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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PRAVEEN SINGH, an individual;
and JOYTESHNA KARAN, an
individual,

Plaintiffs,

v.

KIRK BUNCH, an individual;
FRANK NAVARRO, an individual;
JOHN EVERS, an individual;
DAVID HARRIS; BIRGIT
FLADAGER; COUNTY OF
STANISLAUS, a government
entity; ADAM CHRISTIANSON;
STANISLAUS COUNTY SHERIFF
DEPARTMENT, a government
entity; and DOES 1-100,
inclusive,

Defendants.

No. 1:15-cv-00646-GEB-BAM

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

Defendants Birgit Fladager, County of Stanislaus (the "County"), Stanislaus County Sheriff Department (the "Sheriff's Department"), Adam Christianson ("Sheriff Christianson"), David Harris, and Kirk Bunch (collectively, "Defendants") seek dismissal under Federal Rule of Civil Procedure ("Rule") 12(b)(6) of certain federal and state claims Plaintiffs Praveen Singh and Joyteshna Karan (collectively, "Plaintiffs") allege in their Complaint. (Defs.' Mot. to Dismiss ("Mot."), ECF No. 15.) Defendants Harris and Bunch also move for a more definite

1 statement under Rule 12(e) of any claim against them that is not
2 dismissed without leave to amend. (Mot. 14:19-21.)

3 **I. FACTUAL ALLEGATIONS**

4 The following factual allegations in the Complaint
5 concern the motions.

6 Since 2003, Plaintiff Singh "has been the subject of an
7 erroneous and malicious investigation related to the homicide of
8 Korey Kauffman." (Compl. ¶ 15, ECF No. 1.) "It appears the . . .
9 investigation . . . is politically motivated, or . . . a[]
10 personal vendetta by Defendants." (Compl. ¶ 18.)

11 District Attorney Defendant Fladager, Chief Deputy
12 District Attorney Defendant Harris, and District Attorney
13 Investigator Defendant Bunch led the investigation. (Compl. ¶¶ 3,
14 9, 16.) Further, officers "from the Turlock, Modesto, and Ceres
15 Police Departments, [the] Department of Corrections, and the
16 Stanislaus County Sheriff's Department were involved in a joint
17 task force investigating the crime." (Compl. ¶ 20.)

18 "At some point during this investigation, Defendant
19 Bunch came to believe [Plaintiff] Singh was involved in the
20 murder." (Compl. ¶ 20.) "Investigators¹ have engaged in an all-
21 out bully campaign against [Plaintiff] Singh and the 'Indian'
22 community" (Compl. ¶ 19.) Investigators "searched the
23 business and residence of" another individual, who Investigators
24 thought had information about the homicide. (Compl. ¶ 19 n.2.)
25 Plaintiff Karan has "been investigated, harmed, and bullied by
26

27 _____
28 ¹ Plaintiffs refer to Defendants Bunch, Frank Navarro, and John Evers as
"Investigators." (Compl. ¶ 12.)

1 the District Attorney's office, [Defendant] Bunch, and [other
2 unidentified] Defendants." (Compl. ¶ 19 (emphasis removed).)

3 Before September 6, 2013, "a confidential witness hired
4 by [Defendant] Bunch" called Plaintiff Singh and "attempted to
5 induce [him] to 'talk' about the murder." (Compl. ¶ 21.)
6 "Although [Plaintiff] Singh had [no involvement with the murder
7 and therefore no information] to offer [to] the investigation,
8 he . . . cooperated with Investigators." (Compl. ¶ 21.)

9 On October 2, 2013, Plaintiff Singh sat for a polygraph
10 examination. (Compl. ¶ 22.) Thereafter, "Investigators began
11 their attack on" Plaintiff Singh's friends and family. (Compl.
12 ¶ 23.) Defendant Bunch follows a pattern where "he would threaten
13 the friends and family of [Plaintiff] Singh, [and] accus[e] . . .
14 [Plaintiff] Singh '[of being] a murderer' and . . . [of]
15 run[ning] some sort of a prostitution ring." (Compl. ¶ 23
16 (emphasis removed).) "On numerous occasions, [Plaintiff] Singh's
17 friends were threatened by Investigators to 'get away from Singh'
18 because 'he is a murderer' and 'a pimp.'" (Compl. ¶ 24.)

19 "On or about September 13, 2013, Plaintiff
20 [Karan] . . . voluntarily went to the District Attorney's office
21 to 'talk' about the investigation." (Compl. ¶ 25.) "At this time,
22 [Plaintiffs] Singh and Karan were the parents of one child, and
23 [Plaintiff] Karan was [five-months] pregnant with a second
24 child" (Compl. ¶ 26.) "Although [Plaintiff] Karan was
25 cooperating with Investigators, answering their questions
26 truthfully, Investigators threatened [her] with an investigation
27 for real estate fraud if she didn't 'give them what they
28 wanted[,]'" meaning "information incriminating [Plaintiff]

1 Singh." (Compl. ¶ 25.) Defendant Bunch told Plaintiff Karan, "If
2 you don't stay away [from Singh], I will come and take your kids
3 away and put them in foster care," (Compl. ¶ 26 (alteration in
4 original) (emphasis removed)), and, "I will investigate you and
5 take your children away." (Compl. ¶ 26 (emphasis removed).)

6 Plaintiff Singh was arrested on October 29, 2013,
7 "although he learned it was not regarding the murder
8 investigation." (Compl. ¶ 27.) While in jail, Plaintiff Singh was
9 housed with members of the Northern Ryders gang. (Compl. ¶ 28.)
10 During this time, Defendant Bunch "attempted to 'set up'
11 [Plaintiff] Singh with these gang members by listening in on
12 conversations." (Compl. ¶ 28.) His "bail bond was posted at about
13 10:00 PM the same day, but [he] was[not] released until 4:00
14 AM." (Compl. ¶ 28.)

15 On or about November 11, 2013, Plaintiff "Singh
16 voluntarily called [Defendant] Bunch and asked him 'What do you
17 want from me?'" (Compl. ¶ 29 (emphasis removed).)

18 Plaintiff Singh was again arrested on November 27,
19 2013; the arrest was unrelated to the homicide. (Compl. ¶ 30.)
20 "[A]fter his arrest, Investigators sought and placed [Plaintiff]
21 Singh under a [section] 1275 hold."² (Compl. ¶ 34.) Plaintiff
22 Singh was again housed with Northern Ryders gang members. (Compl.
23 ¶ 36.) "A gang member told [Plaintiff] Singh that [Defendant]
24 Bunch told them that Singh was a 'snitch'" (Compl. ¶ 37.)
25 "Because of this accusation by [Defendant] Bunch, several members
26 threatened [Plaintiff] Singh with his life." (Compl. ¶ 37.)

27
28 ² Plaintiffs presumably refer to California Penal Code section 1275, which
concerns bail issues.

1 Plaintiff "Singh immediately yelled for a guard[,]” and was moved
2 to a laundry facility. (Compl. ¶ 38.)

3 On December 2, 2013, Plaintiff "Karan delivered her
4 child.” (Compl. ¶ 41.) "The birth had complications due to the
5 stress suffered by [Plaintiff] Karan, from [Plaintiff] Singh
6 being in jail . . . , together with the threats by [Defendant]
7 Bunch.” (Compl. ¶ 41.)

8 On February 27, 2014, Plaintiff Singh was arrested "for
9 violation of Welfare and Institutions Code § 14107(b)(4)(a)."
10 (Compl. ¶ 43.) Before his arrest, Plaintiff Singh gave an
11 unidentified person the keys to Plaintiff Karan's real estate
12 brokerage, Royal Royalty. (Compl. ¶ 43.) Investigators
13 "search[ed] [Royal Realty's] . . . files[and] computers, and
14 ended up seizing the majority of [its] files, computers, and
15 printers.” (Compl. ¶ 44.) Thereafter, Plaintiff "Singh was taken
16 to the Investigators['] office . . . , where [Plaintiff] Singh was
17 asked questions about the murder investigation.” (Compl. ¶ 44.)

18 "On or about April 2, 2014, Investigators went to the
19 office of Stewart Title, a title company used by Royal
20 Realty” (Compl. ¶ 47.) Investigators learned Plaintiff
21 "Singh stood to benefit from a pending transaction, and put
22 Stewart Title 'on notice' [of the homicide investigation] with
23 the goal that it would harm [Plaintiff] Singh financially if
24 Investigators could convince Stewart Title to drop Royal Realty
25 [and Plaintiffs] as customers.” (Compl. ¶ 47.) Because of
26 Defendants' actions, "Stewart Title did in fact stop doing
27 business with” Plaintiffs. (Compl. ¶ 49.)

28

1 Plaintiffs also allege the County, Defendant Fladager,
2 and Defendant Harris have policies that include: (1) failing to
3 train on "constitutional limits on the use of force and abuse of
4 power"; (2) failing to punish unconstitutional use of force; (3)
5 tolerating unconstitutional use of force; (4) failing to
6 investigate citizen complaints; (5) tolerating collusive
7 statements; (6) permitting outrageous tactics and tortuous
8 activity; and (7) failing to supervise those involved in the
9 investigation. (Compl. ¶¶ 51, 52.) Plaintiffs also allege the
10 County, Defendant Fladager, and Defendant Harris encouraged,
11 tolerated, ratified, and acquiesced to the conduct about which
12 each Plaintiff complains. (Id.)

13 II. LEGAL STANDARD

14 "To survive a motion to dismiss, a complaint must
15 contain sufficient factual matter, accepted as true, to state a
16 claim to relief that is plausible on its face." Caviness v.
17 Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir.
18 2010) (quoting Ashcroft v. Iqbal, 556 U.S. 662 (2009)). "A claim
19 has facial plausibility when the plaintiff pleads factual content
20 that allows the court to draw the reasonable inference that the
21 defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
22 at 678 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556
23 (2007)). "Determining whether a complaint states a plausible
24 claim for relief . . . [is] a context-specific task that requires
25 the . . . court to draw on its judicial experience and common
26 sense." Id. at 679.

27 "For purposes of a motion to dismiss, we accept all
28 well-pleaded allegations of material fact as true and construe

1 them in the light most favorable to the nonmoving party.”
2 Sateriale v. R.J. Reynolds Tobacco Co., 697 F.3d 777, 783 (9th
3 Cir. 2012).

4 [Further,] the court need not accept as true
5 conclusory allegations, nor make unwarranted
6 deductions or unreasonable inferences. But so
7 long as the plaintiff alleges facts to
8 support a theory that is not facially
implausible, the court’s skepticism is best
reserved for later stages of the proceedings
when the plaintiff’s case can be [evaluated]
on evidentiary grounds.

9 In re Gilead Sciences Secs. Litig., 536 F.3d 1049, 1057 (9th Cir.
10 2008) (citations omitted).

11 III. DISCUSSION

12 A. All Defendants

13 1. Standing

14 Each Defendant argues that Plaintiff Karan lacks
15 standing to allege the following claims under 42 U.S.C. § 1983:
16 unlawful detention, deliberate indifference, unlawful search and
17 seizure, and racial discrimination, including denial of equal
18 protection of law; contending “[t]here are no allegations of any
19 constitutional injury involving a legally protected interest
20 caused by a particular defendant.” (Mot. 8:26-27, 9:4-5.)

21 To have standing, a plaintiff must plausibly allege
22 three standing elements:

23 First, the plaintiff must have suffered an
24 “injury in fact”—an invasion of a legally
25 protected interest which is (a) concrete and
26 particularized, and (b) actual or imminent,
27 not conjectural or hypothetical. Second,
28 there must be a causal connection between the
injury and the conduct complained of—the
injury has to be fairly . . . trace[able] to
the challenged action of the defendant, and
not . . . th[e] result [of] the independent
action of some third party not before the

1 court. Third, it must be likely, as opposed
2 to merely speculative, that the injury will
be redressed by a favorable decision.

3 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
4 (alterations in original) (citations and internal quotation marks
5 omitted). Further, in the equal protection context, "if a
6 governmental actor is discriminating on the basis of race, the
7 resulting injury accords a basis for standing only to those
8 persons who are personally denied equal treatment by the
9 challenged discriminatory conduct." United States v. Hays, 515
10 U.S. 737, 743-44 (1995) (citations and internal quotation marks
11 omitted).

12 Plaintiff Karan has standing to assert a racial
13 discrimination claim under § 1983, based on her assertion that
14 she was personally denied equal treatment by Defendants' alleged
15 conduct during the homicide investigation.³ Plaintiff Karan
16 alleges a concrete and actual injury caused by Defendants.
17 Specifically, she alleges she sustained emotional stress with the
18 manifestation of a physical injury—birth complications—caused in
19 part by District Attorney Investigator Defendant Bunch when he
20 threatened to investigate her for real estate fraud and take away
21 her children. (Compl. ¶¶ 26, 41, 82.) She further alleges she has
22 "suffered emotional distress, stress, anguish, anxiety, and
23 live[s] in fear of [her] life[; and that she has] been directly
24 harmed . . . by Investigators who have intentionally interfered
25 with [her] business, and destroyed [her] reputation among the
26 community, including their close church community." (Compl.

27 ³ Plaintiff Singh, rather than Plaintiff Karan, asserts unlawful
28 detention, deliberate indifference, and unlawful search and seizure claims
under § 1983.

1 ¶¶ 50, 82.) See City of Los Angeles v. Lyons, 461 U.S. 95, 96
2 (1983) (holding plaintiff “presumably” had “standing to claim
3 damages against the individual officers [who choked him] and
4 perhaps against the City”). Therefore, this portion of
5 Defendants’ dismissal motion is denied as to Plaintiff Karan’s
6 racial discrimination claim.

7 **2. Racial Discrimination in Violation of the**
8 **Fourteenth Amendment’s Equal Protection Clause**
9 **Claim**

10 Defendants seek dismissal of each Plaintiff’s racial
11 discrimination claim, which they jointly allege under the
12 Fourteenth Amendment’s Equal Protection Clause, arguing it is not
13 a viable claim.⁴ Specifically, Defendants contend, *inter alia*,
14 this claim fails to allege “that any of the actions that
15 Plaintiffs attribute to Defendants were taken because of
16 Plaintiffs’ race, national origin, religion, or any other legally
17 protected characteristic.” (Mot. 11:18-21.) Defendants further
18 contend Plaintiffs “fail[] to plead . . . facts reflecting . . .
19 disparate treatment.” (Mot. 11:24.)

20 Plaintiffs allege, *inter alia*, they were subjected to
21 “racially motivated arrests, searches, and seizures.” (See Compl.
22 ¶ 82.) They further allege “race was a motivating factor in the
23 decision to use excessive force[and] maliciously prosecute
24 Plaintiff [Singh], and [that these actions were] undertaken with
25 the purpose of depriving Plaintiffs of the equal protection and
26 benefits of the law.” (Compl. ¶ 83.)

27
28 ⁴ Plaintiffs also allege a racial discrimination claim under 42 U.S.C.
§ 1981 that is not challenged in the motions. (See Compl. 18:11-14.)

1 “To state a claim for violation of the Equal Protection
2 Clause, a plaintiff must [allege] that the defendant acted with
3 an intent or purpose to discriminate against [plaintiff] based
4 upon [plaintiff’s] membership in a protected class[,]” Serrano v.
5 Francis, 345 F.3d 1071, 1082 (9th Cir. 2003) (citation omitted),
6 or “that [plaintiff] has been intentionally treated differently
7 from others similarly situated and that there is no rational
8 basis for the difference in treatment.” Vill. of Willowbrook v.
9 Olech, 528 U.S. 562, 564 (2000). Further, “a long line of Supreme
10 Court cases make clear that the Equal Protection Clause requires
11 proof of discriminatory intent or motive.” Navarro v. Block, 72
12 F.3d 712, 716 (9th Cir. 1995) (citations omitted).

13 Plaintiffs plead facts from which it can be inferred
14 that they are of Indian origin. (See Compl. ¶ 19.) See Reedy v.
15 Precyse Solutions LLC, No. 1:12-CV-02061-AWI, 2013 WL 1563254, at
16 *6 (E.D. Cal. Apr. 12, 2013) (“As a person of . . . Indian
17 origin, Plaintiff is a member of a protected class.”).

18 Plaintiffs’ conclusory assertions fail to plausibly
19 allege that Defendants acted with an intent or purpose to
20 discriminate against Plaintiffs based upon their membership in a
21 protected class. Their allegation that “the motivation behind
22 this investigation and related investigations is politically
23 motivated, or . . . [a] personal vendetta by Defendants,” (Compl.
24 § 18), contradicts a plausible inference that Defendants acted
25 with any discriminatory intent or motive during the homicide
26 investigation. Further, Plaintiffs’ allegation that “Defendant
27 Bunch came to believe [Plaintiff] Singh was involved in the
28 murder,” (Compl. ¶ 20), contradicts a plausible inference that

1 Defendant Bunch's actual motive was discriminatory. Nor have
2 Plaintiffs plausibly alleged they were intentionally treated
3 differently from other similarly situated people under
4 investigation.

5 Therefore, this portion of each Defendant's dismissal
6 motion is granted.

7 **3. RICO Conspiracy Claim**

8 Each Defendant seeks dismissal of each Plaintiff's
9 conspiracy claim alleged under RICO, arguing, *inter alia*, the
10 "broad allegation[s] . . . against the individual [Defendant]s
11 are not sufficient under Rule 8 to . . . put [each Defendant] on
12 notice[] as to what alleged acts of racketeering Plaintiffs claim
13 are at issue." (Mot. 13:1-3.)

14 Plaintiffs have not responded to these dismissal
15 arguments.

16 "To establish a violation of [the RICO conspiracy
17 statute], Plaintiffs must allege either an agreement that is a
18 substantive violation of RICO or that the defendants agreed to
19 commit, or participated in, a violation of two predicate
20 offenses." Howard v. Am. Online Inc., 208 F.3d 741, 751 (9th Cir.
21 2000) (citation omitted). To plausibly allege the substantive
22 elements of RICO, under § 1962(c), plaintiff must allege: "(1)
23 conduct (2) of an enterprise (3) through a pattern (4) of
24 racketeering activity." Rezner v. Bayerische Hypo-Und Vereinsbank
25 AG, 630 F.3d 866, 873 (9th Cir. 2010) (citation and internal
26 quotation marks omitted).

27 Plaintiffs' conclusory assertions are insufficient to
28 plausibly allege a violation of the RICO conspiracy statute,

1 since Plaintiffs fail to plausibly allege the substantive
2 elements of a RICO claim or violation of two predicate offenses.

3 Therefore, each Plaintiff's RICO conspiracy claim is
4 dismissed against all Defendants.

5 **4. Negligent Interference with Contract Claim**

6 Defendants Fladager, Bunch, and Harris seek dismissal
7 of Plaintiffs' negligent interference with contract claim,
8 arguing Plaintiffs fail to plausibly allege this claim. (Mot.
9 5:12-14, 10:22-24.) However, "[i]n California there is no [claim]
10 for negligent interference with contractual relations." Davis v.
11 Nadrich, 174 Cal. App. 4th 1, 9 (2009). Therefore, this claim is
12 dismissed since Plaintiffs have not shown it is viable under
13 California law.

14 **B. Defendant Fladager**

15 **1. Official Capacity § 1983 Claims**

16 Defendant Fladager seeks dismissal of Plaintiff Singh's
17 unlawful detention, deliberate indifference, and unlawful search
18 and seizure claims under § 1983 that are alleged against
19 Defendant Fladager in her official capacity as the County's
20 District Attorney, arguing the claims "are precluded [by] the
21 Eleventh Amendment." (Mot. 3:5-7.) She further argues:
22 "Plaintiff[Singh's] claims against Defendant . . . Fladager in
23 her official capacity are based solely on [Defendant] Fladager's
24 role as a policymaker and her training and supervision of her
25 employees. Defendant[Fladager] submit[s] that Pitts[v. County
26 of Kern, 17 Cal. 4th 340 (1998)] and Ninth Circuit precedent
27 following Pitts establishes that Plaintiff[Singh's] claims
28 against [Defendant] Fladager are barred pursuant to the Eleventh

1 Amendment." (Mot. 5:1-5 (citations omitted)). Plaintiff Singh
2 asks the Court to allow discovery before dismissal on Eleventh
3 Amendment immunity grounds. (Opp'n 1:24-28, 2:1-12.)

4 Plaintiff Singh alleges Defendant Fladager directed the
5 homicide investigation, "trained and supervised the
6 [I]nvestigators[,] " failed to conduct sufficient training
7 concerning "the constitutional limitations on the use of force
8 and abuse of power," and is responsible for a constitutionally-
9 deficient policy concerning the use of force. (Compl. ¶¶ 3, 16,
10 51-52.)

11 The Eleventh Amendment bars suits for damages against
12 state officials acting in their official capacity, in the absence
13 of the state's consent to suit. Flint v. Dennison, 488 F.3d 816,
14 824-25 (9th Cir. 2007). This bar applies to a district attorney
15 when "the district attorney represents the state, not the
16 county." Pitts, 17 Cal. 4th at 345. "If the District Attorney was
17 a state officer when [s]he engaged in the acts of which [a
18 plaintiff] complains, [s]he is entitled to Eleventh Amendment
19 immunity (to the extent that [s]he is sued in h[er] official
20 capacity)" Ceballos v. Garcetti, 361 F.3d 1168, 1182 (9th
21 Cir. 2004), rev'd and remanded on other grounds, 547 U.S. 410
22 (2006).

23 Plaintiff Singh's conclusory allegations are
24 insufficient to state claims against Defendant Fladager
25 notwithstanding whether she represented the state or the County.
26 Therefore, Defendant Fladager's motion to dismiss the § 1983
27 claims, alleged against her in her official capacity, is granted.
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2. State Claims

Defendant Fladager also seeks dismissal of Plaintiffs' state claims, arguing Plaintiffs fail "to state any facts that reflect [she] had any direct and personal participation in the events giving rise to Plaintiffs' [state] claims," and that she "is immune from any state claims arising out of any alleged actions taken by other Defendants in this case" under California Government Code section 820.8. (Mot. 5:12-16, 6:3-4.)

Plaintiffs do not oppose this portion of the motion.

Section 820.8 states in pertinent part: "a public employee is not liable for an injury caused by the act or omission of another person." Plaintiffs have not alleged that Defendant Fladager was personally involved in any alleged state claim, or any facts plausibly exposing her to liability for the alleged acts of her subordinates. See Milton v. Nelson, 527 F.2d 1158, 1159 (9th Cir. 1975) ("[S]upervisory personnel whose personal involvement is not alleged may not be held responsible for the acts of their subordinates under California law."). Therefore, Defendant Fladager's motion to dismiss Plaintiffs' state claims is granted.

C. County: § 1983 Claims

The County seeks dismissal of Plaintiff Singh's unlawful detention, deliberate indifference, and unlawful search and seizure claims, arguing:

Plaintiffs base their claim against the County by asserting Defendant Fladager is the policymaker for the County Since . . . it is well established that district attorneys of California in their official capacities are arms of the State, then District Attorney Fladager cannot

1 represent the County . . . when setting
2 policy for her department, and when
3 establishing policy in training of her
4 employees in these areas. Thus, because
5 [Defendant] Fladager's policy-making actions
6 are not attributable the County . . . , the
7 County is an improper party to this case.
8 Moreover, as there is no other policy related
9 allegations save that arise from Defendant
10 Fladager, the County should be dismissed.

11 (Mot. 7:4-12 (citation omitted).)

12 Plaintiff Singh's allegations germane to his claim
13 against the County allege: "[The] C[ounty] is sued for the
14 challenged delegated final decisions of Defendant F[ladager] in
15 her official capacity as the District Attorney for the C[ounty],
16 and for . . . final delegated decision makers, with respect to
17 the . . . challenged deliberately indifferent policies,
18 decisions, widespread habits, customs, usages, and practices."

19 (Compl. ¶ 6.)

20 Plaintiff Singh further alleges in pertinent part:

21 It is the longstanding, widespread, and
22 deliberately indifferent custom, habit,
23 practice and/or policy of County, [Defendant]
24 Fladagar, and [Defendant] Harris to permit
25 Investigators to use excessive force,
26 outrageous tactics, and tortuous activity
27 against individuals when such use is
28 unnecessary and unjustified, as well as
failing to supervise and to train
investigators in the appropriate
constitutional limits on the use of force and
techniques, knowing that these members of law
enforcement therefore pose a significant risk
of injury to the public.

(Compl. ¶ 52.)

"A municipality or other local government entity . . .
may be sued for constitutional torts committed by its officials
according to an official policy, practice, or custom." Cortez v.
Cnty. of Los Angeles, 294 F.3d 1186, 1188 (9th Cir. 2002) (citing

1 Monell v. N.Y. Dep't of Soc. Servs., 436 U.S. 658, 690-91
2 (1978)). "To hold a local government liable for an official's
3 conduct, a plaintiff must . . . [allege] that the official [whose
4 action is ascribed to the County] (1) had final policymaking
5 authority concerning the action alleged to have caused the
6 particular constitutional or statutory violation at issue and (2)
7 was the policymaker for the local governing body for the purposes
8 of the particular act." Id. (citation and internal quotation
9 marks omitted).

10 Plaintiff Singh's allegations do not plausibly allege
11 Defendant Fladager was a policymaker for the County. Further,
12 "the court need not accept as true conclusory allegations, nor
13 make unwarranted deductions or unreasonable inferences." In re
14 Gilead Sciences Secs. Litig., 536 F.3d at 1057. Therefore, the
15 County's dismissal motion is also granted.

16 **D. Sheriff Christianson: Official Capacity § 1983 Claims**

17 Sheriff Christianson moves for dismissal of the
18 official capacity claims against him, arguing he is an improper
19 party in the lawsuit because he "is sued in his official capacity
20 only." (Mot. 6:19 n.1.) Plaintiff Singh does not oppose this
21 portion of the motion.

22 The Supreme Court has held that "an official-capacity
23 suit [seeking to recover damages] is, in all respects other than
24 name, to be treated as a suit against the entity." Kentucky v.
25 Graham, 473 U.S. 159, 166 (1985). Such a suit "is not a suit
26 against the official personally, for the real party in interest
27 is the entity." Id.; Butler v. Elle, 281 F.3d 1014, 1023 n.8 (9th
28 Cir. 2002) ("Section 1983 [damages] claims against government

1 officials in their official capacities are really suits against
2 the governmental employer because the employer must pay any
3 damages awarded.”).

4 Therefore, “[w]hen both a municipal officer and a local
5 government entity are named, and the officer is named only in an
6 official capacity, the court may dismiss the officer as a
7 redundant defendant.” Ctr. for Bio-Ethical Reform, Inc. v. Los
8 Angeles Cty. Sheriff Dep’t, 533 F.3d 780, 799 (9th Cir. 2008).
9 Here, the Sheriff’s Department is a named defendant and Sheriff
10 Christianson is the Sheriff’s Department employee. (See Compl.
11 ¶ 8 (alleging Sheriff Christianson is “the head of the Stanislaus
12 County Sheriff’s office”).) Therefore, Plaintiff Singh’s damages
13 claims against Sheriff Christianson in his official capacity are
14 therefore dismissed.

15 **E. Sheriff’s Department: Section 1983 Claims**

16 The Sheriff’s Department seeks dismissal of Plaintiff
17 Singh’s unlawful detention, deliberate indifference, and unlawful
18 search and seizure claims, contending, *inter alia*, it is not
19 subject to suit since a municipality department is not considered
20 a “person” subject to suit for constitutional violations under
21 § 1983, and because it is an improperly named party. (Mot. 7:18-
22 26.) It further asserts: “It is axiomatic that the Stanislaus
23 County Sheriff’s Department is not a separate, distinct legal
24 entity apart from the C[ounty], but instead is just a department
25 within the County.” (Mot. 7:20-22.)

26 Plaintiff Singh does not oppose the Sheriff’s
27 Department’s motion. Plaintiff Singh alleges the “Sheriff’s
28

1 Department w[as] involved in a joint task force investigating the
2 crime.” (Compl. ¶ 20.)

3 The Sheriff’s Department cites Vance v. County of Santa
4 Clara, 928 F. Supp. 993, 996 (N.D. Cal. 1996), for the
5 proposition that “municipal departments are not persons under
6 [§] 1983[.]” (Mot. 7:19-20.) However, the Ninth Circuit has
7 “unequivocally held that when a California sheriff’s department
8 performs the function of conducting criminal investigations, it
9 is a county actor subject to suit under § 1983.” Jackson v.
10 Barnes, 749 F.3d 755, 764 (9th Cir. 2014) (citations omitted).
11 However, Plaintiff Singh’s vague and conclusory allegation fail
12 to plausibly allege what function the Sheriff’s Department
13 performed subjecting it to liability. Therefore, this portion of
14 the dismissal motion is granted.

15 **F. Defendants Harris and Bunch: “Section 1983” claim**

16 Defendants Harris and Bunch each seek dismissal of each
17 Plaintiff’s “§ 1983” claim, arguing “Plaintiffs do not . . .
18 identify a specific [c]onstitutional provision.” (Mot. 10:6.)

19 “[Section] 1983 is not itself a source of substantive
20 rights, but merely provides a method for vindicating federal
21 rights elsewhere conferred.” Graham v. Connor, 490 U.S. 386, 393-
22 94 (1989) (citations and internal quotation marks omitted). In
23 their First Claim, Plaintiffs assert legal conclusions devoid of
24 factual matter, and they “fail to explain in their [O]pposition
25 [brief] how their First [Claim] differs from their [remaining
26 claims].” Fontana, 750 F. Supp. 2d at 1155. “It appears to this
27 Court that Plaintiffs have identically pled [multiple] claims for
28 relief: one for violation of their rights under [§] 1983 and the

1 [remaining claims] for violations of their rights under the
2 Fourth . . . and Fourteenth Amendments." Id. Since each
3 Plaintiff's "§ 1983" claim "is duplicative and fails as a matter
4 of law," id., this portion of the dismissal motion is granted.

5 **G. Defendant Harris**

6 **1. Remaining § 1983 Claims: Unlawful Detention,**
7 **"Deliberate Indifference," and Unlawful Search and**
8 **Seizure Claims**

9 Defendant Harris seeks dismissal of Plaintiff Singh's
10 § 1983 claims alleged against him, arguing the allegations
11 against him are vague, conclusory, and fail to sufficiently
12 allege causation. (See Mot. 9:11-23.)

13 "Vague and conclusory allegations of official
14 participation in civil rights violations are not sufficient to
15 withstand a motion to dismiss." Ivey v. Bd. of Regents of Univ.
16 of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further:

17 A person deprives another of a constitutional
18 right, within the meaning of section 1983, if
19 he does an affirmative act, participates in
20 another's affirmative acts, or omits to
21 perform an act which he is legally required
22 to do that causes the deprivation of which [a
23 plaintiff complains]. The inquiry into
24 causation must be individualized and
25 focus[ed] on the duties and responsibilities
26 of each individual defendant whose acts or
27 omissions are alleged to have caused a
28 constitutional deprivation.

Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (alteration in
original) (citation and internal quotation marks omitted).

Plaintiff Singh alleges Defendant Harris trained and
supervised Investigators; co-led the homicide investigation; made
statements to Plaintiff Singh's lawyer; and is responsible for a

1 constitutionally-deficient policy, along with the County and
2 Defendant Fladager. (Compl. ¶¶ 4, 16, 46, 51, 52.) However,
3 Plaintiff Singh fails to plausibly allege affirmative acts
4 committed by Defendant Harris that caused the referenced, alleged
5 constitutional deprivations. Accordingly, Defendant Harris's
6 motion to dismiss Plaintiff Singh's § 1983 claims alleged against
7 him is granted.

8 **2. State Claims**

9 Defendant Harris also seeks dismissal of Plaintiffs'
10 state claims, arguing, "Plaintiffs . . . fail to plead . . .
11 facts . . . support[ing] th[ose] . . . claims." (Mot. 10:22-23.)
12 He further argues California Government Code section 820.8
13 "precludes imposition of any liability against . . . [him] for
14 actions undertaken by others," in which any state claim could be
15 based. (Mot. 11:2-3.)

16 Plaintiffs do not plausibly allege facts supporting any
17 state claim against Defendant Harris and have not shown he is
18 liable for the alleged acts of another person, in light of
19 section 820.8's rule precluding his liability based on "the act
20 or omission of another person." Cal. Gov't Code § 820.8.
21 Therefore, this portion of the dismissal motion is granted.

22 **H. Defendant Bunch**

23 **1. Remaining § 1983 Claims: Unlawful Detention,** 24 **"Deliberate Indifference," and Unlawful Search and** 25 **Seizure Claims**

26 Defendant Bunch seeks dismissal of Plaintiff Singh's
27 § 1983 claims, arguing, *inter alia*, the allegations against him
28

1 are vague, conclusory, and fail to sufficiently allege causation.
2 (Mot. 9:11-23.)

3 **a. Unlawful detention claim**

4 Defendant Bunch seeks dismissal of Plaintiff Singh's
5 unlawful detention claim, arguing Plaintiff Singh "fail[s] to
6 state any defendant actually arrested him or caused the arrest,"
7 (Mot. 10:7-8), "do[es] not identify which agency arrested
8 [Plaintiff Singh] on any occasion," (Mot. 9:26-27), and "fail[s]
9 to allege Defendant Bunch . . . had any role in [his] alleged
10 delay in release from jail after [Plaintiff Singh] post[ed]
11 bail." (Mot. 10:11-12.)

12 Plaintiff Singh alleges in the Complaint: "Defendants
13 deprived Plaintiff [Singh] of his property and liberty interests
14 when he was unlawfully arrested and jailed without probable
15 cause[,]" (Compl. ¶ 70), and since he "was not timely released"
16 after he posted bail. (Compl. ¶ 71.)

17 Plaintiff Singh's "[v]ague and conclusory allegations
18 of [Defendant Bunch's] participation in [these alleged]
19 violations are not sufficient to withstand a motion to dismiss."
20 Ivey, 673 F.2d at 268. The Complaint lacks factual allegations
21 plausibly showing that Defendant Bunch participated in Plaintiff
22 Singh's arrests, subsequent jailing, and alleged untimely release
23 from jail.

24 Therefore, Defendant Bunch's motion to dismiss
25 Plaintiff Singh's unlawful detention claim is granted.

26 **b. "Deliberate indifference" claim**

27 Defendant Bunch seeks dismissal of Plaintiff Singh's
28 deliberate indifference claim, in which conditions of Plaintiff

1 Singh's jail confinement are challenged. Defendant Bunch argues,
2 "Plaintiff[] [Singh] appear[s] to claim his life was placed in
3 danger in . . . jail, . . . but fails to state any individual
4 defendant made any statements to place him in danger." (Mot.
5 10:12-14.) Defendant Bunch also argues "Plaintiff Singh appears
6 to admit he complained [to a guard] about being in danger and was
7 moved" and that this admission "render[s] the . . . [c]laim
8 without bases" for challenging this referenced jail confinement.
9 (Mot. 10:14-16.)

10 Plaintiff Singh alleges in his Complaint that while in
11 jail around Thanksgiving Day, "[a] gang member told [Plaintiff]
12 Singh that [Defendant] Bunch told them that [Plaintiff] Singh was
13 a 'snitch' . . . [and that] [b]ecause of this accusation . . .
14 several members threatened [Plaintiff] Singh with his life."
15 (Compl. ¶ 37.)

16 Since Plaintiff Singh alleges in the Complaint that he
17 "was a pretrial detainee, his right to be free from violence at
18 the hands of other inmates arises from the Fourteenth Amendment
19 rather than the Eighth Amendment." Castro v. Cnty. of Los
20 Angeles, 797 F.3d 654, 664 (9th Cir. 2015). "Despite those
21 different constitutional sources, the 'deliberate indifference'
22 test is the same for pretrial detainees and for convicted
23 prisoners." Id. (citation omitted). In Valandingham v. Bojorquez,
24 866 F.2d 1135, 1138 (9th Cir. 1989), the Ninth Circuit held a
25 prisoner stated a claim under § 1983 where an inmate alleged that
26 on a particular date, "he was approached by fellow prisoners and
27 threatened with harm because [prison officials] had told other
28 inmates in the law library that [plaintiff] was a snitch."

1 Defendant Bunch has not shown that Plaintiff Singh's
2 allegations fail to plausibly state the challenged claim.
3 Therefore, this portion of Defendant Bunch's motion is denied.

4 **c. Unlawful search and seizure claim**

5 Defendant Bunch seeks dismissal of Plaintiff Singh's
6 unlawful search and seizure claim, which is based on Defendant
7 Bunch's conduct during the investigation, arguing Plaintiff Singh
8 does not plausibly allege a "claim under the Fourth or Fourteenth
9 Amendments as a matter of law." (Mot. 10:16-19.) Plaintiff Singh
10 alleges, "Defendants arrested [him] without probable cause, and
11 seized his property without probable cause." (Compl. ¶ 78.) He
12 further alleges in pertinent part: Investigators searched
13 Plaintiff Karan's real estate brokerage and seized property
14 therein. (Compl. ¶ 44.)

15 However, the Complaint lacks factual allegations
16 plausibly showing that Defendant Bunch participated in Plaintiff
17 Singh's arrests. Further, Plaintiff Singh fails to identify what
18 property he owned that Defendant Bunch allegedly seized; instead,
19 he alleges Investigators seized Plaintiff Karan's property from
20 her real estate brokerage. (Compl. ¶ 43.) Therefore, this portion
21 of the dismissal motion is granted.

22 **2. State Claims: California Government Code Section**
23 **945.3**

24 Defendant Bunch seeks dismissal of Plaintiff Singh's
25 state claims alleged against him, arguing that under California
26 Government Code Section 945.3, "all state . . . claims arising
27 out of [Plaintiff Singh's pending criminal matters] . . . may not
28 be pursued at this time." (Mot. 13:25, 14:13-14.) Plaintiff Singh

1 opposes, arguing Defendant Bunch's conduct "was related to
2 matters outside the criminal proceedings against [him]." (Opp'n
3 5:2-3.)

4 Section 945.3 states in pertinent part: "No
5 person . . . charg[ed with] a criminal offense may bring a civil
6 action based upon conduct of the peace officer relating to the
7 offense for which the accused is charged" Here, Plaintiff
8 Singh alleges Defendant Bunch's conduct related to the homicide
9 investigation, and Plaintiff Singh has not been charged with the
10 homicide. (Compl. ¶¶ 15-16.) In light of these allegations,
11 Plaintiff Singh's state claims against Defendant Bunch are not
12 barred by section 945.3.⁵

13 3. State Claims: Factual Sufficiency

14 Additionally, Defendant Bunch argues, *inter alia*,
15 Plaintiffs' state claims fail, arguing that "Plaintiffs . . .
16 fail to plead . . . facts . . . support[ing] their state . . .
17 claims against [Defendant] Bunch." (Mot. 10:22-23.) He further
18 argues, "Plaintiffs plead that 'Investigators' undertook the
19 actions of which they complain but Plaintiffs do not identify any
20 specific actions by . . . [Defendant] Bunch . . . that would
21 support the existence of any of the[state] claims." (Mot. 10:27-
22 28.)

24 ⁵ Defendants request judicial notice of three Case Information sheets,
25 concerning criminal matters pending against Plaintiff Singh. (Req. Judicial
26 Notice, ECF No. 8-2; Mot. 14:9.) The Court takes notice of these sheets. See
27 U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d
28 244, 248 (9th Cir. 1992) (holding the court may take judicial notice of
proceedings in other courts); MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504
(9th Cir. 1986) (holding the court "may take judicial notice of matters of
public record outside the pleadings"). The Case Information sheets do not show
Plaintiff Singh has been charged with the homicide.

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a. Defamation claim

Defendant Bunch seeks dismissal of each Plaintiff's defamation claim alleged against him. Defamation "allegations are insufficient i[f] . . . they are ascribed to defendants collectively rather than to individual defendants." Arikat v. JP Morgan Chase & Co., 430 F. Supp. 2d 1013, 1020 (N.D. Cal. 2006). "While the exact words or circumstances of the slander need not be alleged to state a claim for defamation, the substance of the defamatory statement must be alleged." Silicon Knights, Inc. v. Crystal Dynamics, Inc., 983 F. Supp. 1303, 1314 (N.D. Cal. 1997) (citation omitted). "Even under liberal federal pleading standards, 'general allegations of the defamatory statements' which do not identify the substance of what was said are insufficient." Jacobson v. Schwarzenegger, 357 F. Supp. 2d 1198, 1216 (C.D. Cal. 2004).

Plaintiffs' allegations ascribed to Defendant Bunch are that he told family and friends Plaintiff Singh "is a murderer," "a pimp," and "runs some sort of a prostitution ring"; Plaintiffs also allege he told gang members Plaintiff Singh was a "snitch." (Compl. ¶¶ 23, 37.)

Defendant Bunch has not shown that Plaintiff Singh's allegations are insufficient to allege a defamation claim; therefore, this portion of Defendant Bunch's motion is denied. Plaintiff Karan, however, has only stated conclusory allegations that fail to state a claim against Defendant Bunch, and therefore, this portion of his motion is granted.

1 **b. Tortious interference with contract**
2 **(intentional interference with contractual**
3 **relations) claim**

4 Defendant Bunch seeks dismissal of Plaintiffs' claim
5 for tortious interference with contract. Plaintiffs allege: (1)
6 they had a pending transaction in the "escrow stage" with Stewart
7 Title, a third party, (Compl. ¶¶ 47, 49); (2) "Investigators
8 discovered that [Plaintiff] Singh stood to benefit from [the]
9 pending transaction," (Compl. ¶ 47); (3) "[Plaintiff] Singh was
10 referred to as a 'murderer' to Stewart Title personnel," (id.);
11 "Investigators did this . . . with the goal that it would harm
12 [Plaintiff] Singh financially," (id.); (4) "Stewart Title did in
13 fact stop doing business with [Plaintiffs] because of the actions
14 of Defendants," (Compl. ¶ 49); and (5) the property buyer dropped
15 out, escrow dropped out, and the property has decreased in value.
16 (Id.)

17 The California Supreme Court has held:

18 The elements which a plaintiff must plead to
19 state the cause of action for intentional
20 interference with contractual relations are
21 (1) a valid contract between plaintiff and a
22 third party; (2) defendant's knowledge of
23 this contract; (3) defendant's intentional
acts designed to induce a breach or
disruption of the contractual relationship;
24 (4) actual breach or disruption of the
25 contractual relationship; and (5) resulting
26 damage.

24 Pac. Gas & Elec. Co. v. Bear Stearns & Co., 50 Cal. 3d 1118, 1126
25 (1990) (citations omitted).

26 Plaintiffs fail to allege a valid contract, as they
27 merely allege they had "a pending transaction" in the "escrow
28 stage" with a third party, Stewart Title. (Compl. ¶¶ 47, 49.)

1 Accordingly, Plaintiffs fail to state a claim for tortious
2 interference with contract, and therefore this portion of
3 Defendant Bunch's motion is granted.

4 **c. Tortious and negligent interference with**
5 **(prospective) economic advantage claims**

6 Defendant Bunch seeks dismissal of Plaintiffs' tortious
7 and negligent interference with prospective economic advantage
8 claims. Plaintiffs allege in the Complaint, *inter alia*:
9 "Defendants . . . knew of Plaintiffs ongoing business and
10 business relationships with buyers, sellers, title and escrow
11 companies, with which Plaintiffs conducted real estate
12 transactions, and knew of Plaintiffs other prospective business."
13 (Compl. ¶¶ 128, 134.)

14 To plead a claim for tortious, i.e., intentional,
15 interference with prospective economic advantage, a plaintiff
16 must allege:

- 17 (1) an economic relationship between the
18 plaintiff and some third party, with the
19 probability of future economic benefit to the
20 plaintiff; (2) the defendant's knowledge of
21 the relationship; (3) intentional acts on the
22 part of the defendant designed to disrupt the
relationship; (4) actual disruption of the
relationship; and (5) economic harm to the
plaintiff proximately caused by the acts of
the defendant.

23 Youst v. Longo, 43 Cal. 3d 64, 71 n.6 (1987).

24 Further, to plead the tort of negligent interference
25 with prospective economic advantage, a plaintiff must allege:

- 26 (1) an economic relationship existed between
27 the plaintiff and a third party which
28 contained a reasonably probable future
economic benefit or advantage to plaintiff;
(2) the defendant knew of the existence of
the relationship and was aware or should have

1 been aware that if it did not act with due
2 care its actions would interfere with this
3 relationship and cause plaintiff to lose in
4 whole or in part the probable future economic
5 benefit or advantage of the relationship; (3)
6 the defendant was negligent; and (4) such
7 negligence caused damage to plaintiff in that
8 the relationship was actually interfered with
9 or disrupted and plaintiff lost in whole or
10 in part the economic benefits or advantage
11 reasonably expected from the relationship.

12 N. Am. Chem. Co. v. Superior Court, 59 Cal. App. 4th 764, 786
13 (1997).

14 Plaintiff's conclusory allegations do not allege a
15 prospective, or future, economic relationship with Stewart Title
16 or other third parties. Further, as to the negligent form of the
17 tort, Plaintiffs fail to allege that Defendant Bunch owed them a
18 duty of care.

19 Therefore, Defendant Bunch's motions to dismiss these
20 claims are granted.

21 **d. Intentional infliction of emotional distress**
22 **claim**

23 Defendant Bunch seeks dismissal of Plaintiffs'
24 intentional infliction of emotional distress claim.

25 Plaintiffs allege "[t]he unlawful harassment,
26 retaliation, deprivation of rights, and conduct towards
27 Plaintiffs . . . constitute extreme and outrageous conduct."
28 (Compl. ¶ 140.) Plaintiffs further allege they "have suffered and
29 will continue to suffer mental distress and anguish, and loss of
30 consortium." (Compl. ¶ 144.)

31 Specifically, Plaintiffs allege Defendant Bunch told
32 Plaintiff Karan, "If you don't stay away [from Plaintiff Singh],
33 I will come and take your kids away and put them in foster care."

1 (Compl. ¶ 26 (alteration in original).) At the time, Plaintiffs
2 had one child, and Plaintiff Karan was five-months pregnant.
3 Plaintiffs further allege “[t]he birth had complications due to
4 the stress suffered by [Plaintiff] Karan, from [Plaintiff] Singh
5 being in jail . . . , together with the threats by [Defendant]
6 Bunch.” (Compl. ¶ 41.)

7 “A cause of action for intentional infliction of
8 emotional distress exists when there is (1) extreme and
9 outrageous conduct by the defendant with the intention of
10 causing, or reckless disregard of the probability of causing,
11 emotional distress; (2) the plaintiff’s suffering severe or
12 extreme emotional distress; and (3) actual and proximate
13 causation of the emotional distress by the defendant’s outrageous
14 conduct. A defendant’s conduct is outrageous when it is so
15 extreme as to exceed all bounds of that usually tolerated in a
16 civilized community.” Hughes v. Pair, 46 Cal. 4th 1035, 1051
17 (2009) (citations and internal quotation marks omitted).

18 Defendant Bunch has provided no authority evincing that
19 Plaintiff Karan’s allegations are factually insufficient;
20 therefore, his motion is denied. Plaintiff Singh, however, has
21 only stated conclusory allegations that fail to state a plausible
22 claim against Defendant Bunch, and therefore Defendant Bunch’s
23 motion to dismiss Plaintiff Singh’s claim is granted.

24 **e. Negligent infliction of emotional distress**
25 **claim**

26 Defendant Bunch also seeks dismissal of Plaintiffs’
27 negligent infliction of emotional distress claim alleged against
28 him. “The law of negligent infliction of emotional distress in

1 California is typically analyzed . . . by reference to two
2 'theories' of recovery: the 'bystander' theory and the 'direct
3 victim' theory." Burgess v. Superior Court, 2 Cal. 4th 1064, 1071
4 (1992).

5 "To recover damages for emotional distress, absent
6 physical injury, in a 'bystander case' the plaintiff must be: (1)
7 Closely related to the injury victim; (2) Present at the scene of
8 the injury-producing event at the time it occurs and is then
9 aware that it is causing injury to the victim; and (3) Suffer
10 emotional distress as a result, beyond that which would occur in
11 a disinterested witness." Megargee ex rel. Lopez v. Wittman, No.
12 CVF 06-0684 AWILJO, 2006 WL 2988945, at *16 (E.D. Cal. Oct. 17,
13 2006) (citing Martin By and Through Martin v. United States, 984
14 F.2d 1033, 1037 (9th Cir. 1992)). Plaintiffs here have not
15 alleged their contemporaneous presence or resulting emotional
16 distress.

17 In direct victim cases, "a cause of action to recover
18 damages for negligently inflicted emotional distress will
19 lie . . . where a duty arising from a preexisting relationship is
20 negligently breached." Burgess, 2 Cal. 4th at 1074; see also
21 Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc., 48 Cal.
22 3d 583, 588 (1989) ("[The] negligent causing of emotional
23 distress is not an independent tort but the tort of
24 negligence The traditional elements of duty, breach of
25 duty, causation, and damages apply." (alteration in original)
26 (internal citation omitted)). Plaintiffs do not allege a duty
27 arising from a preexisting relationship.

28

1 For the stated reasons, this portion of Defendant
2 Bunch's dismissal motion is granted.

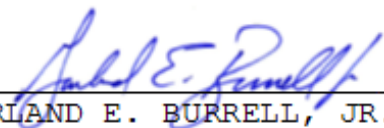
3 **I. Motion for a More Definite Statement**

4 Defendants Bunch and Harris move in the alternative
5 under Rule 12(e) for a more definite statement of the claims
6 against them, arguing they have to speculate as to which
7 allegations are relevant to each Defendant. (Mot. 14:19-28.) This
8 motion is denied since Plaintiffs' allegations are not "so vague
9 or ambiguous that the party cannot reasonably prepare a
10 response." Fed. R. Civ. P. 12(e).

11 **IV. CONCLUSION**

12 For the stated reasons, Defendants' motion dismiss is
13 GRANTED in part and DENIED in part. Plaintiffs have fourteen days
14 from the date on which this Order is filed to file an amended
15 complaint addressing deficiencies in any dismissed claim.

16 Dated: January 6, 2016

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19 _____
20 GARIAND E. BURRELL, JR.
21 Senior United States District Judge
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