



1 **BACKGROUND<sup>2</sup>**

2  
3 Defendants Justin Brown, Paul Fong, and Andrew Leal (“Defendants”) are police  
4 officers for the City of Sacramento. At midnight on August 8, 2014, Plaintiff awoke in his  
5 apartment to the sight of Defendants attempting to wrench the front window from its  
6 track. When Defendants spotted Plaintiff through the window, they informed him that  
7 they would kick down the front door if Plaintiff did not open it voluntarily. Defendants  
8 identified themselves as police officers and claimed they had a warrant.

9 When Plaintiff opened the door, Defendants entered, placed Plaintiff in handcuffs,  
10 threw him on a couch, and asked for “Rosa Davalos.” Defendants were not gentle in  
11 their handling of Plaintiff: they grabbed him “roughly,” “twist[ed] his injured right arm and  
12 shoulder over his back up to his neck,” and threw him on the couch “with such force that  
13 the main supporting center board was broken.” Although Plaintiff informed Defendants  
14 that Davalos lived in the neighboring unit—a fact “which was clearly labeled on the  
15 mailbox”—Defendants remained in Plaintiff’s residence “and abus[ed] Plaintiff and his  
16 fiancée” for almost an hour. Defendants left after running a warrant search and  
17 determining that there were no warrants for either Plaintiff or his fiancée.

18 Plaintiff asserts the following claims against Defendants: unreasonable search,  
19 excessive force, unlawful arrest, negligence, false arrest, intentional infliction of  
20 emotional distress, assault and battery, intrusion into private affairs, and interference  
21 with civil rights. Defendants have filed an Amended Answer to the FAC (ECF No. 14)  
22 that asserts six affirmative defenses. Through the pending Motion, Plaintiff requests that  
23 the Court strike five of Defendants’ affirmative defenses.

24 ///

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>2</sup> The following statement of facts is based on the allegations in Plaintiff’s First Amendment  
Complaint (“FAC”). See ECF No. 10.



1 that Plaintiff was “aggressive and threatening.” Although Defendants need not provide  
2 “detailed factual allegations,” this first affirmative defense is nothing more than an  
3 “unadorned [] accusation” or “naked assertion.” See Iqbal, 556 U.S. at 677-78.  
4 Accordingly, Plaintiff’s Motion to Strike is GRANTED as to Defendants’ first affirmative  
5 defense.

### 6 **B. Immunity**

7 Defendants’ second affirmative defense, in its entirety, states: “Each act or  
8 omission alleged in the complaint falls within the immunities and defenses described in  
9 sections 800 through 995 of the California Government Code, including but not limited  
10 to, sections 815.2, 820.2, 820.4, AND 821.” Defs.’ Am. Answer at 7. Plaintiff contends  
11 that this affirmative defense is insufficiently pled because Defendants do not specify  
12 which of nearly 200 sections of the California Government Code it is based or to which  
13 “acts or omissions” the defense applies.

14 Contrary to Plaintiff’s arguments, the second affirmative defense does in fact  
15 identify specific sections of the California Government Code (specifically sections 815.2,  
16 820.2, 820.4, and 821). Additionally, Defendants’ Answer clearly states that the  
17 affirmative defense is applicable to “each act or omission alleged in the complaint.”  
18 Nevertheless, because Defendants have not pled any facts to support their claim of  
19 immunity, Plaintiff’s Motion to Strike is GRANTED as to Defendants’ second affirmative  
20 defense.

### 21 **C. Good Faith**

22 Defendants’ third affirmative defense, in its entirety, states: “Defendants allege  
23 that they acted in good faith, without malice, without wrongful intent, and within the  
24 scope of the lawful performance of their regularly assigned duties as police officers at all  
25 times alleged in the complaint.” Defs.’ Am. Answer at 7-8. Plaintiff contends this is not  
26 an affirmative defense, but rather a simple denial of Plaintiff’s allegations. Plaintiff  
27 further argues that Defendants have not provided sufficient factual support for their  
28 assertion of good faith.

1           The Court first rejects Plaintiff's argument that good faith is not an affirmative  
2 defense, as the Ninth Circuit has made clear that good faith can be an "affirmative  
3 defense to punitive damages." See Alvarado v. Fed. Express. Corp., 384 F. App'x 585,  
4 590 (9th Cir. 2010) (citing Passantino v. Johnson & Johnson Consumer Prods., Inc., 212  
5 F.3d 493, 516-17 (9th Cir. 2000)).<sup>3</sup> Nevertheless, Defendants' third affirmative defense  
6 must be stricken, as Defendants' Amended Answer does not provide any facts in support  
7 of Defendants' assertion of good faith. To the extent that Defendants' assertion of good  
8 faith is based on the arrest warrant for Rosa Davalos, the Amended Answer does not  
9 explain why Defendants suspected Davalos would be inside of Plaintiff's apartment.  
10 Instead, these details are provided by Defendants in their Opposition. Cf. Defs.' Opp'n  
11 at 1, ECF No. 19 ("Unbeknownst to the officers, Davalos switched apartments with  
12 Plaintiff a short time prior but there was no record of her move.")<sup>4</sup> Thus, Plaintiff's  
13 Motion to Strike is GRANTED with leave to amend as to Defendants' third affirmative  
14 defense.

15           **D. Failure to Mitigate**

16           Defendants' fourth affirmative defense, in its entirety, states: "Plaintiff's claims are  
17 barred, in whole or part, due to Plaintiff's failure to mitigate the personal injury type  
18 damages alleged in the complaint." Defs.' Am. Answer at 8. Plaintiff contends that this  
19 affirmative defense is insufficiently pled and, in any event, is not relevant because  
20 Plaintiff has not alleged that his damages are "continuing."<sup>5</sup> Defendants counter that  
21 they included the affirmative defense because Plaintiff's FAC does not clearly indicate  
22 whether he suffers continuing damages. See Defs.' Opp'n at 6 (noting the Plaintiff has  
23

---

24           <sup>3</sup> Plaintiff has specifically requested punitive damages. FAC at 9.

25           <sup>4</sup> The Court notes that Defendants' Opposition is significantly more detailed than the Amended  
26 Answer. See, e.g., Defs.' Opp'n at 1-2 ("After Plaintiff threatened to shoot the officers in the head, he was  
handcuffed while the officers searched the apartment for Davalos.").

27           <sup>5</sup> See Valle De Oro Bank N.A. v. Gamboa, 26 Cal. App. 4th 1686, 1691 (1994) ("Typically, the rule  
28 of mitigation of damages comes into play when the event producing injury or damage has already  
occurred and it then has become the obligation of the injured or damaged party to avoid continuing or  
enhanced damages through reasonable efforts.").

1 vaguely alleged that he “was harmed,” “was actually harmed,” and “did suffer severe  
2 emotional distress”).

3 Although Defendants have not pled any facts in support of the affirmative  
4 defense, their pleading is only as bare as the allegation of damages in Plaintiff’s FAC.  
5 Accordingly, Plaintiff’s Motion is DENIED as to Defendants’ fourth affirmative defense.

6 **E. Warrant**

7 Defendants’ sixth affirmative defense,<sup>6</sup> in its entirety, states:

8 The entry into Plaintiff’s home, the search of Plaintiff’s home,  
9 and the detention of Plaintiff to accommodate the necessities  
10 of the search were lawful acts pursuant to a lawfully issued  
11 arrest warrant for Rosa Davalos because Defendants had  
reason to believe that Rosa Davalos was inside Plaintiff’s  
home.

12 Defs.’ Am. Answer at 8. Plaintiff contends that this affirmative defense is simply a denial  
13 of Plaintiff’s allegations, and that Defendants have not pled sufficient factual allegations.

14 Plaintiff fails to appreciate that Defendants’ allegations—specifically, that  
15 Defendants had an arrest warrant for Davalos and that they had reason to believe she  
16 was inside of Plaintiff’s apartment—might defeat several of Plaintiff’s claims. See Heien  
17 v. North Carolina, 135 S. Ct. 530, 539 (2014) (“The Fourth Amendment tolerates only  
18 reasonable mistakes, and those mistakes—whether of fact or of law—must be  
19 objectively reasonable.”); Steagald v. United States, 451 U.S. 204, 221 (1981) (“An  
20 arrest warrant alone will suffice to enter a suspect’s own residence to effect his arrest.”);  
21 Hill v. California, 401 U.S. 797, 802 (1971) (“[W]hen the police have probable cause to  
22 arrest one party, and when they reasonably mistake a second party for the first party,  
23 then the arrest of the second party is a valid arrest”). Additionally, although Defendants  
24 could have provided additional facts, the sixth affirmative defense is sufficiently pled.  
25 Plaintiff’s Motion is therefore DENIED as to the sixth affirmative defense.

26 ///

27 ///

---

28 <sup>6</sup> Plaintiff did not move to strike Defendants’ fifth affirmative defense.

1 **CONCLUSION**

2  
3 Thus, Plaintiff's Motion to Strike (ECF No. 17) is GRANTED as to the first,  
4 second, and third affirmative defenses, and DENIED as to the fourth and sixth affirmative  
5 defenses in Defendants' Amended Answer. Because the deficiencies noted by the  
6 Court can be cured by amendment, Defendants are granted leave to file a Second  
7 Amended Answer within twenty (20) days of the electronic filing of this Order. If  
8 Defendants fail to file a Second Amended Answer, this case will proceed on the First  
9 Amended Answer (ECF No. 14) with the first, second, and third affirmative defenses  
10 stricken therefrom.

11 IT IS SO ORDERED.

12 Dated: June 18, 2015

13  
14   
15 \_\_\_\_\_  
16 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
17 UNITED STATES DISTRICT COURT  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28