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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SARA ADAM, et al.,  
  
                                Plaintiffs,  
  
                                v.  
  
BRET BRZYSCZ, CITY OF  
ROSEVILLE, COUNTY OF PLACER,  
CITY OF SACRAMENTO, COUNTY OF  
SACRAMENTO, and DOES 1  
THROUGH 50,  
  
                                Defendants.

CIV. NO. 2:14-02795 WBS DAD  
  
MEMORANDUM AND ORDER

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Twenty-six individual plaintiffs brought this action against defendants Bret Brzyszc, the City of Roseville, the County of Placer ("Placer County"), the County of Sacramento ("Sacramento County"), and the City of Sacramento pursuant to 42 U.S.C. § 1983 for violations of the Fourth Amendment and related state law claims. Presently before the court are the motions of defendants Placer County, Sacramento County, and the City of Sacramento to dismiss pursuant to Federal Rule of Civil Procedure

1 12(b)(6). (Docket Nos. 5, 7, 8.)

2 I. Factual and Procedural Background

3 The allegedly unlawful actions that plaintiffs  
4 challenge in this case resulted from their relation to plaintiff  
5 Samuel Duran. (See Compl. ¶¶ 51-52 (Docket No. 1).) On October  
6 25, 2013, police officers pursued Samuel Duran to the home of  
7 plaintiff Donna Sandoval in Roseville, California. (Id. ¶ 65.)  
8 There, Samuel Duran was struck by gunfire, allegedly while he was  
9 attempting to surrender. (Id. ¶ 66.) Sometime later, plaintiff  
10 Mikkayla Gutierrez allegedly posted a video recording that  
11 depicted the shooting on the internet. (See id. ¶¶ 162, 188.)

12 Approximately one month later, around 7:00 a.m. on  
13 November 20, 2013, Roseville Police Officer Bret Brzyszc, along  
14 with other unidentified officers, simultaneously executed search  
15 warrants at five different residences owned or occupied by one or  
16 more plaintiffs. (See id. ¶¶ 75-189.) Plaintiffs allege the  
17 officers used excessive force against them during the searches,  
18 inflicting various injuries to person and property as well as  
19 causing emotional distress. (See id. ¶¶ 56, 58.) Plaintiffs  
20 allege the raids were conducted in retaliation for Mikkayla  
21 Gutierrez's video post, and the fact that officers seized various  
22 electronic devices during the raids shows an attempt to cover up  
23 any other photographs or video recordings plaintiffs may have  
24 made depicting Samuel Duran's shooting on October 25, 2013. (See  
25 id. ¶¶ 51-52, 162, 184, 188.)

26 Plaintiffs further allege that the warrants authorizing  
27 these searches and seizures were issued based on a finding of  
28 probable cause supported by material misstatements or omissions

1 made by two officers on November 14, 2013. Plaintiffs allege  
2 that Officer Brzyszc and Officer Ken Nakamura<sup>1</sup> either  
3 intentionally lied or made these misstatements with reckless  
4 disregard for the truth. (See id. ¶¶ 42-44, 46-48.) Without  
5 these misstatements, plaintiffs allege there was not probable  
6 cause to support the searches and seizures. (Id. ¶¶ 45, 48.)

7 The only claims brought against these moving defendants  
8 are the third, sixth and seventh claims of the Complaint.

9 Plaintiffs' third claim for relief under § 1983 alleges that  
10 defendants had "policies, procedures, customs, and practices"  
11 that permitted or encouraged unreasonable searches and seizures  
12 in violation of the Fourth Amendment. (Id. ¶¶ 220-30.)

13 Plaintiffs' sixth and seventh claims assert claims under state  
14 law for intentional infliction of emotional distress and  
15 negligence against the municipal defendants.<sup>2</sup>

16 Placer County, Sacramento County, and the City of  
17 Sacramento each move separately to dismiss all plaintiffs' claims  
18 against them for failure to state a claim upon which relief can  
19 be granted pursuant to Rule 12(b)(6). The City of Sacramento  
20 initially moved only to dismiss plaintiffs' sixth and seventh  
21 claims, but at oral argument on April 20, 2014, the City of  
22 Sacramento joined in moving to dismiss plaintiffs' third claim as  
23 well.

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25 <sup>1</sup> Plaintiffs have not named Officer Nakamura as a  
26 defendant in this action.

27 <sup>2</sup> Plaintiffs assert claims for assault and battery but  
28 only against Officer Brzyszc, not against the municipal  
defendants. (Compl. ¶¶ 231-39.)

1 II. Discussion

2 On a motion to dismiss for failure to state a claim  
3 under Rule 12(b)(6), the court must accept the allegations in the  
4 complaint as true and draw all reasonable inferences in favor of  
5 the plaintiffs. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),  
6 overruled on other grounds by Davis v. Scherer, 468 U.S. 183  
7 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). To survive a  
8 motion to dismiss, a plaintiff must plead "only enough facts to  
9 state a claim to relief that is plausible on its face." Bell  
10 Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

11 The plausibility standard "does not require detailed  
12 factual allegations." Ashcroft v. Iqbal, 556 U.S. 662, 678  
13 (2009). Nor does it "impose a probability requirement at the  
14 pleading stage." Starr v. Baca, 652 F.3d 1202, 1213 (9th Cir.  
15 2011). This standard "'simply calls for enough facts to raise a  
16 reasonable expectation that discovery will reveal evidence' to  
17 support the allegations." Id. at 1217 (quoting Twombly, 550 U.S.  
18 at 556). Ultimately, "[d]etermining whether a complaint states a  
19 plausible claim for relief will . . . be a context-specific task  
20 that requires the reviewing court to draw on its judicial  
21 experience and common sense." Iqbal, 556 U.S. at 679.

22 A. Monell Liability

23 A municipality can be held liable under § 1983 only  
24 "when execution of a government's policy or custom, whether made  
25 by its lawmakers or by those whose edicts or acts may fairly be  
26 said to represent official policy, inflicts the injury." Monell  
27 v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658, 693  
28 (1978). Before Iqbal, the Ninth Circuit required plaintiffs

1 facing a motion to dismiss in civil rights actions against local  
2 governments to “set forth no more than a bare allegation that  
3 government officials’ conduct conformed to some unidentified  
4 government policy or custom.” AE ex rel. Hernandez v. Cnty. of  
5 Tulare, 666 F.3d 631, 637 (9th Cir. 2012) (citing Shah v. Cnty.  
6 of Los Angeles, 797 F.2d 743, 747 (9th Cir. 1986)). Since Iqbal,  
7 the Ninth Circuit has held that “to be entitled to the  
8 presumption of truth, allegations in a complaint or counterclaim  
9 may not simply recite the elements of a cause of action, but must  
10 contain sufficient allegations of underlying facts to give fair  
11 notice and to enable the opposing party to defend itself  
12 effectively.” Id. These factual allegations must also  
13 “plausibly suggest an entitlement to relief, such that it is not  
14 unfair to require the opposing party to be subjected to the  
15 expense of discovery and continued litigation.” Id.

16 1. Deprivation of a Constitutional Right

17 To establish municipal liability, a plaintiff must show  
18 “that [the plaintiff] possessed a constitutional right of which  
19 [he or she] was deprived.” Plumeau v. Sch. Dist. No. 40 Cnty. of  
20 Yamhill, 130 F.3d 432, 438 (9th Cir. 1997) (quoting Oviatt By  
21 and Through Waugh v. Pearce, 954 F.2d 1470, 1474 (9th Cir.  
22 1992)); see also City of Los Angeles v. Heller, 475 U.S. 796, 799  
23 (1986) (holding there was no basis for liability against a  
24 municipality when the plaintiff had suffered no constitutional  
25 injury). The Supreme Court has held that “proper analysis”  
26 requires courts “to separate two different issues when a § 1983  
27 claim is asserted against a municipality: (1) whether plaintiff’s  
28 harm was caused by a constitutional violation, and (2) if so,

1 whether the [municipality] is responsible for that violation.”  
2 Collins v. City of Harker Heights, Tex., 503 U.S. 115, 120  
3 (1992).

4 Here, plaintiffs allege that defendants deprived them  
5 of their constitutional rights to protection from searches and  
6 seizures without probable cause and from the use of excessive  
7 force. (See Compl. ¶¶ 201-19, 221-22.)

8 a. Searches and Seizures Without Probable Cause

9 The Fourth Amendment to the United States Constitution,  
10 applicable to the states through the Fourteenth Amendment,  
11 prohibits searches and arrests without probable cause. Beck v.  
12 Ohio, 379 U.S. 89, 90-91 (1964); McKenzie v. Lamb, 738 F.2d 1005,  
13 1007-08 (9th Cir. 1984). “The long-prevailing standard of  
14 probable cause protects ‘citizens from rash and unreasonable  
15 interferences with privacy and from unfounded charges of crime.’”  
16 Maryland v. Pringle, 540 U.S. 366, 370 (2003) (quoting Brinegar  
17 v. United States, 338 U.S. 160, 176 (1949)).

18 Plaintiffs allege that Officer Brzyszc and Officer  
19 Nakamura submitted supporting affidavits that contained material  
20 misstatements or omissions, without which there was no probable  
21 cause to support the five searches. (See Compl. ¶¶ 42-44, 46-  
22 48.) To prevail on this theory, plaintiffs “must make (1) a  
23 substantial showing of deliberate falsehood or reckless disregard  
24 for the truth, and (2) establish that but for the dishonesty, the  
25 challenged action would not have occurred.” Butler v. Elle, 281  
26 F.3d 1014, 1024 (9th Cir. 2002) (internal quotation marks  
27 omitted); see also Ewing v. City of Stockton, 588 F.3d 1218, 1224  
28 (9th Cir. 2009) (citing KRL v. Moore, 384 F.3d 1105, 1117 (9th

1 Cir. 2004)). "If a party makes a substantial showing of  
2 deception, the court must determine the materiality of the  
3 allegedly false statements or omissions." Ewing 588 F.3d at  
4 1224; see also Butler, 281 F.3d at 1024 ("Materiality is for the  
5 court, state of mind is for the jury."). That is, "[i]f an  
6 officer submitted false statements, the court purges those  
7 statements and determines whether what is left justifies issuance  
8 of the warrant." Ewing 588 F.3d at 1224. "If the officer  
9 omitted facts required to prevent technically true statements in  
10 the affidavit from being misleading, the court determines whether  
11 the affidavit, once corrected and supplemented, establishes  
12 probable cause." Id.

13 In a conclusory fashion, plaintiffs allege only that  
14 they "are informed and believe that the affidavit in support of  
15 the search warrant contained material misstatements and  
16 omissions; and upon exclusion of said statements, the affidavit  
17 fails . . . to establish probable cause . . . ." (Compl. ¶¶ 43,  
18 46.) Plaintiffs fail to identify the misstatements or omissions  
19 they believe were material to a determination of probable cause.

20 This allegation fails to give the court any sense of  
21 whether the alleged misstatements or omissions were material and  
22 thus whether plaintiffs plausibly suffered the deprivation of a  
23 constitutional right. See Twombly, 550 U.S. at 570.  
24 Accordingly, because plaintiffs have insufficiently supported a  
25 deprivation of their Fourth Amendment right to be free from  
26 searches and seizures without probable cause, plaintiffs have  
27 also not stated a Monell claim based on this alleged injury. See  
28 Heller, 475 U.S. at 799. The court will therefore grant Placer

1 County, Sacramento County, and the City of Sacramento's motions  
2 to dismiss plaintiffs' third claim based on the theory of the  
3 lack of probable cause for the warrants.

4 b. Excessive Use of Force

5 Under the Fourth Amendment, police may use only such  
6 force during a seizure as is objectively reasonable under the  
7 circumstances. See Graham v. Connor, 490 U.S. 386, 396-97  
8 (1989). In Graham, the Supreme Court articulated factors that  
9 courts should typically consider in an excessive force analysis:  
10 "(1) the severity of the crime at issue; (2) whether the suspect  
11 poses an immediate threat to the safety of the officers or  
12 others; and (3) whether the suspect is actively resisting arrest  
13 or attempting to evade arrest by flight." Cameron v. Craig, 713  
14 F.3d 1012, 1021 (9th Cir. 2013) (citing Graham, 490 U.S. at 396).  
15 In addition to these factors, "a court (or jury) may 'look to  
16 whatever specific factors may be appropriate in a particular  
17 case.'" Id. (quoting Franklin v. Foxworth, 31 F.3d 873, 875-76  
18 (9th Cir. 1994)).

19 Plaintiffs allege that, during the five searches and  
20 seizures conducted simultaneously on November 20, 2013, officers<sup>3</sup>

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21 <sup>3</sup> Plaintiffs' Complaint is not the model of clarity when  
22 identifying what officers took what actions. It consistently  
23 uses the phrase "officers, including but not limited to,  
24 Defendants Officer Brzyszc, Roseville Officers and Sacramento  
25 Officers." (See Compl. ¶¶ 75, 100, 104, 133, 160.) During oral  
26 argument on April 20, 2014, plaintiffs clarified their intent to  
27 include unidentified officers from each of the defendant  
28 municipalities as being present at each of the five searches.  
Such an allegation may support liability for each municipality  
based on a theory of integral participation. See Bravo v. City  
of Santa Maria, 665 F.3d 1076, 1089-90 (9th Cir. 2011) ("Section  
1983 liability extends to those who perform functions 'integral'  
to an unlawful search, even if their individual actions do not



1 used excessive force and executed the searches and arrests "in a  
2 violent, abusive and unreasonable manner" that "intentionally  
3 humiliated and embarrassed plaintiffs." (Compl. ¶¶ 56, 81.) For  
4 example, plaintiffs allege that, during one of the raids,  
5 officers grabbed plaintiff Antonio Duran, threw him face down to  
6 the ground, and jammed a knee into his back. (Id. ¶ 119.)  
7 During another raid, the Complaint alleges that officers  
8 violently threw plaintiff Anita Felix to the ground and later  
9 bent plaintiff Alexis Sandoval's arm behind her back, causing her  
10 pain. (Id. ¶¶ 145, 154.) At a third raid, officers allegedly  
11 threw plaintiffs Juan Sanchez, Danny Garcia, and Destiny C. to  
12 the ground. (Id. ¶¶ 166-67, 171, 177.) The Complaint also  
13 consistently alleges that none of the plaintiffs were armed or  
14 attempted to threaten the officers, resist, or flee. (See id. ¶¶  
15 61, 83, 110, 119, 138, 146, 148, 166-67, 171, 177.)

16 During all five raids, officers also allegedly pointed  
17 firearms at plaintiffs, (see id. ¶¶ 62, 85, 87-88, 110-11, 127,  
18 138, 143, 148, 166-69); destroyed or damaged property including  
19 furniture and various doors and locks, (see id. ¶¶ 106, 115, 136,  
20 163); and forced plaintiffs to stand outside in the cold for up  
21 to four hours while officers conducted the searches, (see id. ¶¶  
22 89-90, 112). Accordingly, plaintiffs have alleged sufficient  
23 underlying facts at this stage to plausibly support a deprivation  
24 of the Fourth Amendment's protection against the use of excessive  
25 themselves rise to the level of a constitutional violation.");  
26 see also James by James v. Sadler, 909 F.2d 834, 837 (5th Cir.  
27 1990) (holding that, while officers did not physically perform  
28 the pat-down of plaintiff, because they provided back-up by  
remaining armed on the premises throughout the search their  
activities rendered them integral participants).

1 force.

2 2. Existence of a Policy or Custom

3 "For purposes of liability under Monell, a 'policy' is  
4 'a deliberate choice to follow a course of action . . . made from  
5 among various alternatives by the official or officials  
6 responsible for establishing final policy with respect to the  
7 subject matter in question.'" Fogel v. Collins, 531 F.3d 824,  
8 834 (9th Cir. 2008) (quoting Fairley v. Luman, 281 F.3d 913, 918  
9 (9th Cir. 2002)). Alternatively, "[a]n act performed pursuant to  
10 a 'custom' that has not been formally approved by an appropriate  
11 decision-maker may fairly subject a municipality to liability on  
12 the theory that the relevant practice is so widespread as to have  
13 the force of law." Bd. of Cnty. Comm'rs v. Brown, 520 U.S. 397,  
14 404 (1997) (citing Monell, 436 U.S. at 690-91).

15 Plaintiffs allege municipal defendants had in place  
16 "policies, procedures, customs, and practices" that permitted or  
17 encouraged the use of excessive force during the raids. (Compl.  
18 ¶ 222.) Although the allegation of an official policy lacks  
19 factual support, plaintiffs' Complaint does contain underlying  
20 facts that might support the existence of a custom for purposes  
21 of Monell. Specifically, the fact that excessive force was  
22 allegedly used against multiple individuals located at five  
23 separate residences that were not in close proximity to one  
24 another and that these raids were conducted at the same time by  
25 different officers raises an inference that officers were acting  
26 pursuant to an established custom of behavior. See Brown, 520  
27 U.S. at 404; Gillette v. Delmore, 979 F.2d 1342, 1349 (9th Cir.  
28 1992) ("A section 1983 plaintiff may attempt to prove the

1 existence of a custom or informal policy with evidence of  
2 repeated constitutional violations.”). The Complaint thus gives  
3 municipal defendants “fair notice” of the custom that plaintiffs  
4 challenge and, assuming these allegations as true, it plausibly  
5 states a claim for relief under Monell. See Hernandez, 666 F.3d  
6 at 637. Accordingly, the court will deny Placer County,  
7 Sacramento County, and the City of Sacramento’s motions to  
8 dismiss plaintiffs’ third claim as it relates to a custom  
9 encouraging the use of excessive force.

10 B. Plaintiffs’ Sixth and Seventh Claims under State Law

11 Plaintiffs’ sixth and seventh claims assert liability  
12 under state law for intentional infliction of emotional distress  
13 and negligence against all defendants. (Compl. ¶¶ 240-251.) As  
14 a prerequisite to asserting state law claims against a public  
15 entity or public employee, however, California’s Tort Claims Act  
16 (“TCA”), Cal. Gov’t Code §§ 810-978.8, requires a plaintiff to  
17 first present to the public entity “all claims for money or  
18 damages” against the local public entity or public employee. Id.  
19 § 905. “[F]ailure to timely present a claim for money or damages  
20 to a public entity bars a plaintiff from filing a lawsuit against  
21 that entity.” California v. Super. Ct., 32 Cal. 4th 1234, 1239  
22 (2004). A plaintiff must therefore “allege facts demonstrating  
23 or excusing compliance with the claim presentation requirement”  
24 in the complaint. Id. at 1242.

25 Plaintiffs allege that they complied with the  
26 California Tort Claims Act by sending a notice of intent to file  
27 suit to the City of Roseville on April 22, 2014, which denied  
28 their claims on May 29, 2014. (Compl. ¶ 5.) Plaintiffs fail to

1 make a similar allegation regarding Placer County, Sacramento  
2 County, or the City of Sacramento. Plaintiffs thus request leave  
3 in their opposition briefs to withdraw their sixth and seventh  
4 claims under state law against Sacramento County and the City of  
5 Sacramento. (See Pls.' Opp'n to Sacramento City at 2 (Docket No.  
6 13); Pls.' Opp'n to Sacramento County at 12 (Docket No. 14).) At  
7 oral argument on April 20, 2014, plaintiffs also requested leave  
8 to withdraw claims six and seven as against Placer County.  
9 Plaintiffs further clarified that they wish to withdraw the state  
10 law claims against these defendants with prejudice. Accordingly,  
11 the court will grant plaintiffs leave to withdraw, with  
12 prejudice, claims six and seven as against Placer County,  
13 Sacramento County, and the City of Sacramento.

### 14 III. Placer County's Request to Stay Proceedings

15 Placer County also asks the court to abstain from  
16 hearing claims against it because there are ongoing criminal  
17 proceedings against plaintiffs Samuel Duran and Antonio Duran.  
18 (See Placer County's Mem. at 6.) Although the county disavows  
19 reliance upon Younger v. Harris, 401 U.S. 37, 41 (1971)  
20 (abstaining from a case that might enjoin prosecution under a  
21 California criminal statute), the court will construe this  
22 request as invoking the Younger doctrine. See Gilbertson v.  
23 Albright, 381 F.3d 965, 984 (9th Cir. 2004) (extending Younger to  
24 relief for damages, including "an action for damages pursuant to  
25 42 U.S.C. § 1983").

26 Under Ninth Circuit precedent, "abstention in favor of  
27 state judicial proceedings is required if the state proceedings  
28 (1) are ongoing, (2) implicate important state interests, and (3)

1 provide the plaintiff an adequate opportunity to litigate federal  
2 claims." Hirsh v. Justices of Supreme Ct. of State of Cal., 67  
3 F.3d 708, 712 (9th Cir. 1995) (citing Middlesex Cnty. Ethics  
4 Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)).

5 Placer County has not shown why this court should apply Younger  
6 abstention here, and it has failed to identify or describe the  
7 nature of the criminal proceedings pending against Samuel Duran  
8 and Antonio Duran.

9 Placer County states only that allegations relating to  
10 actions in the Placer County Jail "could become an issue  
11 depending on the scope of discovery permitted in the civil  
12 action" and "may ultimately relate to claims of improper searches  
13 in jail that might impact the criminal prosecution." (Placer  
14 County's Mem. at 6.) However, it does not appear that any of the  
15 plaintiffs in this action other than Samuel and Antonio Duran are  
16 parties to the pending state criminal proceedings. Moreover,  
17 plaintiffs state in their Complaint that

18 This complaint does not seek to challenge the bringing  
19 of the criminal action against Samuel Duran, or any  
20 other aspect within that criminal action, until such  
21 time as the case is over. The criminal case is thus  
22 mentioned herein only insofar as it relates to  
23 defendants motivation to raid and seize Plaintiffs'  
24 person, residences, vehicles and personal belongings.

25 (Compl. ¶ 52.) The County does not address this passage, nor  
26 does it explain how the claims of plaintiffs other than Samuel  
27 Duran and Antonio Duran will impact state proceedings. Absent a  
28 more specific showing of how plaintiffs' case will interfere with  
the unspecified state criminal proceedings, the court will  
decline to abstain.


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IT IS THEREFORE ORDERED that:

- (1) The motions of the County of Placer, the County of Sacramento, and the City of Sacramento to dismiss the third claim of the Complaint be, and the same hereby are, GRANTED with respect to plaintiffs' claim for municipal liability based on searches and seizures without probable cause; and DENIED with respect to plaintiffs' claim for municipal liability based on the use of excessive force;
- (2) Plaintiffs' request for leave to withdraw claims six and seven with prejudice as against the County of Placer, the County of Sacramento, and the City of Sacramento be, and the same hereby is, GRANTED; and
- (3) The County of Placer's request to stay these proceedings be, and the same hereby is, DENIED without prejudice.

Plaintiffs need not file an amended complaint, but should they choose to do so, plaintiffs have twenty days from the date this Order is signed to file an amended complaint that is consistent with this Order.

Dated: April 22, 2015

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**WILLIAM B. SHUBB**  
**UNITED STATES DISTRICT JUDGE**