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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CODY LEE MCKIE,	)	Case No. 2:10-CV-0218-JAM-DAD
	)	
Plaintiff,	)	<u>ORDER GRANTING DEFENDANTS'</u>
	)	<u>MOTION FOR JUDGMENT ON THE</u>
v.	)	<u>PLEADINGS</u>
	)	
CITY OF ROCKLIN; ROCKLIN POLICE	)	
DEPARTMENT; CHIEF MARK SIEMANS,	)	
individually and in his official	)	
capacity as the chief of the	)	
ROCKLIN POLICE DEPARTMENT;	)	
OFFICER ANTHONY HANDLEY,	)	
individually and in his official	)	
capacity as a Rocklin Police	)	
Officer; and DOES 1 through 50,	)	
inclusive,	)	
	)	
Defendants.	)	

This matter comes before the Court on Defendants' City of Rocklin ("the City") (also sued herein as Rocklin Police Department), Chief Mark Siemens ("Siemens") and Cpl. Anthony Handley ("Handley") (collectively "Defendants") Motion for Judgment on the Pleadings (Doc. 10). Defendants seek judgment on the Complaint (Doc. 1) filed by Plaintiff Cody Lee McKie ("Plaintiff").

1 Plaintiff partially opposes the motion.<sup>1</sup> For the reasons set forth  
2 below, Defendants' motion is GRANTED.

3  
4 I. FACTUAL AND PROCEDURAL BACKGROUND

5 Plaintiff's Complaint alleges that he was shot in the foot by  
6 Handley, while at an open loading bay on the premises of the  
7 Rocklin Kmart Store. The Complaint alleges that the shooting  
8 occurred at approximately 12:30 a.m. on June 25, 2009, when the  
9 store was closed. Plaintiff was standing in a bent over position  
10 when Handley drew his service weapon and shot Plaintiff. Handley  
11 was backed up by a second officer who drew her taser. Plaintiff  
12 was taken to the hospital by paramedics. Plaintiff now brings two  
13 claims for relief under 42 U.S.C. § 1983 for excessive force in  
14 violation of the fourth amendment, a claim for negligence and a  
15 claim for violation of California Civil Code § 52.1.

16 In addition to the limited factual allegations in Plaintiff's  
17 Complaint, judicially noticeable documents show that Handley was  
18 responding to a silent alarm from the store, when he discovered  
19 Plaintiff. Plaintiff was then arrested and charged with burglary  
20 and receiving stolen property. Plaintiff brought a motion, in  
21 State Court, to suppress the evidence obtained on the basis that  
22 Handley used excessive force in violation of Plaintiff's Fourth  
23 Amendment rights. The motion to suppress was argued and denied,  
24 and Plaintiff ultimately plead guilty to the criminal charges.

25 After Plaintiff filed the Complaint, Defendants filed an  
26 Answer. Additionally, the parties filed a stipulation to remove

27 \_\_\_\_\_  
28 <sup>1</sup> This motion was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 230(g).

1 from the Complaint all references to punitive damages. Defendants  
2 now move the Court for judgment on the pleadings on all four claims  
3 for relief. Plaintiff only opposes granting judgment on the  
4 pleadings for the second and third claims for relief.

5  
6 II. OPINION

7 A. Legal Standard

8 Federal Rule of Civil Procedure 12(c) authorizes motions for  
9 judgment on the pleadings. "After pleadings are closed - but early  
10 enough not to delay trial - a party may move for judgment on the  
11 pleadings." Fed. R. Civ. P. 12(c). Judgment on the pleadings is  
12 properly granted when there is no issue of material fact in  
13 dispute, and the moving party is entitled to judgment as a matter  
14 of law. Fleming v. Pickard, et al., 581 F.3d 922, 925 (9th Cir.  
15 2009) (citing Heliotrope Gen. Inc. v. Ford Motor Company, 189 F.3d  
16 971, 979 (9th Cir. 1999)). A motion for judgment on the pleadings  
17 is equivalent to a Rule 12(b)(6) motion to dismiss for failure to  
18 state a claim upon which relief can be granted and the standard of  
19 review is the same. Hal Roach Studios v. Richard Feiner & Co., 896  
20 F.2d 1542, 1550 (9th Cir. 1990).

21 In deciding a motion for judgment on the pleadings the court  
22 must accept all the allegations in the complaint as true and  
23 construe them in the light most favorable to the non-moving party.  
24 Id. However, conclusory allegations and unwarranted inferences are  
25 insufficient to defeat a motion for judgment on the pleadings. In  
26 re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

27 It must appear beyond doubt that the plaintiff can prove no  
28 set of facts in support of his claim which would entitle him to

1 relief. Sun Savings and Loan Ass'n v. Dierdorff, 825 F.2d 187, 191  
2 (9th Cir. 1987).

3 In addition to considering the allegations of the  
4 complaint, like a motion under Rule 12(b)(6), the  
5 court may also take into account materials to which it  
6 can take judicial notice. A Rule 12(c) motion for  
7 judgment on the pleadings may consequently be granted  
8 if, after assessing both the complaint, plus matters  
9 for which judicial notice is proper, it appears beyond  
10 doubt that the non-moving party cannot prove any facts  
11 that would support his claim for relief.

12 Morgan v. County of Yolo, 436 F.Supp.2d 1152, 1155 (E.D. Cal. 2006)  
13 (internal citations omitted).

14 Defendants' request the Court take judicial notice of three  
15 documents: the transcript of Plaintiff's preliminary examination in  
16 Placer County Superior Court, the October 9, 2009 Placer County  
17 Superior Court ruling on the motion to suppress and the judgment  
18 order from the case. (Doc. 12). Defendants' request for judicial  
19 notice is unopposed and is granted pursuant to Federal Rule of  
20 Evidence 201.

21 B. Claims for Relief

22 1. Violation of 42 U.S.C. § 1983, First Claim for Relief

23 Plaintiff asserts a 42 U.S.C. § 1983 claim against Defendants  
24 on the grounds that Defendants used excessive force against him  
25 when Handley shot him in the foot prior to arresting him.  
26 Plaintiff alleges that the shooting violated Plaintiff's Fourth  
27 Amendment right of due process and right to be free of excessive  
28 force by police officers. Defendants argue that collateral  
estoppel bars further litigation of this claim.

1 To prevail in a § 1983 civil action against state actors for  
2 the deprivation of:

3 rights, privileges, or immunities secured by the  
4 Constitution and laws, a plaintiff must show that (1)  
5 acts by the defendants (2) under color of state law  
6 (3) deprived him of federal rights, privileges or  
7 immunities and (4) caused him damage. Section 1983 is  
8 not itself a source of substantive rights, but merely  
9 provides a method for vindicating federal rights  
10 elsewhere conferred. Accordingly, the conduct  
11 complained of must have deprived the plaintiff of some  
12 right, privilege or immunity protected by the  
13 Constitution or laws of the United States.

14 Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th  
15 Cir. 2005) (internal citations omitted).

16 The doctrine of collateral estoppel, or issue  
17 preclusion, prevents re-litigation of legal and/or  
18 factual issues necessarily considered and determined  
19 in a prior legal proceeding between the same parties,  
20 or their privies. The collateral estoppel doctrine  
21 applies with equal force to claims brought under §  
22 1983. Whether collateral estoppel applies in a given  
23 case is primarily a legal question. State law governs  
24 the application of collateral estoppel to issues that  
25 were decided in a prior state court proceeding. Under  
26 California law, collateral estoppel is applied where  
27 (1) the issue sought to be precluded is identical to  
28 that which was decided in a prior proceeding; (2) that  
issue was actually litigated and necessarily decided  
in that proceeding; (3) there was a final judgment on  
the merits; and (4) that party against whom collateral  
estoppel is asserted was a party or in privity with a  
party to the prior proceeding.

29 Harvey v. City of Fresno, 2010 WL 892114, \*8 (E.D. Cal. Mar. 9,  
30 2010) (internal citations omitted). The doctrine of collateral  
31 estoppel may apply in a civil action to issues determined in a  
32 prior motion to suppress ruling. Ayers v. City of Richmond, 895  
33 F.2d 1267, 1271 (9th Cir. 1990).

34 Defendants argue that they are entitled to judgment on the  
35 pleadings in the first claim for relief, because Plaintiff's first  
36 claim was already fully litigated and decided by the State Court at

1 the suppression hearing for his criminal case. The judge in that  
2 case determined that Handley acted reasonably and did not violate  
3 the Fourth Amendment. See Ruling, pp. 83-85 (Doc. 12, Exhibit B).  
4 In his opposition brief, Plaintiff did not raise any arguments in  
5 opposition to Defendants' collateral estoppel argument. Plaintiff  
6 conceded the first claim, instead arguing that even though the  
7 first and fourth claims are barred by collateral estoppel, he can  
8 still maintain the remaining two claims for relief.

9 After carefully reviewing the papers on this issue, the Court  
10 finds Defendants' arguments on the first claim for relief have  
11 merit. Each element necessary for collateral estoppel is met.  
12 Accordingly, Defendants' motion for judgment on the pleadings is  
13 GRANTED for the first claim for relief.

#### 14 2. Violation of 42 U.S.C. § 1983, Second Claim for Relief

15 Plaintiff's second claim for relief is also a claim raised  
16 under 42 U.S.C. § 1983. The second claim is brought against  
17 Defendants Siemens and the City, alleging that they failed to  
18 properly train and supervise their subordinate officers (including  
19 Handley), and failed to properly define the Rocklin Police  
20 Department's use of force policy. Plaintiff alleges that  
21 Defendants violated Plaintiff's constitutional rights, causing  
22 injury to Plaintiff.

23 Municipal governments may only be sued under §1983 for their  
24 unconstitutional or illegal policies. Cities may not be sued for  
25 the acts of their employees. Monell v. Department of Social  
26 Services, 436 U.S. 658, 694 (1978) (holding that "a local  
27 government may not be sued under § 1983 for an injury inflicted  
28 solely by its employees or agents. Instead, it is when execution

1 of a government's policy or custom, whether made by its lawmakers  
2 or by those whose edicts or acts may fairly be said to represent  
3 official policy, inflicts the injury that the government as an  
4 entity is responsible under § 1983"). A plaintiff may also  
5 establish Monell liability by showing that "[a] local governmental  
6 entity's failure to train its employees . . . 'amounts to  
7 deliberate indifference to the rights of persons' with whom those  
8 employees are likely to come into contact." Lee v. City of Los  
9 Angeles, 250 F.3d 668, 681 (9th Cir. 2001) (quoting City of Canton  
10 v. Harris, 489 U.S. 378, 388 (1989)).

11 The second claim for relief is predicated on the Court finding  
12 that a constitutional violation was committed. However, because  
13 the first claim for relief is barred by collateral estoppel, the  
14 second claim for relief also fails. The State Court in the  
15 criminal proceeding found that Handley did not violate Plaintiff's  
16 Fourth Amendment rights, and Plaintiff has conceded that he cannot  
17 re-litigate the issue. The Complaint makes no allegations of any  
18 constitutional violations beyond the previously discussed Fourth  
19 Amendment violation. Accordingly, Siemens and the City cannot be  
20 held liable under § 1983, as there is no underlying constitutional  
21 violation. Thus, judgment on the pleadings, in Defendants' favor,  
22 is granted for this claim.

### 23 3. Negligence, Third Claim for Relief

24 The Complaint alleges that Defendants owed Plaintiff a duty of  
25 care, were negligent in their actions and caused Plaintiff injury.  
26 Defendants argue that they are entitled to judgment on the  
27 pleadings for this claim, because it is also barred by the state  
28 court ruling. "The elements of a cause of action for negligence

1 are (1) a legal duty to use reasonable care, (2) breach of that  
2 duty, and (3) proximate cause between the breach and (4) the  
3 plaintiff's injury. The existence of a legal duty to use  
4 reasonable care in a particular factual situation is a question of  
5 law for the court to decide." Harvey, 2010 WL 892114 at \*15  
6 (dismissing negligence claim based on arrest, when the State Court  
7 had already determined probable cause for arrest) (internal  
8 citations omitted). The State Court decided that Handley acted  
9 reasonably and did not use excessive force. Therefore, Defendants  
10 argue litigation of the negligence claim based on unreasonable  
11 action is barred.

12 Plaintiff argues that the negligence claim is not based on  
13 excessive force, rather it is based on Defendants' failure to  
14 follow policies and procedures, which may have proximately caused  
15 Plaintiff's injuries. Though Plaintiff states that the negligence  
16 claim is not based on excessive force, as Defendants' note, the  
17 only act complained of throughout the complaint is Handley's  
18 shooting of McKie in the foot. Having determined that collateral  
19 estoppel bars litigation of the underlying use of force claim, the  
20 remaining claims that derive from the use of force claim are  
21 likewise barred.

22 Plaintiff cites Daughtery v. Wilson, 2009 WL 25796070 (S.D.  
23 Cal. Aug. 18 2009) for the proposition that a negligence claim  
24 accompanying a constitutional claim should not be dismissed if only  
25 the constitutional claim was previously decided. However,  
26 Daughtery is distinguishable from the case at hand, because the  
27 alleged negligence claim in Daughtery was based on failure to  
28 provide medical care following the plaintiff's arrest. Therefore,



1 though re-litigation of the constitutionality of the arrest was  
2 barred, the negligence claim arose from a separate action and was  
3 therefore not barred by collateral estoppel. In this case, the  
4 allegations of the complaint clearly show that the negligence claim  
5 directly stems from the use of force and policies surrounding use  
6 of force. No policies distinct from the use of force issue are  
7 alleged. Each claim in the complaint derives from Handley's use of  
8 force. Accordingly, as the use of force issue has already been  
9 fully litigated, and Handley found to have acted reasonably,  
10 judgment on the pleadings is granted in Defendants' favor for the  
11 third claim for relief.

12 4. Violation of California Civil Code § 52.1, Fourth  
13 Claim for Relief

14 California Civil Code § 52.1 prohibits interference with  
15 rights provided by the United States Constitution or the California  
16 Constitution. Section 52.1 authorizes damage awards for  
17 constitutional violations carried out by means of threat,  
18 intimidation or coercion. Plaintiff's fourth claim for relief  
19 alleges that Defendants interfered with Plaintiff's Fourth  
20 Amendment rights and rights under Article 1, Section 13 of the  
21 California Constitution. Article 1, Section 13 of the California  
22 Constitution contains language that is identical to that of the  
23 Fourth Amendment. Accordingly, Defendants argue that this claim is  
24 also barred by collateral estoppel, because the state court found  
25 that no Fourth Amendment violation occurred. Absent an underlying  
26 constitutional violation, this claim must be dismissed.  
27 Plaintiff's opposition brief raised no arguments in opposition to  
28 Defendants' motion for judgment on the pleadings for this claim,

1 and the Court finds that Defendants' arguments have merit.  
2 Accordingly, Defendants' motion for judgment on the pleadings is  
3 granted for the fourth claim for relief.

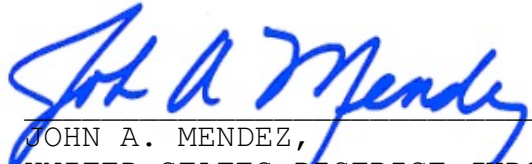
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III. ORDER

For the reasons set forth above, Defendants' motion for judgment on the pleadings is hereby GRANTED, WITH PREJUDICE.

IT IS SO ORDERED.

Dated: November 9, 2010

  
\_\_\_\_\_  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE