

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JONATHAN EARL DANNER,  
Plaintiff,  
v.  
COUNTY OF SAN JOAQUIN and  
MANUEL ANDRADE,  
Defendants.

No. 2:15-cv-0887-MCE-EFB

**MEMORANDUM AND ORDER**

Plaintiff Jonathan Earl Danner (“Plaintiff”) alleges several causes of action against Defendants San Joaquin County and Manuel Andrade (collectively, “Defendants”) stemming from Plaintiff’s alleged unlawful arrest on April 11, 2014. Defendants have filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 13. Plaintiff filed an Opposition to the Motion (ECF No. 15), and Defendants filed a Reply (ECF No. 16). For the reasons that follow, Defendants’ Motion is GRANTED in part and DENIED in part.<sup>1</sup>

///  
///

---

<sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. See E.D. Cal. Local R. 230(g).

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

2  
3 From March 2013 to December 2013, Plaintiff employed Jonathan Jackson at  
4 Plaintiff's hauling and handyman business. The employment relationship ended when  
5 Plaintiff terminated Jackson because of his work performance. In January 2014,  
6 Jackson started a physical altercation with Plaintiff and deliberately broke the window of  
7 Plaintiff's vehicle. Another altercation between Jackson and Plaintiff occurred on  
8 April 11, 2014. The Complaint makes clear that Plaintiff and Jackson provided law  
9 enforcement with conflicting accounts of what transpired that morning.<sup>3</sup>

10 **A. Plaintiff's Account**

11 At approximately 5:30 a.m. on April 11, 2014, Plaintiff awoke in his home to the  
12 sound of a revving car engine. Plaintiff looked out his bedroom window and saw  
13 Jackson's friend Jorge Burns sitting in a vehicle; Plaintiff also heard Jackson shouting  
14 obscenities from the vehicle. Plaintiff walked outside, grabbed his dog, put the dog in his  
15 truck, and went back inside his house. Plaintiff was about to return outside when he  
16 heard glass shatter. Plaintiff observed Burns running away from Plaintiff's truck and  
17 observed a brick in the passenger cabin of the truck. Plaintiff's dog suffered severe  
18 injuries as a result of Burns throwing the brick through the windshield of Plaintiff's truck.

19 Plaintiff called 911 and pursued Burns and Jackson in his truck. San Joaquin  
20 County Sheriff Deputy Manuel Andrade ("Deputy Andrade") reported to Plaintiff's  
21 residence and took Plaintiff's statement. Deputy Andrade observed Plaintiff's dog  
22 bleeding profusely from its forehead and further noted the damage to Plaintiff's truck.

23 **B. Jackson's Account, According to Plaintiff's Complaint**

24 Deputy Andrade subsequently located and interviewed Jackson. Jackson  
25 admitted that he had broken Plaintiff's window during a prior confrontation with Plaintiff

26  
27 <sup>2</sup> The following statement of facts is based entirely on the allegations in Plaintiff's Complaint (ECF  
No. 1).

28 <sup>3</sup> The Complaint describes in detail both Plaintiff's and Jackson's version of events.

1 and stated he was paying Plaintiff for that damage. Jackson also admitted that he had  
2 encountered Plaintiff earlier in the morning of April 11, 2014. However, Jackson  
3 incorrectly stated that the encounter occurred at the Tower Mart at 147 East Lathrop  
4 Road and that Plaintiff instigated the confrontation.

5 Jackson further stated that after the confrontation at Tower Mart, he took Burns to  
6 work and returned home. Ten minutes after that, Plaintiff appeared in front of Jackson's  
7 residence and brandished a small gun. Plaintiff allegedly told Jackson to meet him  
8 around the corner. When Plaintiff drove around the corner, Jackson threw a rock at  
9 Plaintiff's truck and shattered its window. Plaintiff then exited his truck with the gun, and  
10 Jackson threw another rock at Plaintiff. Plaintiff responded by throwing the rock back at  
11 Jackson, retrieving a brick from the back of his truck, and throwing the brick at Jackson.  
12 Plaintiff drove away in his truck, only to return in a different vehicle. Jackson did not  
13 offer Deputy Andrade an explanation regarding the dog's injuries.

#### 14 **C. Plaintiff's Arrest**

15 After hearing Jackson's account, Deputy Andrade arrested Plaintiff for making  
16 criminal threats, brandishing a firearm, and making a false police report. Plaintiff  
17 suggests Deputy Andrade's decision to arrest him and not Jackson was based on the  
18 fact that Plaintiff was convicted of battery on a police officer more than twenty years ago,  
19 a conviction for which he has since encountered "constant harassment from the police."  
20 Compl. at 9.

21 Plaintiff spent six days in the San Joaquin County Jail before posting bail.  
22 Although the San Joaquin County District Attorney initially charged Plaintiff with the three  
23 offenses for which he was arrested, the District Attorney dismissed the charges on  
24 September 25, 2014.

#### 25 **D. Plaintiff's Complaint and Defendant's Motion to Dismiss**

26 Plaintiff's Complaint identifies five causes of action: (1) false arrest under  
27 42 U.S.C. § 1983; (2) false arrest in violation of the California Constitution; (3) malicious  
28 prosecution; (4) intentional infliction of emotional distress; and (5) a vicarious liability

1 claim against Defendant San Joaquin County under California Government Code section  
2 815.2(a).<sup>4</sup> Defendants seek dismissal of all five causes of action.

### 3 4 STANDARD

5  
6 On a motion to dismiss for failure to state a claim under Federal Rule of Civil  
7 Procedure 12(b)(6),<sup>5</sup> all allegations of material fact must be accepted as true and  
8 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.  
9 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only “a short and plain  
10 statement of the claim showing that the pleader is entitled to relief” in order to “give the  
11 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell  
12 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,  
13 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require  
14 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of  
15 his entitlement to relief requires more than labels and conclusions, and a formulaic  
16 recitation of the elements of a cause of action will not do.” Id. (internal citations and  
17 quotations omitted). A court is not required to accept as true a “legal conclusion  
18 couched as a factual allegation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009)  
19 (quoting Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a  
20 right to relief above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles  
21 Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)  
22 (stating that the pleading must contain something more than “a statement of facts that  
23 merely creates a suspicion [of] a legally cognizable right of action.”)).

24 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket  
25 assertion, of entitlement to relief.” Id. at 556 n.3 (internal citations and quotations

26  
27 <sup>4</sup> Contrary to Plaintiff’s Opposition, there are no “allegations of excessive force” in the Complaint.  
Pl.’s Opp’n, ECF No. 15, at 6.

28 <sup>5</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless  
otherwise noted.

1 omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard to see how  
2 a claimant could satisfy the requirements of providing not only ‘fair notice’ of the nature  
3 of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles Alan  
4 Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough facts  
5 to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have  
6 not nudged their claims across the line from conceivable to plausible, their complaint  
7 must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed even if it  
8 strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery  
9 is very remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236  
10 (1974)).

11 A court granting a motion to dismiss a complaint must then decide whether to  
12 grant leave to amend. Leave to amend should be “freely given” where there is no  
13 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice  
14 to the opposing party by virtue of allowance of the amendment, [or] futility of the  
15 amendment . . . .” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.  
16 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to  
17 be considered when deciding whether to grant leave to amend). Not all of these factors  
18 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .  
19 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,  
20 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that  
21 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,  
22 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,  
23 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.  
24 1989) (“Leave need not be granted where the amendment of the complaint . . .  
25 constitutes an exercise in futility . . . .”)).

26 ///

27 ///

28 ///

1 **ANALYSIS**

2  
3 Defendants advance several arguments in their Motion to Dismiss. The Court will  
4 address each in turn.

5 **A. California Government Code Section 945.6(a)**

6 Defendants argue that the second, fourth, and fifth causes of action should be  
7 dismissed on the ground that Plaintiff failed to file this action within six months of  
8 receiving notice that San Joaquin County had rejected his tort claim against the County.  
9 See generally Cal. Gov't Code § 945.6(a) (“any suit brought against a public entity . . .  
10 must be commenced . . . not later than six months after the date [a letter rejecting a tort  
11 claim against the entity] is personally delivered or deposited in the mail”). Defendant  
12 argues that the County rejected Plaintiff’s claim on October 23, 2014, that Plaintiff  
13 therefore should have commenced this action no later than April 23, 2015, and that  
14 Plaintiff’s state law claims are untimely because he did not file his Complaint until  
15 April 24, 2015.

16 However, Plaintiff filed a civil cover sheet and a motion to proceed in forma  
17 pauperis on April 23, 2015. See ECF Nos. 2, 3. Although “[a] civil action is commenced  
18 by filing a complaint with the court,” see Federal Rule of Civil Procedure 3 (emphasis  
19 added), Plaintiff’s Opposition to the pending Motion explains that the Complaint was  
20 inadvertently separated from the documents filed on April 23, 2015, ECF No. 15 at 4.  
21 The Court, although skeptical of Plaintiff’s explanation, will not dismiss the second,  
22 fourth, and fifth causes of action on the ground that Plaintiff has failed to comply with  
23 section 945.6(a). Defendants’ Motion is therefore DENIED to the extent it seeks  
24 dismissal of those causes of action pursuant to section 945.6(a).<sup>6</sup>

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>6</sup> Defendants’ Requests for Judicial Notice (ECF Nos. 13-2), which relate to Defendants’ section 945.6(a) argument, are DENIED as moot.

1           **A. First Cause of Action**

2           Plaintiff’s first cause of action alleges that Deputy Andrade’s arrest of Plaintiff was  
3 an unreasonable seizure in violation of the Fourth Amendment to the United States  
4 Constitution. Deputy Andrade seeks dismissal of the claim on the grounds that he is  
5 entitled to qualified immunity.

6                     The doctrine of qualified immunity shields officials from civil  
7 liability so long as their conduct does not violate clearly  
8 established statutory or constitutional rights of which a  
9 reasonable person would have known. A clearly established  
right is one that is sufficiently clear that every reasonable  
official would have understood that what he is doing violates  
that right. . . .

10                    The dispositive question is whether the violative nature of  
11 particular conduct is clearly established. This inquiry must be  
undertaken in light of the specific context of the case, not as  
a broad general proposition.

12  
13 Mullenix v. Luna, 136 S. Ct. 305, 308 (2015) (per curiam) (citations and internal  
14 quotation marks omitted).

15           In the context of an unlawful arrest, an officer is entitled to qualified immunity “if  
16 he reasonably believed there to have been probable cause.” Rosenbaum v. Washoe  
17 Cnty., 663 F.3d 1071, 1076 (9th Cir. 2011) (per curiam). “Framing the reasonableness  
18 question somewhat differently, the question in determining whether qualified immunity  
19 applies is whether all reasonable officers would agree that there was no probable cause  
20 in this instance.” Id. at 1078.

21                    Probable cause to arrest exists when officers have  
22 knowledge or reasonably trustworthy information sufficient to  
23 lead a person of reasonable caution to believe that an  
24 offense has been or is being committed by the person being  
25 arrested. Alternatively, this court has defined probable cause  
as follows: when under the totality of circumstances known  
to the arresting officers, a prudent person would have  
concluded that there was a fair probability that [the  
defendant] had committed a crime.

26 United States v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007) (citations and internal  
27 quotation marks omitted).

28           ///

1 At this stage of the litigation, the Court cannot find that Deputy Andrade is entitled  
2 to qualified immunity on the unlawful arrest claim. As noted above, on Defendants'  
3 Motion to Dismiss, the Court must construe all allegations in the Complaint in the light  
4 most favorable to Plaintiff. The Complaint suggests that Deputy Andrade arrested  
5 Plaintiff solely on Jackson's account (i.e., that Plaintiff brandished a gun and threw a  
6 brick at Jackson). While Jackson's account, in isolation, could arguably lead a prudent  
7 person to conclude that there was a fair probability that Plaintiff had committed a crime,  
8 the probable cause analysis requires that the Court examine the totality of the  
9 circumstances known to Deputy Andrade.

10 There are several allegations in the Complaint that indicate the account Jackson  
11 provided Deputy Andrade was less than credible. Of particular relevance is the  
12 absurdity of Jackson's account—that is, that Jackson's response to Plaintiff's alleged  
13 brandishing of a gun was to throw a rock at Plaintiff's truck and that Jackson threw  
14 another a rock at Plaintiff when Plaintiff exited his truck with the gun—and that Jackson  
15 admitted having shattered the window of Plaintiff's vehicle during a prior confrontation.  
16 See also Compl. at 5 ("Deputy Andrade arrested plaintiff even though the deputy never  
17 found the gun plaintiff supposedly brandished."). Construing the allegations in the  
18 Complaint in the light most favorable to Plaintiff, Jackson's statement—the only evidence  
19 of Plaintiff's alleged criminal activity—was not believable. Deputy Andrade therefore did  
20 not have "knowledge or reasonably trustworthy information sufficient to lead a person of  
21 reasonable caution to believe" that Plaintiff had committed an offense, and it was not  
22 reasonable for him to believe that he had probable cause to arrest Plaintiff.<sup>7</sup> Deputy  
23 Andrade is therefore not entitled to qualified immunity at this stage of the litigation.

24 Accordingly, Defendants' Motion to Dismiss is DENIED to the extent it seeks  
25 dismissal of the first cause of action.

26 ///

---

27 <sup>7</sup> This finding renders unnecessary any discussion of Deputy Andrade's argument that the first  
28 and second causes of action should also be dismissed because Plaintiff has "fail[ed] to plead the required  
'lack of probable cause' element." Defs.' Mot., ECF No. 13-1, at 12.



1           **B. Second Cause of Action**

2           Plaintiff's second cause of action alleges that Deputy Andrade's arrest of Plaintiff  
3 was an unreasonable seizure in violation of the California Constitution. Deputy Andrade  
4 seeks dismissal of the second cause of action on the grounds that it is untimely under  
5 the applicable statute of limitations and that he is entitled to statutory immunity. The  
6 Court will address each of these arguments.

7                           **1. Statute of Limitations**

8           Deputy Andrade correctly notes that (1) under California Code of Civil Procedure  
9 section 340(c), "[a]n action for . . . false imprisonment"<sup>8</sup> shall be brought within one year,  
10 (2) according to the Complaint, Deputy Andrade arrested Plaintiff on April 11, 2014, and  
11 (3) Plaintiff did not file this action until April 24, 2015. Defendants argue that because  
12 Plaintiff did not commence this suit within one year of the arrest, section 340(c) bars and  
13 the Court must dismiss Plaintiff's second cause of action.

14           Plaintiff did not even acknowledge Deputy Andrade's section 340(c) argument in  
15 his Opposition. Nevertheless, both Plaintiff and Deputy Andrade have overlooked  
16 California Government Code sections 945.3 and 352.1(a). Section 945.3 provides:

17                           No person charged by indictment, information, complaint, or  
18                           other accusatory pleading charging a criminal offense may  
19                           bring a civil action for money or damages against a peace  
20                           officer or the public entity employing a peace officer based  
21                           upon conduct of the peace officer relating to the offense for  
22                           which the accused is charged, including an act or omission in  
23                           investigating or reporting the offense or arresting or detaining  
24                           the accused, while the charges against the accused are  
25                           pending before a superior court.

