





1 address in the MPD database to be changed to falsely reflect  
2 Plaintiff's address." (Id. ¶¶ 19-20.) When Saelee did so, he  
3 "set[] into motion a chain of events that he knew or should have  
4 known would foreseeably lead to the address for the real suspect  
5 being changed and overwritten" in the MPD database to Plaintiff's  
6 address. (Id. ¶ 19.) Plaintiff was "arrested [on or about June  
7 18, 2013,] and thereafter falsely imprisoned in the Merced County  
8 Jail as a result of being wrongfully . . . identified as . . .  
9 the real suspect." (Id. ¶ 24.) Plaintiff was arrested even though  
10 the real suspect "is a different height [and]. . . weight" than  
11 Plaintiff, has a different date of birth, and the Defendants  
12 "ha[d] access to an abundance of relevant, identifying  
13 information concerning the real suspect. . . including . . .  
14 finger prints, booking photos, prior reports, and addresses."  
15 (Id. ¶ 1.)

16 On July 1, 2013, the Merced County Superior Court found  
17 Plaintiff "factually innocent" because "he unequivocally was not  
18 the suspect in the pending criminal matters." (Id. ¶ 26.)

19 "Defendants Andrade and the City of Merced failed to  
20 institute reasonable quality control procedures . . . for  
21 requiring verification and corroboration [of information entered  
22 into the MPD database], to reduce the risk of innocent persons  
23 with the same or similar names having their address falsely  
24 entered into MPD's database as that of a suspect." (Id. ¶ 17.) As  
25 a result, "a number of other individuals in the last several  
26 years. . . have been falsely arrested." (Id. ¶ 28.)

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1 Specifically, Saelee argues "the Fourth Amendment applies to ...  
2 pre-arraignment seizure[s]". (Mot. 3:28-4:1, ECF No. 16.)

3 However, "[p]recedent demonstrates . . . that post-  
4 arrest incarceration is analyzed under the Fourteenth Amendment  
5 alone." Rivera v. County of Los Angeles, 745 F.3d 384, 389-  
6 90 (9th Cir.2014).

7 Saelee has not shown that the dismissal motion should  
8 be granted without leave to amend. Therefore, the motion is  
9 denied.

#### 10 **B. Monell Claim**

11 The City and Andrade seek dismissal of Plaintiff's  
12 Monell claim, arguing "to the extent Plaintiff fails to  
13 sufficiently allege. . . an underlying constitutional violation  
14 of the Fourth and Fourteenth Amendments, the Monell claim also  
15 fails." (Mot. 6:21-23.)

16 Plaintiff argues his Complaint sufficiently alleges a  
17 Monell claim against the City and Andreade since he alleges they  
18 "failed to institute reasonable quality control procedures within  
19 the MPD for requiring verification and corroboration [of  
20 information in the database], to reduce the risk of innocent  
21 persons . . . having their address falsely entered into MPD's  
22 database" notwithstanding the "numerous procedures and  
23 information systems [that] are available. . . to address [this]  
24 risk," and this failure amounts to deliberate indifference.  
25 (Opp'n 21:19-26.)

26 To allege a claim under the municipal liability  
27 doctrine promulgated by the Supreme Court in Monell v. Department  
28 of Social Services, 436 U.S. 658 (1978), "a plaintiff must prove

1 “(1) that the plaintiff possessed a constitutional right of which  
2 he was deprived; (2) that the municipality had a policy; (3) that  
3 this policy amounts to deliberate indifference to the plaintiff's  
4 constitutional right; and, (4) that the policy is the moving  
5 force behind the constitutional violation.” Dougherty v. City of  
6 Covina, 654 F.3d 892, 900 (9th Cir.2011).

7 Plaintiff has not alleged facts plausibly evincing that  
8 the MPD database policies were the “moving force” behind his  
9 alleged constitutional injury; and he alleges that the arresting  
10 officers lacked probable cause to arrest him. (FAC ¶ 30.)

11 Therefore, Plaintiff’s Monell claim is dismissed.

12 **C. California Constitution**

13 Saelee argues Plaintiff’s claim alleged under Article  
14 I, Section 13 of the California Constitution should be dismissed  
15 since it “fail[s] as a matter of law” because “California courts  
16 do not recognize [a claim] for damages for violation” of this  
17 provision. (Mot. 8:22, 8:24-25.)

18 Plaintiff counters that “[a] damages claim under  
19 Article I, § 13 is cognizable because the California Supreme  
20 Court in Katzberg [v. Regents of Univ. of Cal.]. . . implicitly  
21 endorsed a damages action for the violation of the prohibition  
22 against unlawful searches and seizures” in Article I, Section 13  
23 of the California Constitution. (Opp’n 26:4-6.)

24 Article I, Section 13 of the California Constitution  
25 protects a person’s “right. . . to be secure in their persons,  
26 papers, and effects against unreasonable seizures and searches.”  
27 In Katzberg, the California Supreme Court stated “it is  
28 appropriate to employ the following framework for determining the

1 existence of a damages action to remedy an asserted  
2 constitutional violation”:

3 First, we shall inquire whether there is  
4 evidence from which we may find or infer,  
5 within the constitutional provision at issue,  
6 an affirmative intent either to authorize or  
7 to withhold a damages action to remedy a  
8 violation. . . . If we find any such intent,  
9 we shall give it effect. Second, if no  
10 affirmative intent either to authorize or to  
11 withhold a damages remedy is found, we shall  
12 undertake the ‘constitutional tort’ analysis  
13 adopted by Bivens [v. Six Unknown Named  
14 Agents, 403 U.S. 388 (1971)] and its progeny.  
15 Among the relevant factors in this analysis  
16 are whether an adequate remedy exists, the  
17 extent to which a constitutional tort action  
18 would change established tort law, and the  
19 nature and significance of the constitutional  
20 provision. If we find that these factors  
21 militate against recognizing the  
22 constitutional tort, our inquiry ends. If,  
23 however, we find that these factors favor  
24 recognizing a constitutional tort, we also  
25 shall consider the existence of any special  
26 factors counseling hesitation in recognizing  
27 a damages action, including deference to  
28 legislative judgment, avoidance of adverse  
policy consequences, considerations of  
government fiscal policy, practical issues of  
proof, and the competence of courts to assess  
particular types of damages.

Katzberg v. Regents of Univ. of Cal., 29 Cal.4th 300, 317 (2002).

19 The Katzberg factors do not favor Plaintiff’s monetary  
20 damages claim alleged under Article I, Section 13 of the  
21 California Constitution since “[n]either the plain language of  
22 the [A]rticle I, [S]ection 13, nor the available legislative  
23 history indicate[s] an intent on behalf of the California  
24 Legislature to permit the recovery of monetary damages for its  
25 violation.” Manning v. City of Rohnert Park, No. C 06-03435 SBA,  
26 2007 WL 1140434, at \*1 (N.D. Cal. Apr. 17, 2007). Nor has  
27 Plaintiff shown that he lacks an adequate remedy under  
28

1 California's false arrest and false imprisonment law to seek  
2 damages for his alleged injury. See Brown v. Cnty. of Kern, No.  
3 1:06-cv-00121-OWW-TAG, 2008 WL 544565, at \*17 (E.D. Cal. Feb. 26,  
4 2008) (considering legislative history and Plaintiff's other tort  
5 claims when deciding Plaintiff could not bring a damages claim  
6 under the same constitutional section).

7 Therefore, Saelee's motion to dismiss Plaintiff's  
8 general and compensatory damages claim alleged under Article I,  
9 Section 13 of the California Constitution without leave to amend  
10 is granted.

11 **D. Negligence**

12 **1. No Duty**

13 Saelee seeks dismissal of Plaintiff's negligence claim  
14 against him arguing solely that Plaintiff does not "identify any  
15 enactment or statute that impose[d] some legal duty on . . .  
16 Saelee." (Mot. 10:2-3.) However, Saelee has not demonstrated that  
17 this argument is a basis for dismissal.

18 Therefore, the motion is denied.

19 **2. Immunity**

20 The City seeks dismissal of Plaintiff's negligence  
21 claim that is alleged against it under California Government Code  
22 section 815.2, arguing that California law immunizes it from this  
23 claim.

24 Plaintiff contends California law authorizes this claim  
25 since he alleges that his injury resulted from a City employee's  
26 conduct while the employee was acting within the scope of his  
27 employment.

28 The City responds that holding it liable for its

1 employee's conduct "would be redundant to any claim asserted  
2 against an individual employee," and since Plaintiff's negligence  
3 claim is also alleged against Saelee, "any separate claim for  
4 relief against the City. . . based on ... [Saelee's alleged  
5 conduct] would be . . . superfluous." (Opp'n 15-17.)

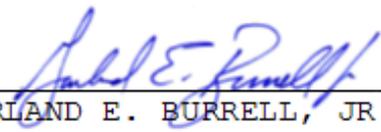
6 "California Government Code section 815.2, subdivision  
7 (a) makes a public entity vicariously liable for its employee's  
8 negligent acts or omissions within the scope of employment."  
9 Eastburn v. Reg'l Fire Prot. Auth., 31 Cal. 4th 1175, 1180  
10 (2003). "As long as [a plaintiff] is permitted to allege that the  
11 [City] employees were negligent, he must also be permitted to  
12 allege that the [City] is derivatively liable pursuant to  
13 California Government Code § 815.2(a)." AE ex rel. v. Cnty. of  
14 Tulare, 666 F.3d 631, 638 (9th Cir. 2012).

15 Therefore, the City's motion is denied.

16 **IV. Conclusion**

17 For the stated reasons, each Defendant's dismissal  
18 motion is GRANTED in PART and DENIED in PART. Plaintiff is  
19 granted ten (10) days from the date on which this order is filed  
20 to file a Second Amended Complaint addressing the deficiencies in  
21 any claim dismissed with leave to amend.

22 Dated: January 8, 2015

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25 \_\_\_\_\_  
26 GARIAND E. BURRELL, JR.  
27 Senior United States District Judge  
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