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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL W. BAKER,

Plaintiff,

vs.

MICHELE RODRIGUEZ; BRAD
CARRINGTON; T. JANSEN; DANNY
MOORHOUSE; SANDRA HUTCHENS,
ORANGE COUNTY SHERIFF; ORANGE
COUNTY SHERIFF'S DEPARTMENT;
COUNTY OF ORANGE; and DOES 1-10,
INCLUSIVE.

Defendants.

CASE NO. SACV 11-00138-JST (PJWx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

1 Before the Court is a Motion to Dismiss filed by Defendants County of Orange
2 (“County”), Orange County Sheriff’s Department (“Sheriff’s Department”), Sheriff Sandra
3 Hutchens, Sergeant Tim Jansen, Deputy Brad Carrington, and Deputy Michele Rodriguez
4 (“individual Defendants”) (collectively, “Defendants”). (Mot., Doc. 19.) Defendants
5 move to dismiss Plaintiff’s First Amended Complaint (“FAC”) for failure to set forth
6 allegations sufficient to support a claim. (Id. at 2.) Having reviewed the parties’ papers
7 and heard oral argument, the Court GRANTS IN PART AND DENIES IN PART
8 Defendants’ Motion.

9
10 **BACKGROUND**

11 Plaintiff asserts five claims against the moving Defendants¹: (1) a claim under 42
12 U.S.C. § 1983 (“§ 1983”) for violation of Plaintiff’s Fourth and Fourteenth Amendment
13 rights, (2) a § 1983 claim for conspiracy to violate Plaintiff’s Fourth and Fourteenth
14 Amendment rights, (3) a state law claim for false imprisonment, (4) a state law claim for
15 intentional infliction of emotional distress, and (5) a state law claim for negligent infliction
16 of emotional distress.

17 There is a common factual basis for all of Plaintiff’s claims. Plaintiff alleges that on
18 August 21, 2009, he entered the property located at 4 Bastia, Laguna Niguel, California
19 (“the Property”) to seek assistance because his car would not start. (FAC ¶¶ 13-14, 16.)
20 He alleges that he believed a friend’s girlfriend lived at the Property (Id. at ¶ 15), but the
21 Property actually belonged to Defendant Danny Moorhouse (“Moorhouse”), who placed
22 Plaintiff under a citizen’s arrest and called 911 (Id. at ¶¶ 12-13, 27.) Allegedly, Plaintiff
23 told both Deputy Rodriguez and Moorhouse his reasons for entering the Property and
24 denied intent to commit a crime on the Property. (Id. at ¶¶ 13-16.) Nonetheless, he
25 alleges, Deputy Rodriguez accepted the citizen’s arrest, handcuffed Plaintiff, and placed

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27 ¹ Plaintiff also asserts a separate false arrest claim only against Defendant Danny Moorhouse,
28 who is not a moving Defendant here.

1 him in the back of her and Deputy Carrington's patrol car. (Id. at ¶ 17.) The Deputies then
2 transported Plaintiff to his car, where they tried to start his vehicle and confirmed that it
3 would not start. (Id. at ¶¶ 20-21.) The Deputies subsequently conducted a search of
4 Plaintiff's car (Id. at ¶ 22), then Deputy Rodriguez re-arrested Plaintiff and transported him
5 to the Orange County Jail.² (Id. at ¶¶ 22, 24.)

6 Plaintiff further alleges that an audio/video camera located on the patrol vehicle
7 captured Plaintiff's conversations with Deputies Rodriguez and Carrington regarding his
8 car and the recording confirmed that a Deputy attempted to start his car but it would not
9 start. (Id. at ¶¶ 20-21.) Nonetheless, Plaintiff alleges, the police report written by Deputy
10 Rodriguez and approved by Deputy Carrington did not list the audio/video recording or
11 Moorhouse's 911 call. (Id. at ¶¶ 25, 27-28.) This report was subsequently approved by
12 Sergeant Jansen, who was vested with the authority to approve police reports by Sheriff
13 Hutchens, on behalf of the County of Orange. (Id. at ¶ 29.) After Plaintiff was arrested
14 and booked at the Orange County Jail, he was charged with felony burglary and bail was
15 set at \$50,000. (Id. at ¶¶ 24, 26.) Then, before his arraignment on August 24, 2009,
16 Plaintiff alleges Deputy Carrington executed a declaration in support of increasing bail to
17 \$100,000. (Id. at ¶ 32.)

18 Plaintiff alleges that, at a hearing in state court on September 4, 2009, Deputy
19 Rodriguez testified that no one from the Sheriff's Department had tried to start Plaintiff's
20 vehicle. (Id. at ¶ 38.) Subsequently, during Plaintiff's trial, Deputy Rodriguez testified
21 that no attempt was made to determine whether Plaintiff's car would start and then later
22 admitted that an audio/video recording of the events existed. (Id. at ¶¶ 39-40.) Plaintiff
23 alleges that as a result of Deputy Rodriguez's testimony, the audio/video recording was
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25 ² The FAC does not allege that Plaintiff was released from arrest while Deputies Carrington
26 and Rodriguez attempted to start his car. However, the inference from the allegation that he was
27 "again arrested" after a search of his car (FAC ¶ 24) combined with Plaintiff's admission in his
28 Opposition that drugs were found in his car (Pl.'s Opp'n, Doc. 25, at 5) is that his re-arrest was at
least in part due to the discovery of drugs in his car.

1 produced by the prosecution. (Id. at ¶ 42.) Because the audio/video recording
2 corroborated Plaintiff's statements that his car would not start, Plaintiff alleges, the
3 prosecution moved to dismiss the burglary case against Plaintiff and the Court granted the
4 motion. (Id. at ¶ 43.) As of the time of dismissal, Plaintiff had allegedly spent nearly six
5 months incarcerated in the Orange County Jail. (Id. at ¶ 44.)

6 The minutes of Plaintiff's criminal trial reflect that the prosecution dismissed the case
7 against Plaintiff as a result of the "new discovery" of the audio/video recording. (Request
8 for Judicial Notice, "RJN," Doc. 21, Ex. A at 26.)³ At the same time the prosecution
9 dismissed the case, Plaintiff agreed to admit that there was probable cause for his arrest,
10 and formally admitted the same. (Id.) In his Opposition, however, Plaintiff states that this
11 admission is confusing because at the same time he was arrested for burglary, he was
12 arrested for a drug charge after drugs were found in his car. (Pl.'s Opp'n., Doc. 25, at 5.)

13
14 **LEGAL STANDARD**

15 When evaluating a Rule 12(b)(6) motion, the Court must accept as true all
16 allegations of material facts that are in the complaint and must construe all inferences in
17 the light most favorable to the non-moving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384
18 (9th Cir. 1994). Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a
19 short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R.
20 Civ. P. 8(a)(2). "Specific legal theories need not be pleaded so long as sufficient factual
21 averments show that the claimant may be entitled to some relief." *Fontana v. Haskin*, 262
22 F.3d 871, 877 (9th Cir. 2001). Dismissal of a complaint for failure to state a claim is not

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24 ³ Defendants filed a request for judicial notice in support of their Motion, asking the Court to
25 take notice of the Certified Minutes in *People v. Baker*, Case No. 09SF0800 F A. Defendants'
26 request is GRANTED, as the contents of these documents are "not subject to reasonable dispute"
27 in that they are "capable of accurate and ready determination by resort to sources whose accuracy
28 cannot reasonably be questioned." Fed. R. Evid. 201.

1 proper where a plaintiff has alleged “enough facts to state a claim to relief that is plausible
2 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial
3 plausibility when the plaintiff pleads factual content that allows the court to draw the
4 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
5 *Iqbal*, 129 S. Ct. 1937, 1949 (2009). “And, of course, a well-pleaded complaint may
6 proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and
7 that a recovery is very remote and unlikely.” *Twombly*, 550 U.S. at 556 (internal quotation
8 marks and citation omitted).

10 **DISCUSSION**

11 **I. § 1983 Claims**

12 Plaintiff alleges that Defendants violated his Fourth Amendment right to be free
13 from unreasonable search and seizure and his Fourteenth Amendment right to due process.
14 (FAC ¶ 47-48.) Specifically, he alleges that he was wrongfully arrested and confined for
15 six months. (Id. at ¶ 53.) While Plaintiff cites §1985 rather than § 1983 in the FAC, (Id. at
16 ¶ 54), the Court finds that the facts plead a claim under § 1983 for violation of Plaintiff’s
17 Fourteenth Amendment rights and a claim for conspiracy to violate Plaintiff’s Fourteenth
18 Amendment rights under § 1983, but only as to Deputies Rodriguez and Carrington.

19 **a. Violation of Plaintiff’s Fourth and Fourteenth Amendment Rights**

20 The FAC suggests three separate time periods during which Plaintiff’s
21 constitutional rights may have been violated. The inference from the FAC is that Plaintiff
22 was arrested *twice* on or about August 21, 2009. First, Deputy Rodriguez arrested Plaintiff
23 when she accepted the citizen’s arrest from Moorhouse. (Id. at ¶ 17.) Second, Deputy
24 Rodriguez “again arrested” Plaintiff after a search of his car. (Id. at ¶ 24.) Finally,
25 Plaintiff also alleges he was incarcerated for six months before Deputy Carrington turned
26 over the audio/video recording and the state court dismissed the burglary charge. (Id. at ¶
27 44.)

1 light of the facts already pleaded, cannot plead facts sufficient to establish that either
2 arrest, to the extent they need to be analyzed separately, violated his Fourth Amendment
3 rights. Therefore, Plaintiff's § 1983 claim for violation of his Fourth Amendment rights
4 based on lack of probable cause is dismissed with prejudice.

5 2. Violation of Plaintiff's Fourteenth Amendment Rights

6 Plaintiff alleges facts sufficient to establish that Defendants Rodriguez and
7 Carrington violated his Fourteenth Amendment rights by concealing exculpatory evidence
8 until the middle of his trial. (FAC ¶¶ 48, 53.) "[T]he loss of liberty caused by an
9 individual's mistaken incarceration after the lapse of a certain amount of time gives rise to
10 a claim under the Due Process Clause of the Fourteenth Amendment." *Lee v. City of Los*
11 *Angeles*, 250 F.3d 668, 683 (9th Cir. 2001) (internal citation and quotation omitted).
12 Specifically, where state actors recklessly or intentionally cause the continued
13 incarceration of a person for whom there is not probable cause to maintain confinement,
14 there is a violation of the Due Process Clause. *See id.* at 683-84. (citing cases holding that
15 the continued detention of the plaintiff where the sheriff or police officer knew or should
16 have known it was wrongful states a claim under § 1983). This is true when officers
17 refuse to investigate available exculpatory evidence. *Russo v. Bridgeport*, 479 F.3d 196,
18 208 (2d Cir. 2007).⁴

19 Here, Plaintiff alleges that the Defendants withheld exculpatory evidence leading to
20 six months of confinement. The FAC and Plaintiff's Opposition generate some confusion
21 as to whether Plaintiff would have been detained for some period of time on the drug
22 charges. However, drawing the inference most favorable to Plaintiff, the Court finds that
23 Plaintiff alleges facts that establish that he would not have been detained for six months
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25 ⁴ The Second Circuit held that prolonged detention cases are more properly analyzed under the
26 Fourth, rather than Fourteenth, Amendment. *Id.* at 209. However, because the Ninth Circuit in
27 *Lee* analyzed continued detention under the Fourteenth Amendment, the Court will do the same.
28 250 F.3d at 683.

1 had Deputies Rodriguez and Carrington listed the audio/video recording in the police
2 report or otherwise turned over that evidence earlier.

3 **b. Conspiracy to Violate Plaintiff’s Constitutional Rights**

4 “To establish liability for a conspiracy in a § 1983 case, a plaintiff must
5 demonstrate the existence of an agreement or meeting of the minds to violate constitutional
6 rights.” *Crowe v. Cnty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (internal citations
7 and quotations omitted). “Such an agreement need not be overt, and may be inferred on
8 the basis of circumstantial evidence such as the actions of the defendants.” *Id.*

9 Here, Plaintiff impliedly alleges that both Deputies Rodriguez and Carrington knew
10 about the exculpatory audio/video recordings because they were present when the patrol
11 car camera captured the events. (FAC ¶¶ 18-20.) Deputy Rodriguez failed to list the
12 evidence in her police report (*Id.* at ¶ 27) and Deputy Carrington approved that report (*Id.*
13 at ¶ 28). Furthermore, Plaintiff alleges that Deputy Carrington executed a declaration to
14 increase Plaintiff’s bail, (*Id.* at ¶ 32), and Deputy Rodriguez falsely testified that no one
15 from the Sheriff’s Department had tried to start Plaintiff’s car. (*Id.* at ¶ 39.)

16 These allegations support the existence of a conspiracy between Deputies
17 Rodriguez and Carrington to violate Plaintiff’s Fourteenth Amendment right to be free
18 from incarceration. While Plaintiff does not allege that the Deputies overtly agreed to
19 violate his constitutional rights, his allegations that (1) Deputy Rodriguez prepared a report
20 excluding the audio/video recordings that Deputy Carrington approved, (2) they both knew
21 about and withheld the exculpatory evidence, (3) Deputy Carrington executed a declaration
22 in support of an increase in bail, in furtherance of the conspiracy, and (4) Deputy
23 Rodriguez testified falsely in furtherance of the conspiracy establish a “common
24 objective.” *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1541
25 (9th Cir. 1989). Thus, Plaintiff states a claim for conspiracy against Deputies Rodriguez
26 and Carrington. However, there are no allegations that any of the other Defendants knew
27 about the audio/video recording, and thus, Plaintiff fails to sufficiently state a conspiracy
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1 claim against any other individual defendant. Thus, as to the individual defendants other
2 than Rodriguez and Carrington, the §1983 conspiracy claim is dismissed with leave to
3 amend.

4 **c. Qualified Immunity**

5 “In § 1983 actions, the doctrine of qualified immunity protects city officials from
6 personal liability in their individual capacities for their official conduct so long as that
7 conduct is objectively reasonable and does not violate clearly-established federal rights.”
8 *Comm. House, Inc. v. City of Boise*, 623 F.3d 945, 964 (9th Cir. 2010) (internal citations
9 omitted). Here, Plaintiff had a clearly-established right to be free from prolonged
10 detention as a result of suppression of exculpatory evidence. *See Lee*, 250 F.3d at 683-84.
11 *See also Russo*, 479 F.3d at 211 (noting a “clearly-established constitutional right to be
12 free from prolonged detention caused by law enforcement officials’ mishandling or
13 suppression of evidence in a manner which ‘shocks the conscience.’”) Therefore, Deputies
14 Rodriguez and Carrington are not entitled to qualified immunity based on the allegations in
15 the FAC.

16 **d. § 1983 Claims against Sergeant Jansen**

17 There is no respondeat superior liability under § 1983. *Iqbal*, 129 S. Ct. at 1948.
18 Therefore, to state a claim against Sergeant Jansen, Plaintiff must allege facts which
19 establish that Sergeant Jansen personally violated his rights. However, Sergeant Jansen is
20 only alleged to have approved the police report, which did not list the audio/video
21 recording, (FAC ¶ 29), and to have known that audio/video recordings must be preserved
22 whether listed in the police report or not (*Id.* at ¶ 35). Plaintiff does not allege, however,
23 that Sergeant Jansen knew or should have known that an audio/video recording existed in
24 this case. Accordingly, Plaintiff’s § 1983 claims for violation of Plaintiff’s Fourteenth
25 Amendment rights against Sergeant Jansen are dismissed without prejudice.

26 **e. § 1983 Claims against Sheriff Hutchens**

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1 Plaintiff's allegations as to Sheriff Hutchens' involvement in his arrest and
2 incarceration are minimal. He alleges that Sheriff Hutchens vested in Sergeant Jansen the
3 authority to approve the police report. (Id. at ¶ 29.) He also alleges that she is responsible
4 for implementing the policy and procedures of the Sheriff's Department, including proper
5 training of deputies. (Id. at ¶ 57.) However, there are no allegations of her personal
6 knowledge or involvement of any of the facts in this case. Moreover, to the extent her
7 liability is based on her failure to properly train deputies, as Plaintiff argues in his
8 Opposition, (Pl.'s Opp'n. at 6-7), Plaintiff's allegation that Deputies Rodriguez and
9 Carrington knew the Sheriff's Department policy with regard to disclosure of audio/video
10 recordings directly contradicts this argument. (FAC ¶ 35.) Therefore, Plaintiff's § 1983
11 claims for violation of Plaintiff's Fourteenth Amendment rights against Sheriff Hutchens
12 are dismissed without prejudice.

13 **f. § 1983 Claims against the Sheriff's Department**

14 A claim under § 1983 against the Sheriff's Department is improper because
15 "municipal police departments and bureaus are generally not considered 'persons' within
16 the meaning of 42 U.S.C. § 1983." *United States v. Kama*, 394 F.3d 1236, 1239 (9th Cir.
17 2005). Therefore, the § 1983 claims against the Sheriff's Department are dismissed with
18 prejudice.

19 **g. Municipal Liability**

20 Under *Monell v. New York City Department of Social Services*, a municipality may be
21 liable under § 1983 if a plaintiff identifies a municipal policy or custom underlying its
22 employees' actions. 436 U.S. 658, 694 (1978). The Ninth Circuit has held that "a claim of
23 municipal liability under section 1983 is sufficient to withstand a motion to dismiss even if
24 the claim is based on nothing more than a bare allegation that the individual officers'
25 conduct conformed to official policy, custom, or practice." *Whitaker v. Garcetti*, 486 F.3d
26 572, 581 (9th Cir. 2007). Other district courts have noted persuasively that "[i]n light of
27 *Iqbal*, it would seem that the prior Ninth Circuit pleading standard for *Monell* claims (i.e.,
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1 'bare allegations') is no longer viable." *Young v. City of Visalia*, 687 F. Supp. 2d 1141,
2 1149 (E.D. Cal. 2009). The Court agrees that after *Iqbal*, something more than a "bare
3 allegation" is required.

4 Here, Plaintiff's allegations of an official policy, custom, or practice are both "bare"
5 and contradictory. First, the FAC alleges that it was the policy and procedure of the
6 County and Sheriff's Department "that all investigative reports, arrest reports and police
7 reports concerning the arrest of one accused of a crime include all items of evidence
8 concerning that alleged crime." (FAC ¶ 56.) Second, Plaintiff alleges a failure to properly
9 train employees to comply with policies and procedures. (Id. at ¶ 73.) This allegation,
10 however, directly contradicts Plaintiff's allegation that all Defendants, including Deputies
11 Rodriguez and Carrington, knew they had a duty to disclose in their police reports and turn
12 over exculpatory evidence, including audio/video recordings. (Id. at ¶ 35.) Because
13 Plaintiff makes such contradictory allegations, the FAC does not sufficiently identify the
14 challenged policy, custom, or practice. *See Young*, 687 F. Supp. 2d at 1149 (holding that
15 allegations must identify the challenged policy/custom to pass muster under *Iqbal*).
16 Therefore, Plaintiff's § 1983 claims for violation of Plaintiff's Fourteenth Amendment
17 rights against the County are dismissed without prejudice.

18 **II. State Law Claims**

19 **a. Municipal Immunity**

20 To the extent that each of the individual Defendants is immune from state tort
21 Claims, the municipal Defendants also have immunity. Under California Government
22 Code § 815.2, "a public entity is not liable for an injury resulting from an act or omission
23 of an employee of the public entity where the employee is immune from liability."
24 Therefore, if the individual Defendants are immune, the County and the Sheriff's
25 Department must also be immune.

26 **b. False Imprisonment**

1 Under California law, the elements of false imprisonment are “(1) the nonconsensual,
2 intentional confinement of a person, (2) without lawful privilege, and (3) for an
3 appreciable period of time, however brief.” *Blaxland v. Commonwealth Dir. of Pub.*
4 *Prosecutions*, 323 F.3d 1198, 1205 (9th Cir. 2003). (internal citation and quotation
5 omitted). However, a law enforcement officer who effects a lawful arrest is not liable for
6 false imprisonment under California law. *Cervantes v. United States*, 330 F.3d 1186, 1188
7 (9th Cir. 2003).

8 Plaintiff fails to state a claim for false imprisonment based on his arrest because he
9 does not allege facts showing that his arrest was unlawful. Deputy Rodriguez initially took
10 him into custody after accepting Moorhouse’s citizen’s arrest, (FAC ¶ 17), a factual
11 scenario that cannot give rise to a claim for false imprisonment under California law.
12 *Arpin*, 261 F.3d at 920-21. When Deputy Rodriguez “again arrested” Plaintiff, she had
13 probable cause to arrest because she had discovered drugs in his car. Therefore, Plaintiff
14 does not plead facts that establish that his initial arrest(s) were unlawful.

15 Furthermore, where a Plaintiff is wrongfully confined pursuant to an initially valid
16 arrest, the correct claim is malicious prosecution,⁵ not false imprisonment. *Collins v. City*
17 *and Cnty. of San Francisco*, 123 Cal. Rptr. 525, 528 (Cal. App. 1st 1975) *See also Russo*,
18 479 F.3d at 204 n.8 (affirming the dismissal of false imprisonment claims under similar
19 facts and similar state law). Therefore, Plaintiff fails to state a claim for false
20 imprisonment, and that claim is dismissed with prejudice.

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24 ⁵ While malicious prosecution would appear to be the correct claim, the Court notes that all
25 individual Defendants here would be immune from a claim for malicious prosecution. California
26 Government Code § 821.6 shields a public employee from liability “for injury caused by his
27 instituting or prosecuting any judicial or administrative proceeding within the scope of his
28 employment, even if he acts maliciously or without probable cause.” *See also Cousins v. Lockyer*,
568 F.3d 1063, 1071 (9th Cir. 2009) (“[M]alicious prosecution . . . is a claim for which
government officers are immune under California Government Code § 821.6).

1 **c. Intentional Infliction of Emotional Distress**

2 Plaintiff fails to state a claim for intentional infliction of emotional distress against
3 any of the individual Defendants because each is entitled to immunity under California
4 law. Deputies Carrington and Rodriguez, Sergeant Jansen, and Sheriff Hutchens are all
5 immune from liability for intentional infliction of emotional distress under California
6 Government Code § 821.6. This statute primarily applies to actions for malicious
7 prosecution, but extends to claims based on acts undertaken during the investigatory phase
8 of proceedings, including the withholding of exculpatory evidence. *Amylou R. v. Cnty. of*
9 *Riverside*, 34 Cal.Rptr.2d 319 (Cal.App. 4th 1994); *Randle v. City and Cnty. of San*
10 *Francisco*, 230 Cal.Rptr. 901, 905-06 (Cal.App. 1st 1986). *Cf. Blankenhorn v. City of*
11 *Orange*, 485 F.3d 463, 488 (9th Cir. 2007) (police officers not immune for acts undertaken
12 during the arrest, rather than investigation, of plaintiff).

13 Here, the operative allegations supporting Plaintiff’s intentional infliction of
14 emotional distress claim against the officers are his allegedly wrongful arrest and wrongful
15 confinement brought about by officers’ conspiracy to conceal exculpatory evidence,
16 Deputy Carrington’s declaration in support of increased bail, and Deputy Rodriguez’s
17 alleged perjury during Plaintiff’s trial. Each of these acts constitutes part of the
18 investigation into Plaintiff’s guilt, even if they were done maliciously. Therefore, Deputy
19 Carrington, Deputy Rodriguez, Sergeant Jansen, and Sheriff Hutchens are immune from
20 liability for intentional infliction of emotional distress under § 821.6. Because the
21 individual Defendants are immune, the County and Sheriff’s Department are also immune.
22 Therefore, Plaintiff’s intentional infliction of emotional distress claim is dismissed with
23 prejudice.

24 **d. Negligent Infliction of Emotional Distress**

25 Plaintiff fails to state a claim for negligent infliction of emotional distress against all
26 Defendants for the same reasons he fails to state a claim for intentional infliction of
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1 emotional distress. Therefore, Plaintiff's claim for negligent infliction of emotional
2 distress is dismissed with prejudice.

3 **III. Conclusion**

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5 For the foregoing reasons, Defendants' Motion is DENIED IN PART and
6 GRANTED IN PART.

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8 I. Plaintiff's § 1983 claims against the Sheriff's Department are DISMISSED
9 WITH PREJUDICE.
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11 II. Plaintiff's § 1983 claims for violation of his Fourth Amendment rights based
12 on lack of probable cause for arrest and conspiracy to violate his Fourth
13 Amendment rights are DISMISSED WITH PREJUDICE as to all moving
14 Defendants.
- 15
16 III. Plaintiff's § 1983 claim for violation of his Fourteenth Amendment rights is
17 DISMISSED WITH LEAVETO AMEND as to Sergeant Jansen, Sheriff
18 Hutchens, and the County.
- 19
20 IV. Plaintiff's § 1983 claim for conspiracy to violate his Fourteenth Amendment
21 rights is DISMISSED WITH LEAVE TO AMEND as to Sergeant Jansen,
22 Sheriff Hutchens, and the County.
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24 V. Plaintiff's false imprisonment claim is DISMISSED WITH PREJUDICE as
25 to all moving Defendants.
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VI. Plaintiff's intentional infliction of emotional distress claim is DISMISSED WITH PREJUDICE as to all moving Defendants.

VII. Plaintiff's negligent infliction of emotional distress claim is DISMISSED WITH PREJUDICE as to all moving Defendants.

Plaintiff may file an amended complaint consistent with this Order no later than **October 24, 2011.**

DATED: September 29, 2011

JOSEPHINE STATON TUCKER
JOSEPHINE STATON TUCKER
UNITED STATES DISTRICT JUDGE