26                           Any applicable statute of limitations for filing and prosecuting  
27                           these actions shall be tolled during the period that the  
28                           charges are pending before a superior court.

29           Applied here, section 945.3 tolled the limitations period from the date the District  
30 Attorney filed the information against Plaintiff (April 15, 2014) to the date the District  
31 Attorney dropped the charges against Plaintiff (September 25, 2014). Moreover, under

---

32                           <sup>8</sup> "In California, false arrest and false imprisonment are not separate torts." George v. City of  
33                           Long Beach, 973 F.2d 706, 710 (9th Cir. 1992).

1 California Code of Civil Procedure section 352.1(a), the limitations period was also tolled  
2 while Plaintiff was incarcerated at the San Joaquin County Jail. See generally Elliott v.  
3 City of Union City, 25 F.3d 800 (9th Cir. 1994) (reversing the district court because the  
4 statute of limitations was tolled “commencing at the [plaintiff’s] arrest and continuing  
5 through his custody”). The Complaint indicates that Plaintiff was incarcerated for six  
6 days beginning on April 11, 2014.

7 Thus, applying sections 845.3 and 352.1(a), the limitations period was tolled from  
8 the date that Deputy Andrade arrested Plaintiff (April 11, 2014) to the date the District  
9 Attorney dropped the charges against Plaintiff (September 25, 2014). Plaintiff therefore  
10 had until September 26, 2015 to file a complaint containing his second cause of action.  
11 Because Plaintiff filed his Complaint in April 2015—months before the expiration of the  
12 one-year limitations period—the claim is not untimely under section 340(c).

13 Accordingly, Defendants’ Motion is DENIED to the extent that it seeks dismissal  
14 of the second cause of action on the ground it is untimely under section 340(c).

## 15 **2. Statutory Immunity**

16 Deputy Andrade also argues he is entitled to statutory immunity under California  
17 Penal Code section 847(b), which provides that “[t]here shall be no civil liability” for false  
18 arrest if the arresting officer “had reasonable cause to believe the arrest was lawful.” As  
19 explained above, construing the allegations in the light most favorable to Plaintiff, Deputy  
20 Andrade did not have reasonable cause to believe the arrest was lawful. Accordingly,  
21 Defendants’ Motion is DENIED to the extent that it seeks dismissal of the second cause  
22 of action on the ground that Deputy Andrade is entitled to immunity under section  
23 847(b).

## 24 **C. Third Cause of Action**

25 Plaintiff’s third cause of action is a § 1983 malicious prosecution claim against  
26 Deputy Andrade. Deputy Andrade seeks dismissal of the claim on the ground that it is  
27 inadequately pled.

28 ///

1 “In order to prevail on a § 1983 claim of malicious prosecution, a plaintiff must  
2 show that the defendants prosecuted him with malice and without probable cause, and  
3 that they did so for the purpose of denying him equal protection or another specific  
4 constitutional right.” Awabdy v. City of Adelanto, 368 F.3d 1062, 1066 (9th Cir. 2004)  
5 (internal bracketing and quotation marks omitted). Deputy Andrade argues that Plaintiff  
6 has failed to adequately plead a malicious prosecution claim because (1) the Complaint  
7 makes clear that there was probable cause to prosecute Plaintiff and (2) Plaintiff has not  
8 alleged that Deputy Andrade improperly influenced the District Attorney to file criminal  
9 charges. The Court will address each of these arguments.

### 10 **1. Probable Cause**

11 For the same reasons the Court found that, construing the allegations in the  
12 Complaint in the light most favorable to Plaintiff, it was not reasonable for Deputy  
13 Andrade to believe that he had probable cause to arrest Plaintiff, the Court finds that  
14 there was not probable cause to prosecute Plaintiff (i.e., the charges were based entirely  
15 on Jackson’s less than credible account).

### 16 **2. Presumption of Prosecutorial Independence**

17 Although malicious prosecution actions are not limited to suits against  
18 prosecutors, there is a “presumption of prosecutorial independence” that ordinarily  
19 precludes liability for individuals that participated in the investigation or filed a report that  
20 resulted in the initiation of proceedings. Awabdy, 368 F.3d at 1066, 1067. But that  
21 presumption does not bar a subsequent § 1983 claim against an individual “who  
22 improperly exerted pressure on the prosecutor, knowingly provided misinformation to  
23 him, concealed exculpatory evidence, or otherwise engaged in wrongful or bad faith  
24 conduct that was actively instrumental in causing the initiation of legal proceedings.” Id.  
25 at 1067. Applied here, Plaintiff’s Complaint sufficiently alleges that Deputy Andrade  
26 engaged in wrongful or bad faith conduct that was actively instrumental in causing the  
27 District Attorney to file charges against Plaintiff. Specifically, the Complaint states:  
28 “Deputy Andrade knew he did not have probable cause to arrest plaintiff, but that Deputy

1 Andrade's arrest of plaintiff was done maliciously, with the intent to harm plaintiff . . . ."  
2 Compl. at 9. Plaintiff further alleges that "Deputy Andrade's conduct was a substantial  
3 factor in causing plaintiff's harm." *Id.* Plaintiff also suggests that the real motivation  
4 behind Deputy Andrade's decision to arrest Plaintiff and file the inaccurate police report  
5 was his knowledge of Plaintiff's prior conviction for battery on a police officer.

6 Because Plaintiff has alleged that Deputy Andrade engaged in wrongful or bad  
7 faith conduct that was actively instrumental in causing the District Attorney to file charges  
8 against Plaintiff, the presumption of prosecutorial independence does not bar Plaintiff's  
9 malicious prosecution claim against Deputy Andrade. Accordingly, Defendants' Motion  
10 to Dismiss is DENIED to the extent that it seeks dismissal of the third cause of action on  
11 the ground that Plaintiff has inadequately pled a malicious prosecution claim.

#### 12 **D. Fourth Cause of Action**

13 Plaintiff's fourth cause of action is an intentional infliction of emotional distress  
14 ("IIED") claim against Deputy Andrade. An IIED claim consists of the following elements:

15 (1) extreme and outrageous conduct by the defendant with  
16 the intention of causing, or reckless disregard of the  
17 probability of causing, emotional distress; (2) the plaintiff's  
18 suffering severe or extreme emotional distress; and (3) actual  
and proximate causation of the emotional distress by the  
defendant's outrageous conduct.

19 Doe v. Gangland Prods., Inc., 730 F.3d 946, 960 (9th Cir. 2013). Deputy Andrade seeks  
20 dismissal of Plaintiff's IIED claim on the ground that Plaintiff has not alleged extreme or  
21 outrageous conduct or that he suffered severe emotional distress.

22 The Court finds that Deputy Andrade's decision to arrest Plaintiff solely on the  
23 less than credible account of Jackson, which resulted in Plaintiff's incarceration at the  
24 San Joaquin County Jail for six days and a criminal prosecution, may amount to extreme  
25 and outrageous conduct for purposes of IIED. See Hamre v. City of Bothell, 81 F. App'x  
26 260, 263 (9th Cir. 2003) ("[T]he district court erred in dismissing Hamre's intentional  
27 infliction of emotional distress claim by failing to recognize that being prosecuted on

28 ///

1 trumped up charges amounts to more than ‘mere annoyance, inconvenience, or normal  
2 embarrassment.’”).

3         However, the Complaint is deficient with respect to the “severe or extreme  
4 emotional distress” element. “Severe emotional distress means emotional distress of  
5 such substantial quantity or enduring quality that no reasonable man in a civilized  
6 society should be expected to endure it.” Kiseskey v. Carpenters’ Trust for So. Cal.,  
7 144 Cal. App. 3d 222, 231 (1983) (internal quotation marks omitted). Although the  
8 Complaint alleges that “Plaintiff actually suffered emotional distress,” Compl. at 9, the  
9 Court is not required to accept as true a “legal conclusion couched as a factual  
10 allegation,” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009). Plaintiff has not otherwise  
11 pled emotional distress of substantial and enduring quality. Accordingly, Defendants’  
12 Motion is GRANTED to the extent that it seeks dismissal of Plaintiff’s IIED claim.  
13 Because Plaintiff may be able to cure the defect, Plaintiff is granted leave to amend the  
14 claim.

#### 15         **E. Fifth Cause of Action**

16         Plaintiff’s fifth cause of action asserts that Defendant San Joaquin County is  
17 vicariously liable for Deputy Andrade’s acts under California Government Code section  
18 815.2(a). Section 812.2 imposes upon public entities vicarious liability for the tortious  
19 acts of their employees. See generally Robinson v. Solano Cnty., 278 F.3d 1007, 1016  
20 (9th Cir. 2002) (“California . . . has rejected the Monell rule and imposes liability on  
21 counties under the doctrine of respondeat superior for acts of county employees”).

22         In their Motion to Dismiss, Defendants note that the Complaint does not specify  
23 which causes of action trigger the County’s vicarious liability. Defendant argues, and the  
24 Court agrees, that the County cannot be held vicariously liable for the federal causes of  
25 action (i.e., the first and third causes of action) in Plaintiff’s Complaint. See generally  
26 Castro v. Cnty. of L.A., 797 F.3d 654, 670-71 (9th Cir. 2015) (explaining that “a  
27 municipality is not liable under § 1983 based on the common-law tort theory of  
28 respondeat superior.”). Defendants’ Motion to Dismiss is therefore GRANTED to the

1 extent it requests that the Court dismiss the County as a defendant from the first and  
2 third causes of action.

3 As to the state law causes of action, Defendants argue that the County cannot be  
4 held vicariously liable for claims that Defendants believe should otherwise be dismissed.  
5 As noted above, the Court finds that Plaintiff has not adequately pled an IIED claim  
6 against Deputy Andrade; accordingly, that claim is DISMISSED as to both Defendants.  
7 However, the Complaint adequately states a false arrest claim under California law  
8 against Deputy Andrade, and the County can be held vicariously liable on that claim  
9 under section 812.2. Accordingly, Defendants' Motion is DENIED to the extent that it  
10 seeks to have the County dismissed as a defendant from the second cause of action.

## 11 12 **CONCLUSION**

13  
14 For the reasons stated above, Defendants' Motion to Dismiss (ECF No. 13) is  
15 GRANTED in part and DENIED in part. Specifically:

16 A. Defendants' Motion is GRANTED to the extent it seeks dismissal of Plaintiff's  
17 fourth of cause action. That claim is DISMISSED, with leave to amend, as to both  
18 Defendant Deputy Andrade and Defendant San Joaquin County.

19 B. Defendants' Motion is also GRANTED to the extent it seeks the dismissal of  
20 Defendant San Joaquin County as a defendant to the first and third causes of action.  
21 Defendant San Joaquin County is DISMISSED, without leave to amend, as a defendant  
22 to the first and third causes of action.<sup>9</sup>

23 C. Defendants' Motion is DENIED to the extent it seeks dismissal of Plaintiff's  
24 remaining causes of action.

25 Not later than twenty (20) days following the date this Memorandum and Order is  
26 electronically filed, Plaintiff may, but is not required to, file a First Amended Complaint. If

27 \_\_\_\_\_  
28 <sup>9</sup> Because Defendant San Joaquin County may be held vicariously liable on the second cause of  
action, it is not outright dismissed as a party to this action.

1 Plaintiff does not file an amended complaint, this action will proceed on the first, second,  
2 third, and fifth causes of action in the original Complaint.

3 IT IS SO ORDERED.

4 Dated: December 1, 2015

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

  
MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT