amended Complaint on other named Defendants. (ECF  
13 Nos. 28, 32.) Thus, Stone was well aware of the motions to dismiss and has even  
14 been active in this matter after the County and City filed their motions on April 1,  
15 2022, and April 4, 2022, respectively. (ECF Nos. 21, 24.) Additionally, Stone offers  
16 no excuse for failing to oppose the motions and has not sought an extension or other  
17 relief. As such, the Court construes Stone’s failure to respond to either motion as  
18 consent to the Court granting the motions. Accordingly, pursuant to Local Rule 7-12  
19 and *Ghazali*, the Court **GRANTS** the City’s and County’s motions.

20 Although the Court grants both motions as unopposed, the Court proceeds to  
21 address the merits of each motion in turn, in order to provide Stone with notice of the  
22 FAC’s deficiencies and a meaningful opportunity to amend.

### 23 V. THE CITY’S MOTION TO DISMISS

24 Stone alleges that LAPD officers unlawfully required him to “effect multiple  
25 methods of service” on K. Thomas and Stover before executing his restraining orders,  
26 and that he was “denied due process of law” when officers refused to “accept the  
27 validity” of his service of the restraining orders against Stover and K. Thomas. (FAC  
28 ¶¶ 2, 44.) Stone attempts to impose liability on the City for the LAPD officers’

1 conduct. The City moves to dismiss Stone’s 42 U.S.C. § 1983 claim arguing that  
2 Stone does not have a due process right to the “execution of a restraining order in any  
3 particular way, let alone to its service in any particular way.” (City Mot. 6.)

4 “To state a claim under [42 U.S.C.] § 1983, a plaintiff must allege the violation  
5 of a right secured by the Constitution and laws of the United States, and must show  
6 that the alleged deprivation was committed by a person acting under color of state  
7 law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). In his § 1983 claim, Stone alleges a  
8 violation of his due process rights under the Fourteenth Amendment. (FAC ¶ 45.)  
9 Accordingly, the issue here is whether the LAPD officers’ treatment of Stone’s  
10 restraining orders violated Stone’s constitutional right to due process.

11 In *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), the Supreme Court  
12 addressed whether an individual, Gonzales, who had “obtained a state-law restraining  
13 order[, had] a constitutionally protected property interest in having the police enforce  
14 the restraining order when they [had] probable cause to believe it had been violated.”  
15 *Id.* at 750. Gonzales brought a 42 U.S.C. § 1983 action against the Town of Castle  
16 Rock, Colorado claiming that it violated the Due Process Clause of the Fourteenth  
17 Amendment when its police officers, acting pursuant to official policy or custom,  
18 failed to respond properly to her repeated reports that her estranged husband was  
19 violating the terms of a restraining order. *Id.* at 751. The Court held that Gonzales  
20 did not, “for the purposes of the Due Process Clause, have a property interest in police  
21 enforcement of a restraining order against her husband.” *Id.* at 768; *see DeShaney v.*  
22 *Winnebago Cnty. Dep’t of Social Servs.*, 489 U.S. 189, 197 (1989) (recognizing that,  
23 absent special circumstances, “a State’s failure to protect an individual against private  
24 violence simply does not constitute a violation of the Due Process Clause”); *Martinez*  
25 *v. City of Clovis*, 943 F.3d 1260, 1273 (9th Cir. 2019) (“[T]he benefit that a third party  
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1 may receive from having someone else arrested for a crime generally does not trigger  
2 protections under the Due Process Clause.” (quoting *Castle Rock*, 545 U.S. at 768)).<sup>6</sup>

3 Here, under the header “Negligent Infliction of Emotional Distress,” Stone  
4 suggests that LAPD officers are required under California Penal Code  
5 section 836(c)(1) to execute restraining orders. (FAC ¶ 50.) The section provides:

6 [w]hen a peace officer is responding to a call alleging a violation of a .  
7 . . . restraining order . . . and the peace officer has probable cause to  
8 believe that the person against whom the order is issued has notice of  
9 the order and has committed an act in violation of the order, the  
10 officer shall, consistent with subdivision (b) of Section 13701, make a  
11 lawful arrest of the person without a warrant and take that person into  
12 custody whether or not the violation occurred in the presence of the  
13 arresting officer. . . .

13 Cal. Penal Code § 836(c)(1). The language appears to create a mandatory duty to  
14 make an arrest whenever there is “probable cause to believe that the person against  
15 whom the order is issued has notice of the order and has committed an act in violation  
16 of the order.” *Id.*; see *McFadyen v. County of Tehama*, No. 2:18-cv-02912-TLN-  
17 DMC, 2020 WL 4480376, \*13 (E.D. Cal. Aug. 4, 2020) (finding that California Penal  
18 Code section 836(c)(1) created a mandatory duty to arrest whenever probable cause  
19 objectively exists for purpose of liability under section 815.6).

20 However, despite its mandatory language, section 836(c)(1) does not  
21 necessarily make “enforcement of restraining orders mandatory” under *Castle Rock*.  
22 See *Pantoja v. Los Angeles County*, No. CV 19-2132 JFW (SS), 2019 WL 4280063,  
23 \*9 (C.D. Cal. Aug. 13, 2019), report and recommendation adopted, No. CV 19-2132  
24 JFW (SS), 2019 WL 4276633 (C.D. Cal. Sept. 10, 2019) (finding a plaintiff’s

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25 \_\_\_\_\_  
26 <sup>6</sup> There are two exceptions to this rule: (1) “a special relationship between the plaintiff and the state  
27 may give rise to a constitutional duty to protect”; and (2) “the state may be constitutionally required  
28 to protect a plaintiff that it affirmatively places . . . in danger by acting with ‘deliberate indifference’  
to a ‘known or obvious danger.’” *Martinez*, 943 F.3d at 1271 (internal citations and quotations marks  
omitted). Stone does not allege facts establishing an exception applies here.

1 restraining order against her ex-husband did not provide her with a substantive due  
2 process right to have him arrested for its violation). This holding is based on the  
3 California courts’ long-standing tradition of recognizing law enforcement discretion.  
4 *Id.* (citing *City of Santee v. County of San Diego*, 211 Cal. App. 3d 1006, 1018  
5 (1989)). Additionally, because section 836(c)(1) requires that an arrest is consistent  
6 with “subdivision (b) for Section 13701”—and this subdivision provides for an  
7 exception for “exigent circumstances”—the arrest requirement, at least in the  
8 domestic violence context, is “not absolute.” *Id.*

9       Moreover, whether or not section 836(c)(1) mandates enforcement of civil  
10 restraining orders, the mere fact that a state law mandates arrests does not mean that  
11 Stone has a “property interest” protected by the Due Process Clause. *See Castle Rock*,  
12 545 U.S. at 766. Under *Castle Rock*, Stone does not have a property interest in the  
13 enforcement of his restraining order and “the benefit a third party may receive from  
14 having someone else arrested for a crime generally does not trigger protections under  
15 the Due Process clause.” *Id.* at 768. Thus, irrespective of whether Stone alleges that  
16 he had a due process right to have the service of his restraining orders accepted as  
17 valid, or whether he alleges he had a due process right to have K. Thomas and Stover  
18 arrested for violating the restraining orders, his claim fails. Accordingly, Stone has  
19 failed to plausibly allege that the City, through its police officers, deprived him of a  
20 cognizable constitutional right.

21       The Court therefore **GRANTS** the City’s motion dismiss Stone’s 42 U.S.C.  
22 § 1983 claim. Although it appears unlikely that Stone can state a 42 U.S.C § 1983  
23 claim for violation of his due process rights under the facts presented in his FAC, the  
24 Court cannot conclude at this stage in the proceeding that any amendment would be  
25 futile. Out of an abundance of caution, the Court provides Stone **with leave to amend**  
26 this claim to address the above-discussed deficiencies. *See Manzarek v. St. Paul Fire*  
27 *& Marine Ins. Co.*, 519 F.3d 1025, 1034–35 (9th Cir. 2008).

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**VI. THE COUNTY’S MOTION TO DISMISS**

The County moves to dismiss Stone’s constitutional due process claim, arguing that Stone failed to allege the deprivation of a cognizable constitutional right. (County Mot. 5–6.) The County also moves to dismiss Stone’s negligence claim on the grounds that there is no mandatory statutory duty to accept service of a restraining order and the County is otherwise immune from tort liability. (County Mot. 10–12.)<sup>7</sup>

**A. Stone’s 42 U.S.C. § 1983 Claim**

Stone alleges that he was “denied due process of law” when the County’s Executive Office refused to accept service of Stone’s restraining order against conservatee K. Thomas. (FAC ¶ 44.) The Court finds that Stone has not adequately pleaded that he was deprived of “any rights, privileges, or immunities secured by the Constitution and laws,” *Castle Rock*, 545 U.S. at 755 (2005) (quoting 42 U.S.C. § 1983), because the right to serve the government with a restraining order against one of its conservatees is not a right protected under the Fourteenth Amendment.

As discussed above, a failure to enforce a restraining order does not support a due process violation. To the extent that Stone alleges he has a right to have the government’s acceptance of service of a restraining order in the manner he chooses, Stone fails to allege a due process violation and instead, merely seeks a benefit to a procedural process. In *Castle Rock*—where Gonzales believed the officers’ failure to arrest her husband after he violated her restraining order amounted to a due process violation—the Court observed that any purported right to have law enforcement arrest someone pursuant to a restraining order was “inadequate to even support standing . . . much less can it be the basis for a property interest.” *Id.* at 764 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). Two justices joined in a concurring opinion, explaining that a state does not “create a property right merely by ordaining beneficial procedure unconnected to some articulable substantive

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<sup>7</sup> As the Court is granting the County’s motion due to failure to state a claim, the Court does not address the County’s additional arguments regarding Stone’s requested remedies of declaratory and injunctive relief. (See County Mot. 13–15.)

1 guarantee.” *Castle Rock*, 545 U.S. at 771–72 (J. Souter concurring). The  
2 government’s acceptance of service of a restraining order in the manner Stone chooses  
3 would be a procedural benefit. Like Gonzales in *Castle Rock*, Stone seems to be  
4 claiming a property interest in the state-mandated process itself.

5 The argument that denying a plaintiff proper service amounts to deprivation of  
6 a property interest was also considered and rejected in the Eastern District. *Malott v.*  
7 *Placer County*, No. 2:14-CV-1040 KJM EFB, 2014 WL 6469125, \*12–14 (E.D. Cal.  
8 Nov. 17, 2014). There, the plaintiff alleged he had a “claim of entitlement under  
9 California law to have his properly issued subpoena served” and he was otherwise  
10 “deprived of that property interest without due process” when the subpoena was  
11 returned to him. *Id.* at \*12. The plaintiff in *Malott* argued that California Code of  
12 Civil Procedure § 262.1 and California Government Code § 26608 created a property  
13 right in the service of a subpoena. *Id.* at \*13. Relying on *Castle Rock*, the court found  
14 that neither statute gave rise to a constitutional property interest. *Id.* at \*12–14.

15 Here, under his negligence cause of action, Stone asserts that the County’s  
16 Executive Office has a duty to receive service of restraining orders under California  
17 Government Code section 960.8,<sup>8</sup> and that the Sheriff has a duty to serve Stone’s  
18 restraining order under California Government Code § 26608.<sup>9</sup> (FAC ¶¶ 52–53.) But  
19 like the state statutes in *Malott*, these provisions set forth certain procedures for  
20 service and therefore, these procedures, without more, do not give rise to a property  
21 interest. *Cf. Mueller v. County of San Bernardino*, Case No. CV 18-151 DSF (SPx),  
22 2018 WL 8130611, at \*3–5 (C.D. Cal. May 9, 2018) (dismissing § 1983 claim where  
23 plaintiffs claimed an interest in California’s child-protection processes).

24  
25 \_\_\_\_\_  
26 <sup>8</sup> California Government Code section 960.8 states, in relevant part, that “[s]ervice of process in an  
27 action or proceeding against a public agency may be made in conformity with the information  
28 contained in the statement in the Registry of Public Agencies . . . on file at the time of that service.  
Service in this manner . . . constitutes personal service upon the public agency.”

<sup>9</sup> California Government Code section 26608 states that “[t]he sheriff shall serve all process and  
notices in the manner prescribed by law.”

1 The Court therefore **GRANTS** the County’s motion to dismiss as to Stone’s  
2 42 U.S.C. § 1983 claim. As with the City’s motion, although it appears unlikely that  
3 Stone can state a claim for violation of 42 U.S.C. § 1983 against the County, out of an  
4 abundance of caution, the Court provides Stone **with leave to amend** this claim to  
5 address the above-discussed deficiencies. *See Manzarek*, 519 F.3d at 1034–35.

6 **B. Stone’s Negligent Infliction of Emotional Distress (“NIED”) Claim**

7 Stone appears to assert a claim for NIED. (FAC ¶¶ 49–55.) “A claim of  
8 negligent infliction of emotional distress is not an independent tort but the tort of  
9 negligence to which the traditional elements of duty, breach of duty, causation, and  
10 damages apply.” *Wong v. Jing*, 189 Cal. App. 4th 1354, 1377 (2010). A plaintiff must  
11 show that the emotional distress was “serious” to recover damages for NIED when  
12 there is no accompanying personal, physical injury. *Id.* (citing *Molien v. Kaiser*  
13 *Found. Hosps.*, 27 Cal. 3d 916, 927–30 (1980)).

14 Stone alleges that the County breached its duty under California Government  
15 Code section 960.8 to “receive the service of [his] restraining order” against K.  
16 Thomas. (FAC ¶ 52.) Stone also seeks to hold the County liable for the acts and  
17 omissions of the Sheriff and Executive Office staff under California Government  
18 Code section 815.2. (FAC ¶ 54.) To this end, Stone alleges that the Sheriff breached a  
19 duty to serve his restraining order on K. Thomas’ conservator under Government Code  
20 section 26608. (FAC ¶ 53.)

21 *1. Direct Liability*

22 The County argues that it is not liable for state law torts in the absence of a  
23 statute that imposes a mandatory duty on it. (County Mot. 10.) Under California’s  
24 Government Claims Act, “liability of a public entity for an injury is [only] statutory.”  
25 *Leon v. County of Riverside*, 64 Cal. App. 5th 837, 846 (2021). “Section 815,  
26 subdivision (a), the cornerstone of the Act, provides that, [e]xcept as otherwise  
27 provided by statute: (a) A public entity is not liable for an injury, whether such injury  
28 arises out of an act or omission of the public entity or a public employee or any other

1 person.” *Id.* (internal quotation marks and citations omitted). Under Government  
2 Code section 815.6, “[w]here a public entity is under a mandatory duty imposed by an  
3 enactment that is designed to protect against the risk of a particular kind of injury,” a  
4 public entity may be liable. *See State of California v. Superior Court*, 150 Cal. App.  
5 3d 848, 854 (1984). There is a three-pronged test to establish liability under  
6 section 815.6: (1) the “enactment must create a mandatory, not discretionary, duty,”  
7 (2) the “enactment must intend to protect against the kind of risk of injury suffered by  
8 the party asserting” section 815.6 liability, and (3) the “breach of the mandatory duty  
9 must be the proximate cause of the injury suffered.” *Id.*

10 Stone fails to state a plausible claim that the County is directly liable for  
11 negligence. At the outset, section 960.8 does not appear to apply to Stone’s situation.  
12 “[T]he provisions of Government Code sections 960–960.8 provide for service of  
13 process in an action or proceeding against a public agency.” *Thierfeldt v. Marin Hosp.*  
14 *Dist.*, 35 Cal. App. 3d 186, 199 (1973). Here, Stone only intended to serve the  
15 Executive Office because he believed doing so would constitute service on the  
16 Director, which would result in service on K. Thomas. Thus, Stone’s “action or  
17 proceeding” was always against K. Thomas, not a public agency.

18 Finally, even if section 960.8 imposed a mandatory duty to accept service and  
19 was designed to protect against the kind of negligence Stone alleges, Stone has not  
20 alleged the elements necessary to state an NIED claim. Stone pleads that the County  
21 acted with intent or reckless disregard for his rights, but Stone has not alleged that this  
22 conduct caused him serious emotional distress or an injury of any kind. Notably,  
23 Stone does not seek any damages. (*See* FAC ¶¶ 49–55.) Accordingly, Stone has failed  
24 to allege that the “breach of [a] mandatory duty [was] the proximate cause of [an]  
25 injury suffered.” *State of California*, 150 Cal. App. 3d at 854.

## 26 2. *Vicarious Liability*

27 Stone also fails to state a claim that the County is vicariously liable for  
28 negligence. “A public entity is liable for injury proximately caused by an act or



1 omission of an employee of the public entity within the scope of his employment if  
2 the act or omission would . . . have given rise to a cause of action against that  
3 employee.” Cal. Gov’t Code § 815.2(a). A “county is ordinarily not liable if the  
4 employee’s act or omission would not give rise to a cause of action against that  
5 employee[,] or of the employee is immune from liability. Thus, the county’s liability  
6 depends on the liability of its employee[s].” *Walker v. County of Los Angeles*,  
7 192 Cal. App. 3d 1393, 1397 (1987) (internal citations omitted).

8 Even if the Sheriff or Executive Office staff did have a duty to serve or accept  
9 service of Stone’s restraining order, Stone has failed to sufficiently plead the  
10 remaining elements to state a claim for negligence, namely, that he suffered serious  
11 emotional distress, that the alleged conduct was the proximate cause of any injury, and  
12 that he is seeking damages for an injury. *See Wong*, 189 Cal. App. 4th at 1377.  
13 Accordingly, the Court **GRANTS** the County’s motion dismiss Stone’s NIED claim  
14 **with leave to amend** this claim to address the above-discussed deficiencies. *See*  
15 *Manzarek*, 519 F.3d at 1034–35.

## 16 VII. CONCLUSION

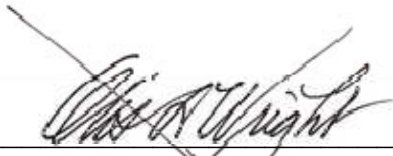
17 For the aforementioned reasons, the Court **GRANTS** the City’s and County’s  
18 motions to dismiss, (ECF Nos. 21, 24), **with leave to amend** the FAC as described  
19 above. If Stone chooses to file a Second Amended Complaint, he must do so within  
20 **twenty-one (21) days** of the date of this Order, in which case Defendants shall answer  
21 or otherwise respond no later than **fourteen (14) days** from the date the Second  
22 Amended Complaint is filed. If Stone chooses not to amend, his claims shall be  
23 deemed dismissed with prejudice and the case shall be closed as of the lapse of the  
24 amendment deadline.

25 Moreover, the Federal Pro Se Clinic offers free guidance to individuals  
26 representing themselves in federal civil actions. The Los Angeles Clinic operates only  
27 by appointment, which may be made by calling (213) 385-2977, Ext. 270 or by  
28 visiting <http://prose.cacd.uscourts.gov/los-angeles>. Clinic staff can respond to many

1 questions with a telephonic appointment or by email. In-person appointments may be  
2 available at the Roybal Federal Building and Courthouse, 255 East Temple Street,  
3 Suite 170, Los Angeles, California 90012. The Court encourages Stone to visit the  
4 Clinic or otherwise consult with an attorney prior to amending his FAC.

5  
6 **IT IS SO ORDERED.**

7  
8 July 25, 2022

9  
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11 \_\_\_\_\_  
12 **OTIS D. WRIGHT, II**  
13 **UNITED STATES DISTRICT JUDGE**