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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

V. W., a minor, by and
through her Guardian Ad
Litem, Tenaya Barber,
Individually and as
Successor in Interest
of Decedent MICHAEL WHITE,

NO. CIV. S-12-1629 LKK/GGH

Plaintiffs,

v.

O R D E R

CITY OF VALLEJO, a municipal
corporation; ROBERT NICHELINI,
in his individual and official
capacity as Chief of Police;
Officers Does 1-25,
individually, jointly and
severally,

Defendants.

_____ /

This civil rights lawsuit is brought by the surviving minor
daughter of the decedent, Michael White, against the City of
Vallejo (the "City") and its Chief of Police, Robert Nichelini (the
"defendant").¹ The plaintiff, through her Guardian ad Litem,

¹ Plaintiff also sues under state tort laws for negligence and
assault and battery.

1 Tanaya Barber, alleges that the City's police officers killed the
2 decedent while they were using a taser gun during his arrest. Both
3 defendants move for judgment on the pleadings, asserting that the
4 cases against them were discharged in the City's bankruptcy.

5 For the reasons that follow, the City's un-opposed motion for
6 judgment on the pleadings will be granted. In addition, defendant
7 Robert Nichelini's motion for judgment on the pleadings will be
8 granted to the extent the lawsuit names him in his official
9 capacity, but denied to the extent the lawsuit names him in his
10 individual (or personal) capacity.

11 **I. BACKGROUND**

12 On May 23, 2008, the City of Vallejo filed for Chapter 9
13 bankruptcy protection. Defendants' Request for Judicial Notice
14 ("RfJN") Exh. 1 (ECF No. 13-2, pp.6-84). On June 15, 2010, while
15 the bankruptcy case was pending, the City's police officers
16 allegedly killed the decedent, see Complaint ¶ 16, wrongfully and
17 in violation of his and his daughter's civil rights. No later than
18 December 15, 2010, plaintiff filed tort claims pursuant to Cal.
19 Gov. Code §§ 910, et seq. Complaint ¶ 13.² On August 4, 2011,
20 the Bankruptcy Court confirmed the City's Plan (filed August 2,
21 2011) for the adjustment of its debts. RfJN Exh. 3 (ECF No. 13-2,
22 pp.86-88). According to the Plan, the City was discharged from all

24 ² The cited Government Code requires tort claims "relating to
25 a cause of action for death" to be filed "not later than six months
26 after the accrual of the cause of action." Cal. Gov't Code
§ 911.2(a).

1 debts and all claims against it, with exceptions not relevant here,
2 pursuant to "section 944 of the Bankruptcy Code" upon the
3 "effective date" of November 1, 2011. RfJN Exh. 4 (ECF No. 13-2,
4 pp.90-91 (Vallejo's "Notice of November 1, 2011 Effective Date").
5 Plaintiff filed this lawsuit on June 18, 2012.

6 **II. STANDARDS**

7 A motion for judgment on the pleadings may be brought "[a]fter
8 the pleadings are closed but within such time as to not delay the
9 trial." Fed. R. Civ. P. 12(c). The court analyzes 12(c) motions
10 in substantially the same way as it analyzes Rule 12(b)(6) motions
11 because, "under both rules, 'a court must determine whether the
12 facts alleged in the complaint, taken as true, entitle the
13 plaintiff to a legal remedy.'" Chavez v. U.S., 683 F.3d 1102, 1108
14 (9th Cir. 2012).

15 On a motion to dismiss under Rule 12(b)(6), a court must
16 assess whether the complaint contain[s] sufficient
17 factual matter, accepted as true, to "state a claim to
18 relief that is plausible on its face." Mere conclusory
19 statements in a complaint and "formulaic recitation[s]
20 of the elements of a cause of action" are not
21 sufficient. Thus, a court discounts conclusory
22 statements, which are not entitled to the presumption of
23 truth, before determining whether a claim is plausible.
A claim has facial plausibility when the plaintiff
pleads factual content that allows the court to draw the
reasonable inference that the defendant is liable for
the misconduct alleged. Determining whether a complaint
states a plausible claim for relief will ... be a
context-specific task that requires the reviewing court
to draw on its judicial experience and common sense.

24 Chavez, 683 F.3d at 1108-09 (citations and some internal quotations

25 ////

26 ////

1 omitted).³

2 **III. ANALYSIS**

3 **A. The City.**

4 The City and defendant Nichelini, in his official capacity,
5 move for a judgment on the pleadings, arguing that any claim
6 plaintiff might have against them was discharged by the City's
7 Chapter 9 bankruptcy and the confirmation of its Plan. Plaintiff
8 concedes that the bankruptcy code "renders any judgment Plaintiff
9 would get against Defendant City for the events occurring on June
10 15, 2010, void and thereby bars Plaintiff from pursuing her claims
11 against Defendant City." Plaintiff's Opposition to Motion for
12 Judgment on the Pleadings (ECF No. 19) at p.5. Plaintiff's
13 concession is well-taken, although some explanation is needed here.

14 **1. Timing of the discharge.**

15 Unlike a Chapter 7 liquidation bankruptcy, in a Chapter 9
16 municipal bankruptcy, the bankruptcy code discharges all of the
17 City's debt existing as of the date of confirmation.⁴ 11 U.S.C.
18 § 944(b)(1) ("the debtor is discharged from all debts as of the
19 ////

21 ³ Quoting Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell
22 Atl. Corp. v. Twombly, 550 U.S. 544 (2007).

23 ⁴ In Chapter 7, the debtor is discharged only from debts
24 existing as of the date the bankruptcy case was commenced, See 11
25 U.S.C. §§ 727(b) (Chapter 7 debtor is discharged from all debts
26 existing as of the date of the "order of relief," which is normally
the commencement of the bankruptcy case, 11 U.S.C. §§ 301(b)
(voluntary case), 302(a) (joint case), 303(h) (involuntary case,
if uncontroverted; otherwise the order of relief is granted "after
trial")).

1 time when ... the plan is confirmed").⁵ Plaintiff concedes that
2 her claim arose on June 15, 2010. Accordingly the claims against
3 the City, and against defendant in his official capacity - which
4 arose after commencement of the bankruptcy, but before the
5 confirmation date - are barred. O'Loughlin v. County of Orange, 229
6 F.3d 871 (9th Cir. 2000). O'Loughlin addressed the status of three
7 ADA claims against a Chapter 9 municipal bankruptcy debtor: one
8 arose before commencement of the bankruptcy case; one arose after
9 commencement but before discharge (the date the plan was
10 confirmed); and one arose post-discharge (after the confirmation
11 date). The Ninth Circuit, interpreting Section 944(b)(1), held
12 that the claims arising before the confirmation date were
13 discharged in the bankruptcy. Id., at 877 (affirming "the district
14 court's dismissal of O'Loughlin's complaint insofar as it is based
15 on pre-discharge violations of the ADA by the County"). Only the
16 claim that arose after the discharge date was permitted to go
17 forward. Id.

18 **2. Dischargeability of plaintiff's claims.**

19 Another remarkable feature of a municipal bankruptcy is that
20 discharges under Chapter 9 are not subject to the "exceptions" to
21 discharge set forth at 11 U.S.C. § 523(a). These exceptions
22 prohibit individual debtors from discharging debt arising from
23 "willful and malicious injury." 11 U.S.C. § 523(a); Kawaauhau v.
24 Geigher, 523 U.S. 57, 63 (1998) (to be non-dischargeable, the

25
26 ⁵ Thus, in a Chapter 9 case, the discharge date and the confirmation date are the same.

1 judgment debt must be "for willful and malicious" injury).
2 Although the statute itself does not expressly state that injuries
3 (or as here, death), allegedly resulting from civil rights
4 violations are non-dischargeable, many bankruptcy courts have so
5 interpreted this exception. See, e.g., Gee v. Hammond (In re Gee),
6 173 B.R. 189, 193 (B.A.P. 9th Cir. 1994) (claim arising from sex
7 discrimination was non-dischargeable under Section 523(a), as the
8 underlying acts were "willful and malicious"); Avery v. Sotelo (In
9 re Sotelo), 179 B.R. 214, 218 (Bkrctcy. S.D. Cal. 1995) (claim
10 arising from sexual harassment injury is not dischargeable);
11 (Magana v. Moore Development Corp. (In re Moore), 1 B.R. 52, 54
12 (Bankr. C.D. Cal. 1979) (in a racial discrimination case involving
13 housing, the court holds that the "[d]ischarge of debts arising
14 from willful violations" of the civil rights laws would be
15 "inconsistent with the intent of Congress," as those laws are
16 specifically intended to eliminate the "'badges and incidents of
17 slavery'").

18 Neither party has identified anything in the language of the
19 bankruptcy laws that prevents a municipality from avoiding
20 liability, even for a willful and malicious violation of the civil
21 rights of one its own citizens.⁶ To the contrary, this somewhat

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23 ⁶ Nor does the court find any mention in the legislative
24 history of the statutory provisions governing municipal
25 bankruptcies, or non-dischargeability, of any concern about the
26 apparent ability of a municipality to sweep away (or limit) its
liability, even for willful and malicious injuries it might inflict
on its own citizens. See generally, H.R. Rpt. No. 94-686 (1975),
reprinted in 1976 U.S.C.C.A.N. 539; H.R. Conf. Rpt. 94-938 (1976),
reprinted in 1976 U.S.C.C.A.N. 583; H.R. Rpt. No. 95-595 (1977),

1 surprising, indeed, alarming result appears to be supported by the
2 language of the bankruptcy laws because: (1) the non-
3 dischargeability of debts for "willful and malicious injury"
4 applies only to debts of individuals; and (2) the "willful and
5 malicious injury" non-dischargeability provisions do not apply at
6 all in a Chapter 9 bankruptcy.⁷ 11 U.S.C. §§ 523(a) (applying
7 exceptions to discharges to "individual" debtors under
8 "section 727, 1141, 1228(a), 1228(b), or 1328(b)"); 901 (omitting
9 Section 523 from the general bankruptcy sections that apply in a
10 Chapter 9 case); accord Yamaha Motor Corp. U.S.A. v. Shadco, Inc.,
11 762 F.2d 668, 670 (8th Cir. 1985) (the exemptions embodied in 11
12 U.S.C. § 523(a) apply only to individual debtors, they "do not apply
13 to corporate debtors"), cited with approval, Towers v. U.S. (In re
14 Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1302 (9th Cir. 1995)
15 (in the context of tax claims, "§ 523 only applies to individual
16 and not corporate debtors").

17 Thus, alarming as it is, as the bankruptcy statute appears to
18 be written, a municipality may erase its own liability to persons
19 whom it and its officers have willfully and maliciously deprived

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21 reprinted in 1978 U.S.C.C.A.N. 5963; S. Rpt. 95-989 (1978),
22 reprinted in 1978 U.S.C.C.A.N. 5787. Indeed, even the legislative
23 history regarding Section 523(a) itself appears to make no specific
24 mention of suits arising from willful and malicious civil rights
25 violations.

26
27 ⁷ Given that the exception applies only to "individuals," it
28 is not all that surprising that it is entirely absent from
29 Chapter 9, since Chapter 9 debtors are never "individuals," they
30 are, by definition, municipalities. See 11 U.S.C. § 109(c)(1)
31 ("[a]n entity may be a debtor under Chapter 9 of this title if and
32 only if such entity ... is a municipality").

1 of their civil rights - and even their lives - by filing for
2 bankruptcy. This extraordinary result would appear to exalt the
3 bankruptcy laws over the civil rights laws (even though the civil
4 rights laws, like the bankruptcy laws, are anchored in the
5 constitution). However, the court need not, and does not, resolve
6 this matter, as neither side has briefed it nor identified any
7 applicable statutory, case-law or legislative history citations
8 relating to this matter. To the contrary, plaintiff has simply
9 conceded that her claims against the City were discharged in the
10 bankruptcy.

11 **B. Chief of Police, Robert Nichelini.**

12 **1. Arguments.**

13 Nichelini asserts that the claims against him in his
14 individual or personal capacity should be dismissed because they
15 are, in essence, claims against the City, and were therefore
16 discharged with the City's bankruptcy. This assertion rests upon
17 two distinct premises.

18 First, defendant asserts that under state law, the City is
19 required to defend him "regardless of whether the case is brought
20 under § 1983 and whether they are sued in their individual or
21 official capacities," citing Cal. Gov't Code § 995 and Williams v.
22 Horvath, 16 Cal. 3d 834, 843 (1976). Motion at 5-6. Second,
23 defendant argues that state law "requires the City to pay any claim
24 or judgment against its employees in favor of third-party

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1 plaintiffs," citing Cal. Gov't Code § 825, et seq. Motion at 6.
2 Based upon these two premises, defendant concludes that "[t]he
3 City's statutorily-mandated payment of former Chief Nichelini's
4 defense costs and judgments falls within the broad category of
5 'debt' discharged by the bankruptcy," since it existed prior to the
6 City's bankruptcy confirmation. Motion at 6.⁸

7 Plaintiff argues that because she is suing Nichelini in his
8 individual (or personal) capacity, her lawsuit is one solely
9 against him, and is not against the City.⁹ In support, plaintiff
10 quotes Kentucky v. Graham, 473 U.S. 159, 165-66 (1985) for the
11 proposition that "an award of damages against an official in his
12 personal capacity can be executed only against the official's
13 personal assets." Opposition at 6; see also, Community House, Inc.
14 v. City of Boise, Idaho, 623 F.3d 945, 967-68 (9th Cir. 2010)
15 (same), quoting Graham, 473 U.S. at 165-66.

16 Plaintiff also argues that Nichelini is improperly trying to
17 change the nature of the federal and state claims from being claims
18 against himself, personally, into claims against the City, citing

19 ⁸ A "debt" is "liability on a claim." 11 U.S.C. § 101(12).
20 A "claim" is a "right to payment, whether or not such right is
21 reduced to judgment, liquidated, unliquidated, fixed, contingent,
22 matured, unmatured, disputed, undisputed, legal, equitable,
secured, or unsecured." 11 U.S.C. § 101(5) (A).

23 With exceptions not applicable here (at least they not apparent
24 from the pleadings to date), "the debtor is discharged from all
debts as of the time when ... the plan is confirmed." 11 U.S.C.
§ 944(b) (1).

25 ⁹ To the degree plaintiff sues Nichelini "in his ... official
26 capacity," those claims are dismissed for the same reason the
claims against the City are dismissed.

1 Demery v. Jupperman, 735 F.2d 1139, 1148-49 (9th Cir. 1994).¹⁰

2 **2. Resolution.**

3 The issue presented here is whether a claim against a city
4 officer in his individual or personal capacity is discharged in the
5 city's bankruptcy because of Cal. Gov't Code §§ 825(a) and 995.¹¹

6 **a. Whether the City must provide a defense.**

7 It appears that Nichelini oversimplifies the law with his
8 repeated assertions that "the City is required to defend" him
9 against this lawsuit, and that "state law ... requires the City to
10 pay" any judgment against him. In fact, the City's "requirements"
11 are not as automatic, iron-clad and mandatory as Nichelini asserts.

12 First, the defense is not automatic. Rather, Nichelini must
13 "request" that the City provide a defense for him. Cal. Gov't Code
14 § 995 (the City shall provide a defense "upon request" of the
15 employee or former employee).¹² Nothing in the pleadings or

16
17 ¹⁰ Plaintiff also asserts that Nichelini is improperly trying
18 to clothe himself in the state's sovereign immunity, citing Ronwin
19 v. Shapiro, 657 F.2d 1071, 1074 (9th Cir. 1981). However, nothing
20 in defendant's papers indicates that he is asserting, or entitled
21 to, sovereign immunity. As defendant puts it, this case is about
22 "indemnity," not "immunity." Nevertheless, as will be discussed
below, sovereign immunity cases, including Ronwin, are useful in
determining whether a claim against a public official in his
personal capacity is essentially a claim against the employing
public entity (and thus barred by the entity's bankruptcy
discharge).

23 ¹¹ As noted below, even assuming the city's indemnification or
24 defense obligation under the California statutes, given the city's
assertion relative to the effect of its bankruptcy, such obligation
has arguably been discharged.

25 ¹² California law provides that:

26 upon request of an employee or former employee, a public

1 Request for Judicial Notice establishes that Nichelini has made
2 this request.¹³

3 Second, the provision of a defense is not mandatory in all
4 cases. The City may refuse to provide a defense if it determines
5 that Nichelini did not, in fact, act within the course and scope
6 of his duties,¹⁴ that his action or inaction resulted from "actual
7 fraud," corruption or "actual malice," or that defending him would
8 create a conflict of interest. Cal. Gov't Code § 995.2(a);
9 DeGrassi v. City of Glendora 207 F.3d 636, 642 (9th Cir. 2000)
10 (same).

11
12 entity shall provide for the defense of any civil action
13 or proceeding brought against him, in his official or
14 individual capacity or both, on account of an act or
omission in the scope of his employment as an employee
of the public entity.

15 Cal. Gov't Code § 995.

16 ¹³ Although no document before the court asserts that
17 Nichelini has requested that the City defend him, the court
apparently can presume that he has done so, perhaps from the fact
18 that the City is representing him in these pretrial proceedings.
See Sinclair v. Arnebergh, 224 Cal. App. 2d 595, 598 (1964)
19 ("Presumptions ... that requests for representation were made ...
are justified, and it is obvious that section 995 of the Government
20 Code makes it mandatory upon the city attorney to represent a
policeman upon request in a civil action arising out of the scope
of his employment"). However the court notes that the "defense"
21 contemplated in the statute is the defense to the trial, not simply
to these pretrial proceedings. See Section 825(a) (request must
22 be made no later than 10 days before trial). Moreover, if
defendants are correct about the effect of the bankruptcy, the
23 discharge would appear to wipe out the City's duty to defend,
leaving Nichelini to provide his own defense.

24
25 ¹⁴ The fact that plaintiff alleges that Nichelini acted, or
failed to act, within the course and scope of his official duties
26 would appear to have no bearing on the City's own determination in
this regard.

1 Third, even if the City were required to provide a defense at
2 the outset of the litigation, it is free to discontinue that
3 defense if it subsequently - and unilaterally - determines that "an
4 actual and specific conflict of interest" has subsequently arisen.
5 Id., § 995.2(c). This very sequence occurred in Stewart v. City
6 of Pismo Beach, 35 Cal. App. 4th 1600 (2nd Dist. 1995).

7 In Stewart, a city police officer was sued in a civil rights
8 complaint, and the city hired attorneys to defend him. Id., at
9 1603. The attorneys continued to defend the officer after he
10 resigned his position. Id. However, after the officer began
11 cooperating with plaintiffs (in exchange for getting the claims
12 against him in his personal capacity dropped), the city withdrew
13 its defense of the officer and also notified him that it would not
14 indemnify him. Id., at 1604. The officer sued to compel the city
15 to defend him. Id. The appellate court ordered the trial court
16 to sustain the city's demurrer, concluding that "Section 995.2,
17 subdivision (c) allows the City to refuse to provide a further
18 defense to Stewart because, by cooperating with the city's
19 opponents in the federal action, Stewart has created a conflict of
20 interest between himself and the City." Id., at 1607-08.¹⁵

21 **b. Whether the City must indemnify defendant.**

22 The indemnification of Nichelini is neither automatic nor
23 mandatory. To obtain indemnification, Nichelini must, first,
24

25 ¹⁵ Thus, although in most real world situations, a successful
26 suit against a police officer normally (after indemnification),
results in a hit to city's treasury, that is not always the case.

1 request that the City defend him, and he must do so in writing, no
2 fewer than 10 days before trial. Cal. Gov't Code § 825(a);¹⁶
3 DeGrassi, 207 F.3d at 642.

4 Second, he must show "that the act or omission was within the
5 scope of employment." Pelayo v. City of Downey, 570 F. Supp. 2d
6 1183, 1196 (C.D. Cal. 2008). Indeed, if an official sues for
7 indemnification in the event the employing public entity fails to
8 defend and indemnify him, he must prove that his actions or
9 omissions were within the course and scope of his official duties.
10 Farmers Ins. Group v. County of Santa Clara, 11 Cal. 4th 992, 997
11 (1995) ("a public entity is required to pay claims and defense
12 costs arising out of a civil lawsuit only where the employee proves
13 that the act or omission giving rise to an injury occurred in 'the
14 scope of his or her employment as an employee of the public
15 entity'").

16 Third, Nichelini must "cooperate[] in good faith in the
17 defense of the claim or action." Cal. Gov't Code § 825(a);

18
19 ¹⁶ That Section provides:

20 if an employee or former employee of a public entity
21 requests the public entity to defend him or her against
22 any claim or action against him or her for an injury
23 arising out of an act or omission occurring within the
24 scope of his or her employment as an employee of the
25 public entity and the request is made in writing not
26 less than 10 days before the day of trial, and the
employee or former employee reasonably cooperates in
good faith in the defense of the claim or action, the
public entity shall pay any judgment based thereon or
any compromise or settlement of the claim or action to
which the public entity has agreed.

26 Cal. Gov't Code § 825(a).

1 DeGrassi, 207 F.3d at 642 (“[f]ailure to cooperate in good faith
2 with the City’s defense of the claim relieves the public entity of
3 its obligation to indemnify the employee”).

4 Finally, even if Nichelini does everything the law requires
5 of him to be eligible for indemnification, the City still will not
6 indemnify him for the punitive (or “exemplary”) damages that
7 plaintiff seeks here, except in very limited circumstances. See
8 Cal. Gov’t Code § 825 (“[n]othing in this section authorizes a
9 public entity to pay that part of a claim or judgment that is for
10 punitive or exemplary damages”); Grassilli v. Barr, 142 Cal. App.
11 4th 1260, 1292 (4th Dist. 2006) (Section 825 authorizes
12 indemnification for a punitive damages award “only under very
13 limited circumstances”). Specifically, the City is precluded from
14 indemnifying for punitive damages, unless the City’s governing body
15 determines that Nichelini acted within the course and scope of his
16 employment, that he acted in good faith and “in the best interests”
17 of the City, and that indemnification for such punitive damages are
18 “in the best interests” of the City. Id., § 825(b).

19 **c. Whether the claim against defendant is actually one**
20 **against the City.**

21 Defendant’s premises for his argument that the claims against
22 him are, in essence, claims against the City, thus do not withstand
23 scrutiny. Plaintiff’s cases, on the other hand, tend to support
24 the opposite view. Although defendant concludes, based upon his
25 premises, that any judgment against him will come out of the City’s
26 treasury, this does not appear to be the case. To the contrary,

1 "an award of damages against an official in his personal capacity
2 can be executed only against the official's personal assets."
3 Kentucky v. Graham, 473 U.S. 159, 165-66 (1985); Community House,
4 Inc. v. City of Boise, Idaho, 623 F.3d 945, 967-68 (9th Cir. 2010)
5 (same).

6 The Ninth Circuit appears to confirm that a personal capacity
7 Section 1983 claim against a public official is not a claim against
8 the employing public entity. In Demery v. Kupperman, 735 F.2d 1139
9 (9th Cir. 1984), the plaintiff sued state officials in their
10 personal capacities. The case involved the state's assertion of
11 sovereign immunity - which is not in issue here - but its
12 discussion of the nature of the claims and how the judgment would
13 be paid, is instructive.

14 The Ninth Circuit found no sovereign immunity bar to the suit
15 against the officials in their personal capacity. That is because,
16 "the state's obligation to pay damages derives not from the nature
17 of plaintiff's claim, but from an entirely collateral, voluntary
18 undertaking on the part of the state." Demery, 735 F.2d at 1148.
19 Here too, the City's obligation to pay does not derive from the
20 nature of plaintiff's claim. Rather, defendant is being sued "for
21 damages for which ... the United States has made them individually
22 liable." Id. In Demery, the Ninth Circuit held that a
23 Section 1983 lawsuit against a California state official sued in
24 his personal capacity "is not essentially one against the state:
25 California's law does not, and cannot, change the nature of the
26 federal claim." Id. To the contrary, the City's decision to

1 indemnify defendant (or not), is "a purely intramural arrangement"
2 between the City (with strong State intervention) and its officers.
3 Id., at 1147 (citing Ronwin v. Shapiro, 657 F.2d 1071 (9th
4 Cir. 1981), again in the context of sovereign immunity).

5 Demery and Ronwin, both cases involving sovereign immunity,
6 found that a claim against a state official was not essentially one
7 against the state for sovereign immunity purposes, even though
8 state law required the state to indemnify the official. This court
9 believes that under the same reasoning, a claim against a City
10 official is not essentially one against the City for bankruptcy
11 discharge purposes, even if state law requires the City to
12 indemnify the official. This conclusion is particularly compelling
13 here, since, as discussed above, the City is not necessarily
14 required to provide a defense, or to indemnify the City official,
15 and in any event, such indemnification obligation was arguably
16 discharged by the bankruptcy, and nothing in the pleadings shows
17 that any such obligation exists.

18 In short, the court will not make the leap over the facts and
19 the law that defendant requests. It will not find that a claim
20 (and lawsuit) against a City officer in his individual capacity is
21 the legal equivalent of a claim (and lawsuit) against the City,
22 when any judgment against defendant can only be executed against
23 defendant's assets (not the City's);¹⁷ the City is not obligated to

24
25 ¹⁷ There is nothing in the pleadings or the Request for
26 Judicial Notice to establish that defendant has assigned his
indemnification claim to plaintiff. If that were the case, and if
the indemnification claim was not discharged in bankruptcy,

1 indemnify defendant against the judgment unless it makes several
2 specific findings; the City is not permitted to indemnify defendant
3 against punitive damages except under "very limited circumstances;"
4 and the City can unilaterally withdraw its obligation to defend and
5 indemnify. See Maddalone v. Solano County, 2009 WL 29750 (E.D.
6 Cal.) (Brennan, M.J.) (in the context of a request for a stay,
7 claims against employees of bankrupt city are not claims against
8 the bankrupt city. Rather, "the claims are against individuals who
9 may, if held liable, have a claim against the City for indemnity"),
10 adopted in full, Civ. Case No. 2:07-cv-1828 (E.D. Cal. March 30,
11 2009) (England, J.).¹⁸

12 **d. Whether the claim was discharged.**

13 _____
14 plaintiff presumably could then seek indemnification against the
15 City, which, if plaintiff were to succeed, would come out of the
16 City's treasury.

17 ¹⁸ Cf. State ex rel. Dockstader v. Hamby, 162 Cal. App. 4th
18 480, 484 (4th Dist. 2008) (in the context of a California False
19 Claims Act case, "[b]ecause section 825 requires a government
20 agency, on timely request, to defend and indemnify a public
21 employee against claims arising out of an act or omission occurring
22 within the scope of his or her employment, a suit against the
23 defendants is tantamount to a suit against LAUSD [the public
24 entity] itself"). Despite its broad language, Dockstader involved
25 public officials sued only in their official capacities, where
26 plaintiffs sought to recover funds defendants obtained for their
public employer from the state.

27 There appear to be differing views within this district over
28 whether such claims should be stayed while the bankruptcy case is
29 proceeding. See Williams v. Kenney, 2008 WL 3540408 (E.D. Cal.)
30 (Brennan, M.J.) (in the context of a request for a stay, a suit
31 against officers employed by a bankrupt city is a suit against the
32 City since the City must defend and indemnify), adopted in full,
33 2008 WL 4454042 (E.D. Cal. 2008) (Karlton, J.); Smith-Downs v. City
34 of Stockton, 2012 WL 3202265 (E.D. Cal. 2012) (England, J.)
35 (staying claims against city officers since the bankrupt city would
36 be required to defend and indemnify the officers).

1 It is undisputed that the claim against defendant, in his
2 individual capacity, arose on June 10, 2013. The City's bankruptcy
3 result in the discharge of all of its debts. Because of this,
4 plaintiff's resulting claims against the City, as well as its
5 resulting claims against defendant in his official capacity, were
6 discharged.¹⁹ Nothing in the law, the City's discharge or the
7 bankruptcy court's confirmation order indicates that defendant's
8 individual debts are also discharged. The court concludes that
9 plaintiff's claim against defendant in his individual capacity was
10 therefore not discharged in the City's bankruptcy.

11 Defendant asks this court to overlook the fact that
12 "indemnification" is a claim separate and apart from the
13 Section 1983 liability claim that underlies it.²⁰ Plaintiff here
14 is suing defendant for a civil rights violation, not for
15 indemnification. It is the defendant who may choose to sue the
16 City for indemnification, if he is found liable in this lawsuit,
17 and if the City declines to defend him or pay the judgment.²¹ It
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19 ¹⁹ If defendant had a contingent claim against the City for
20 indemnity, arising from decedent's death, the City might argue that
21 the claim was discharged in the bankruptcy. See, e.g., Boyajian
v. Orboudabi, 184 Cal. App. 4th 1020 (3rd Dist. 2010). However,
the court is not called upon to consider this matter.

22 ²⁰ In addition, California has a separate cause of action for
23 a public entity's wrongful failure to provide a defense. Cal.
Gov't Code § 996.4

24 ²¹ A different result might obtain if defendant had assigned
25 his indemnity claim to plaintiff prior to the date of the City's
26 discharge. Normally, this practice would allow plaintiff to sue
the City directly if it won a liability verdict against defendant,
and a judgment in that case would come out of the City's treasury.

1 is at that point that a court might have to determine if
2 defendant's claim - for indemnity - was discharged in bankruptcy.

3 **IV. CONCLUSION**

4 For the reasons stated above:

5 1. The City's motion, and Nichelini's motion made in his
6 official capacity, for dismissal on the pleadings is **GRANTED**, and
7 all claims against them are **DISMISSED** with prejudice;

8 2. Defendant Nichelini's motion, made in his individual or
9 personal capacity, for judgment on the pleadings, is **DENIED**.

10 IT IS SO ORDERED.

11 DATED: August 1, 2013.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT