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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANCISCO DUARTE, et al.,
Plaintiffs,
v.
STOCKTON CITY, et al.,
Defendants.

No. 2:19-cv-00007-MCE-CKD

MEMORANDUM AND ORDER

Through the present lawsuit, Plaintiffs Francisco Duarte and Alejandro Gutierrez (collectively “Plaintiffs” unless otherwise specified) alleged they were subjected to excessive force while being falsely arrested by members of the Stockton Police Department. Plaintiffs’ operative First Amended Complaint (“FAC”) contains causes of action directed toward Defendants City of Stockton, the Stockton Police Department (“SPD”), Police Chief Eric Jones, Officers Kevin Hachler, Eric Howard, Michael Gandy, Conner Nelson and Sergeant Underwood (collectively “Defendants” unless otherwise specified). Both Plaintiffs sought to recover for: (1) excessive force under the Fourth and Fourteenth Amendments to the United States Constitution; (2) false arrest and false imprisonment in violation of the Fourth and Fourteenth Amendments; and (3) violation of substantive due process for the falsifying of police reports.

1 The Court previously granted a motion to dismiss and a motion for summary
2 judgment filed by Defendants, holding that each of Plaintiff’s claims was barred under
3 Heck v. Humphrey, 512 U.S. 477 (1994) and that neither the Stockton Police
4 Department or City of Stockton were “persons” under 42 U.S.C. § 1983.¹ Duarte
5 appealed, and the Ninth Circuit reversed this Court’s decisions, remanding for further
6 proceedings.²

7 On remand, the Court agreed to consider the arguments it did not reach in
8 Defendants’ original motion for summary judgment and directed that Defendants file a
9 renewed motion. ECF No. 131. The Court also indicated that it would entertain
10 arguments as to causes of action that had been dismissed prior to the original summary
11 judgment briefing, namely as to false arrest and municipal liability. Id.³ Presently before
12 the Court is Defendants’ renewed Motion for Summary Judgment, which is fully briefed.
13 ECF No. 137, 141, 142. For the following reasons, that Motion is GRANTED.⁴

16 ¹ Defendants also moved to dismiss the excessive force and false arrest claims to the extent they
17 were based on the Fourteenth Amendment. Plaintiffs conceded that those causes of action should
18 properly be analyzed under the Fourth Amendment, so the Fourteenth Amendment is no longer at issue.
See ECF No. 24, at 13:19-24; ECF No. 35, at 10:26-11:2.

19 ² Gutierrez did not appeal and instead reached a settlement with Defendants. See ECF No. 76-3.
His claims are no longer before the Court.

20 ³ Duarte’s contention that the Court only intended to consider arguments as to the false arrest and
21 municipal liability claims and not the excessive force causes of action, see ECF No. 141 at 6, is wrong and
22 based on a clear misreading of the Court’s order. The Court will consider arguments as to excessive
23 force, false arrest, municipal liability. Duarte’s due process claim, however, is no longer before the Court
24 because he did not appeal from the dismissal of that cause of action. See Ninth Circuit Case No. 21-
25 16929, Duarte’s Opening Brief, ECF No. 15, at 8 n.2 (“Mr. Duarte also raised a substantive due process
26 claim under the Fourteenth Amendment, the dismissal of which he does not appeal. ER-99.”). The Ninth
27 Circuit did not consider that cause of action, did not reverse this Court’s dismissal of it, and it therefore
28 falls outside the scope of the remand order. See Duarte v. City of Stockton, 60 F.4th 566, 568 (9th Cir.
2023) (“In this 42 U.S.C. § 1983 action, Francisco Duarte appeals from the dismissal of his false arrest
and municipal liability claims, as well as the adverse grant of summary judgment on his excessive force
claim.”); id. at 574 (“We reverse the district court’s dismissal of Duarte’s false arrest and municipal liability
claims. We also reverse the summary judgment in favor of the individual Appellees on Duarte’s excessive
force claim. We remand for further proceedings consistent with this opinion.”).

⁴ 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**⁵

2
3 In the late evening of May 5, 2017, four calls were made to the SPD reporting that
4 “sideshow” activity was occurring at and in the vicinity of the intersection at Clay and
5 Hunter Streets.⁶ All of these calls were placed between 10:44 p.m. and 10:52 p.m. Two
6 of the callers reported hearing gunshots being fired in the area.⁷ Defendants Nelson,
7 Hachler, Howard, and Gandy were among those officers that responded to these calls.

8 Duarte had arrived at this intersection between 10:15 p.m. and 10:30 p.m. to
9 purchase food from a taco truck. Gutierrez, with whom Duarte was not previously
10 acquainted, was there for the same reason. By Duarte’s estimation, there were 80-100
11 people at the intersection when he arrived, and that number had increased to 100 or a
12 little over 100 as he waited for his food.

13 Duarte saw at least six to ten officers appear at the intersection, and the officers
14 parked their vehicles in such a way as to block the thoroughfare. Several minutes later,
15 Duarte decided to leave. As he was attempting to walk back to his car, Officer Nelson
16 (with Officers Hachler and Gandy nearby) was in the process of arresting and
17 handcuffing Gutierrez and had taken Gutierrez down to the ground between two parked

18 _____
19 ⁵ Unless otherwise indicated, the following material facts are undisputed and are taken, at times
20 verbatim, from Defendants’ Statement of Undisputed Material Facts (“Defs. SSUMF”) and Plaintiff’s
21 Responses and Objections thereto (“Pl. Response”). ECF No. 141-1.

22 ⁶ “Sideshows” are an illegal demonstration of automotive stunts in vacant lots, parking lots, and
23 on public streets. Defendants’ expert opined that sideshows “include illegal vehicular citable and towable
24 offenses, criminal activity and nuisance-disturbing the peace.” Expert Report of Jeffrey R. Hislop, ECF No.
25 52-16, at 6. According to Mr. Hislop:

26 The activity is also dangerous and presents a high risk for injury and/or
27 death to the participants, spectators, and the general public. The
28 responding law enforcement officers are also put into a high-risk situation
where they are outnumbered and confronted by angry, intoxicated crowds
which may include armed individuals. The enforcement is highly stressful
and dangerous for the responding law enforcement services.

29 Id. The City of Stockton Municipal Code prohibits spectators from attending sideshows.

30 ⁷ Whether or not sideshow activities actually took place or any shots were fired is disputed. For
purposes of the instant Motion, however, all that matters is that there were multiple reports of such
activities and that officers responded based on those reports.

1 cars. While walking back towards his car, Duarte could see Gutierrez and police officers
2 on the ground. When Duarte first saw the officers and Gutierrez, he was three to four
3 feet away from an officer. He froze, put his hands up, and leaned back.

4 By then Gandy was assisting Nelson in arresting Gutierrez when he felt someone,
5 who turned out to be Duarte, behind him.⁸ Gandy instructed Duarte twice to “get back.”
6 Duarte, however, did not hear any officers giving any commands and did not hear any
7 officer say “get back” to him. Duarte thus failed to comply with Gandy’s orders, and
8 Gandy proceeded to try to grab him.⁹

9 Duarte can be heard on body worn camera footage saying “don’t push me” in
10 response to an officer instructing him to get back. Duarte said this after Officer Gandy
11 first tried to grab him. After Duarte said, “Don’t push me,” Officer Gandy grabbed Duarte
12 by his right shoulder and took him to the ground, with Gandy falling on top of Duarte.

13 At that point Hachler moved in to assist Gandy. Duarte had fallen forward on top
14 of his hands, pinning them with his own bodyweight (and the weight of Gandy, who was
15 on top of him). Hachler observed what he believed was Duarte struggling and
16 attempting to pull his arm away. Hachler also saw that Gandy was having difficulty
17 gaining control of Duarte’s arms. Hachler reports that he saw one of Duarte’s hands was
18 underneath him, near his waistband.¹⁰ When Hachler got to Duarte, he told Duarte to
19

20 ⁸ Defendants’ version of events differs slightly. Defendants contend Gandy “saw” Duarte, but
21 Duarte contends that Gandy’s testimony actually indicated that he could not see and he felt someone
22 there instead. The distinction is immaterial, but the Court nonetheless adopts Plaintiff’s version of events
for purposes of this Motion. See Defs. SSUMF and Pl. Response, ECF No. 141-1, No. 26.

23 ⁹ Duarte purports to dispute this fact, but in actuality, he simply points out that three second
24 elapsed between the first time Officer Gandy said “get back” and Duarte being thrown to the ground.
25 While Duarte argues that “[he] would not have even had sufficient time to react or move, even if he had
26 heard the order,” he offers only: (1) his own speculation in support of that conclusion, Duarte Decl., ECF
No. 58-3, at ¶ 3; and (2) the synopsis of a paralegal, who offers her observations of what she sees on the
officers’ body cam videos, Decl. of Jenna Swartz, ECF No. 58-6. Pl. Response at No. 19. Nothing in the
record indicates that Ms. Swartz has any specialized knowledge that equips her to testify as to the
contents of the videos. Her testimony is thus irrelevant and will be disregarded. The videos speak for
themselves.

27 ¹⁰ Again, Duarte purports to dispute this fact, but he merely argues that it was dark and that events
28 cannot be discerned from the video. He does not dispute, however, that he had his hands underneath him
or that one was near his waistband.

1 “give him your hand,” Duarte admits he was told to place his hands behind his back and
2 that he was yelling “I didn’t do anything.” Duarte contends he could not place his arms
3 behind his back because they were pinned beneath him, but he does not recall telling
4 the officers he was unable to comply.

5 Hachler then struck Duarte on the left leg with his baton. According to
6 Defendants, Hackler struck Duarte only once. Duarte testifies, however, that he believes
7 he was hit at least six times. Duarte Decl., ECF No. 58-3, ¶ 6. Gandy and Hachler were
8 thereafter able to get to Duarte’s hands and handcuff him, arresting him for resisting,
9 obstructing, or delaying a peace officer under California Penal Code § 148(a). At no
10 point after Duarte was placed in handcuffs did any officer strike or hit him.

11 Duarte immediately advised officers that his leg was broken. Gandy had him walk
12 on his injured leg to a patrol vehicle and drove him to the hospital where an X-ray
13 confirmed he had a broken ankle.

14 15 STANDARD

16
17 The Federal Rules of Civil Procedure provide for summary judgment when “the
18 movant shows that there is no genuine dispute as to any material fact and the movant is
19 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
20 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
21 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

22 Rule 56 also allows a court to grant summary judgment on part of a claim or
23 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) (“A party may
24 move for summary judgment, identifying each claim or defense—or the part of each
25 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
26 Madan, 889 F. Supp. 374, 378–79 (C.D. Cal. 1995). The standard that applies to a
27 motion for partial summary judgment is the same as that which applies to a motion for
28 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic

1 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
2 judgment standard to motion for summary adjudication).

3 In a summary judgment motion, the moving party always bears the initial
4 responsibility of informing the court of the basis for the motion and identifying the
5 portions in the record “which it believes demonstrate the absence of a genuine issue of
6 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
7 responsibility, the burden then shifts to the opposing party to establish that a genuine
8 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co., Ltd. v.
9 Zenith Radio Corp., 475 U.S. 574, 586–87 (1986); First Nat’l Bank v. Cities Serv. Co.,
10 391 U.S. 253, 288–89 (1968).

11 In attempting to establish the existence or non-existence of a genuine factual
12 dispute, the party must support its assertion by “citing to particular parts of materials in
13 the record, including depositions, documents, electronically stored information,
14 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do
15 not establish the absence or presence of a genuine dispute, or that an adverse party
16 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
17 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
18 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,
19 Inc., 477 U.S. 242, 248, 251–52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
20 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1992). The opposing party must also
21 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is
22 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
23 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
24 before the evidence is left to the jury of “not whether there is literally no evidence, but
25 whether there is any upon which a jury could properly proceed to find a verdict for the
26 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
27 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
28 As the Supreme Court explained, “[w]hen the moving party has carried its burden under

1 Rule [56(a)], its opponent must do more than simply show that there is some
2 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
3 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
4 non-moving party, there is no ‘genuine issue for trial.’” Id. at 587.

5 In resolving a summary judgment motion, the evidence of the opposing party is to be
6 believed, and all reasonable inferences that may be drawn from the facts placed before
7 the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at 255.

8 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
9 obligation to produce a factual predicate from which the inference may be drawn.

10 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244–45 (E.D. Cal. 1985), aff’d,
11 810 F.2d 898 (9th Cir. 1987).

12 13 ANALYSIS

14 15 A. Officers Nelson and Howard

16 Defendants contend that Officers Nelson and Howard are entitled to judgment
17 because Duarte does not name them as Defendants with regard to his remaining claims,
18 and, regardless, he has not set forth any evidence implicating them in either of those
19 causes of action. Duarte does not respond to this argument in his Opposition, but in his
20 Response to Defendants’ Statement of Undisputed Material Facts, he appears to
21 contend only that Nelson and Howard are implicated in this fifth claim for falsifying police
22 reports. See ECF No. 141-1, at No. 39. Because the Court has already determined that
23 the fifth cause of action is no longer at issue, this argument is unpersuasive.

24 Defendants’ Motion is thus GRANTED as to Defendants Nelson and Howard.

25 B. Sergeant Underwood and Chief Jones

26 According to Defendants, judgment should be entered in favor of Sergeant
27 Underwood and Chief Jones, both of whom are sued in their individual capacities,
28 because it is undisputed that neither of them participated in Duarte’s arrest. Underwood

1 arrived after Duarte had been arrested, and Jones was not on the scene at any point
2 that night.¹¹

3 Plaintiff disagrees, arguing that both Underwood and Jones are liable as
4 supervisors. As to Sergeant Underwood, Plaintiff contends that “[a]s the direct
5 supervisor, Sgt. Underwood failed to investigate the situation.” ECF No. 141 at 20.
6 Plaintiff believes that Underwood should at least have provided his own written report
7 regarding the incident. Id. With regard to Chief Jones, Plaintiff takes the positions that:
8 (1) “under [his] command, none of . . . SPD’s officers has ever been terminated for use
9 of unreasonable or excessive force”; (2) “Stockton and SPD have settled numerous
10 lawsuits for substantial sums of money . . . , indicating that several instances of use of
11 force by SPD officers were not justified”; and (3) “several lawsuits remain pending
12 against Defendants City, SPD, Jones, and/or their officers which relate to alleged
13 improper uses of force.” Id.

14 First, as to Sergeant Underwood, Duarte has offered no evidence that Underwood
15 did not investigate the events of May 5, 2017, or that he did not review Hachler’s report.
16 Moreover, Duarte points to no authority indicating that either of these supposed
17 shortcomings give rise to any sort of constitutional injury.¹²

18 Second, as to Chief Jones, Duarte has not offered any evidence to show that
19 Jones had a constitutional duty to discipline officers. See *Booke v. County of Fresno*, 98
20 F. Supp. 3d 1103, 1129 (E.D. Cal. 2015) (“The mere failure to discipline does not show

21 ¹¹ For this reason, the Court rejects Duarte’s argument in his Separate Statement of Disputed
22 Facts, ECF No. 141-2, at No. 62, that Underwood should be held liable for failing to intervene. He could
not intervene when he was not present.

23 ¹² In fact, Defendants point to authority holding directly to the contrary. See *Motley v. Parks*, 432
24 F.3d 1072, 1081 (9th Cir. 2005) (“[A]bsent some indication to a supervisor that an investigation was
25 inadequate or incompetent, supervisors are not obliged either to undertake de novo investigations or to
26 cross examine subordinates reasonably believed to be competent as to whether their investigations were
27 negligent.”) (citations and internal quotation marks omitted). That principle applies with even more force
28 here than it did in Motley because in that case, the court considered a hypothetical investigation that would
have occurred prior to the alleged constitutional injury being inflicted and thus that investigation could have
prevented the violation from ever occurring. Duarte does not allege here how an after-the-fact
investigation by Underwood would have prevented the events leading to his remaining claims. Stated
another way, Duarte has not established that a failure to investigate led to his arrest or Hachler’s use of
force.

1 condoning or ratification.”). Nor has he shown how the existence or settlement of other
2 lawsuits indicates that any of Jones’ conduct was implicated in those actions. Finally,
3 there is no evidence before the Court to establish that any policy implemented by Jones
4 was the moving force behind Duarte’s arrest or the force used in effectuating it.
5 Accordingly, both Underwood and Jones are entitled to judgment in their favor.

6 **C. Monell claims**

7 Defendants next seek judgment on Duarte’s Monell claims against SPD and the
8 City of Stockton. “A government entity may not be held liable under 42 U.S.C. § 1983,
9 unless a policy, practice, or custom of the entity can be shown to be a moving force
10 behind a violation of constitutional rights.” Dougherty v. City of Covina, 654 F.3d 892
11 (9th Cir. 2011) (citing Monell v. Dep’t of Soc. Servs. of the City of New York, 436 U.S.
12 658, 694 (1978)). “In order to establish liability for governmental entities under Monell, a
13 plaintiff must prove ‘(1) that [the plaintiff] possessed a constitutional right of which he
14 was deprived; (2) that the municipality had a policy; (3) that this policy amounts to
15 deliberate indifference to the plaintiff’s constitutional right; and, (4) that the policy is the
16 moving force behind the constitutional violation.’” Id. (quoting Plumeau v. Sch. Dist. No.
17 40 Cnty. of Yamhill, 130 F.3d 432, 438 (9th Cir.1997) (internal quotation marks and
18 citation omitted; alterations in original)).

19 Duarte contends that SPD and the City ratified the actions of Gandy and Hachler
20 because “the investigation of Hachler’s actions, to the extent it took place at all,
21 contained inconsistencies that should have been apparent to any reasonable
22 administrator.” Pl.’s Opp., ECF No. 141 at 21. In addition, Duarte argues, the City and
23 SPD have a custom or practice that tolerates actions like those taken by Gandy and
24 Hachler. Id. at 21. In support of this second argument, Duarte points to a variety of
25 lawsuits alleging that SPD officers utilized excessive force. Finally, according to Duarte,
26 SPD and the City are liable for the actions of Gandy and Hachler on a failure to train
27 theory.

28 None of these arguments are well taken. There is no evidence that there is any

1 sort of policy or custom in place under which the City and SPD turn a blind eye to
2 instances where officers were found to have used excessive force. While Duarte points
3 to lawsuits that included allegations regarding unconstitutional uses of force, and he
4 offers evidence that the parties in some of those suits reached settlements, he has not
5 shown that it was established that the force used in those cases was determined to be
6 wrongful. In addition, Duarte has not shown that any of those cases concerned facts
7 sufficiently similar to those before the Court here. Duarte has likewise offered nothing
8 beyond conclusory assertions to support his theories that SPD or the City ratified Gandy
9 and Hachler's actions or provided constitutionally deficient training. Given the lack of
10 evidence before the Court, Defendants have shown that they are entitled to judgment on
11 Duarte's Monell claims against SPD and the City of Stockton.

12 **D. False Arrest/Imprisonment**

13 Defendants contend they are entitled to judgment on Duarte's false
14 arrest/imprisonment claim because his "arrest was appropriate under the
15 circumstances." Defs.' Mot., ECF No. 137-1, at 13. The Court agrees.

16 Duarte was arrested for violation of California Penal Code § 148(a), which
17 provides:

18 Every person who willfully resists, delays, or obstructs any
19 public officer, peace officer, or an emergency medical
20 technician . . . in the discharge or attempt to discharge any
21 duty of his or her office or employment, when no other
22 punishment is prescribed, shall be punished by a fine not
23 exceeding one thousand dollars (\$1,000), or by imprisonment
24 in a county jail not to exceed one year, or by both that fine and
25 imprisonment.

26 Cal. Pen. Code § 148(a)(1). It is undisputed that Duarte was very close to officers
27 effectuating the arrest of Gutierrez in a dark, tight space in the middle of a large crowd.
28 He ignored two commands to "get back." When Gandy attempted to grab Duarte, he
told the officer not to push him. Then, once he and Gandy fell to the ground, Duarte
again failed to comply with commands to put his hands behind his back, saying only that
he "didn't do anything." The Court is aware that Duarte has offered evidence that he did

1 not hear the initial commands to “get back” and that his hands ended up underneath his
2 body as officers tried to handcuff him. None of that was conveyed to the officers at the
3 scene, however, and it is reasonable under the circumstances to have concluded Duarte
4 was obstructing their performance of their duties and resisting arrest.¹³ Defendants
5 Motion is GRANTED as to Duarte’s false arrest/imprisonment cause of action.

6 **E. Excessive Force**

7 Finally, Defendants move for judgment as a matter of law as to Duarte’s
8 excessive force claims against Gandy and Hachler. According to Defendants, the
9 relevant uses of force can be broken down into three separate instances: (1) “Officer
10 Gandy taking Duarte to the ground”; (2) “Officer Hachler using his baton on Duarte”; and
11 (3) “Officer Gandy making Duarte walk on his injured leg.” Defs.’ Mot., ECF No. 137-1,
12 at 16. Each of these, they argue, was reasonable.

13 Fourth Amendment excessive force claims are evaluated for objective
14 reasonableness, asking “whether the officers’ actions are ‘objectively reasonable’ in light
15 of the facts and circumstances confronting them.” Tan Lam v. City of Los Banos, 976
16 F.3d 986, 996-97 (9th Cir. 2020) (quoting Graham v. Connor, 490 U.S. 386, 397 (1989)).
17 “To assess objective reasonableness, [the Court] balance[s] the nature and quality of the
18 intrusion against the government’s interests.” Bernal v. Sacramento County Sheriff’s
19 Dept., 73 F. 4th 678, 691 (9th Cir. 2023). “Graham sets out a non-exhaustive list of
20 factors for evaluating reasonability: (1) the severity of the crime at issue, (2) whether the
21 suspect posed an immediate threat to the safety of the officers or others, and (3)
22 whether the suspect actively resisted arrest or attempted to escape.” Maxwell v. County
23 of San Diego, 708 F.3d 1074, 1086 (9th Cir. 2013). “The ‘reasonableness’ of a particular
24 use of force must be judged from the perspective of a reasonable officer on the scene,
25 rather than with the 20/20 vision of hindsight.” Graham, 490 U.S. at 396. “The calculus

26
27 ¹³ Duarte argues in opposition that when ordered to put his hands behind his back, he said, “I
28 can’t.” Pl.’s Opp., ECF No. 141, at 17. That appears to be an embellishment of the record as Duarte
offers no evidence to support that statement and instead testifies that he instead said, “I’m not doing
nothing, sir.” Duarte Decl., ECF No. 58-3, ¶ 4.

1 of reasonableness must embody allowance for the fact that police officers are often
2 forced to make split-second judgments—in circumstances that are tense, uncertain, and
3 rapidly evolving—about the amount of force that is necessary in a particular situation.”
4 Id. at 396-97.

5 As to Officer Gandy taking Duarte to the ground, Duarte’s only real argument in
6 opposition is that “three seconds [was] insufficient time for Defendant Gandy to allot for
7 [Duarte] to comply, and insufficient time for . . . Gandy to immediately move into force.”
8 Pl.’s Opp., ECF No. 141, at 17. This is not a challenge to the amount of force, but rather
9 to the need to resort to force in the first place. The Court concludes that this use of force
10 was reasonable. First, officers had responded late in the evening to multiple calls
11 reporting sideshow activity and shots fired, and they were confronted with trying to
12 manage a large crowd of people and the accompanying traffic. Second, when Duarte
13 came into close proximity with officers effectuating the arrest of Gutierrez in a dark,
14 narrow space between two parked cars, he and was twice ordered to “get back,” but he
15 did not retreat. Gandy thus moved to physically push Duarte back or grab him and the
16 result was the two of them landing on the ground. The fact that this happened relatively
17 quickly cuts in Gandy’s favor not Duarte’s because these are precisely the type of
18 “tense, uncertain, and rapidly evolving” circumstances in which we allow officers to make
19 split-second judgments.”¹⁴

20 Nor was it unreasonable for Gandy to require Duarte to walk to the patrol vehicle
21 after Duarte complained that his leg was broken. The Court is aware of no authority
22 requiring officers to adjust their protocols based on the subjective complaints of an
23 arrestee. Certainly, chaos would result from such a rule. Moreover, Duarte has offered
24 no objective evidence to indicate that officers should have known the extent of his

25
26 ¹⁴ It is irrelevant that Duarte did not hear the orders to get back. The Court is considering the
27 scene from the perspective of a reasonable officer. It is objectively reasonable that an officer on the scene
28 ordering an individual to get back would believe he had been heard. In any event, three seconds is a long
time under the circumstances of this case. Indeed, Duarte had enough time to protest verbally that he was
being pushed, which indicates he had time to react, and officers reasonably believed he had chosen not to
obey orders.

1 injuries. There is certainly no evidence that Gandy was aware Duarte's ankle was
2 broken. Given all of this, having an arrestee walk to a waiting vehicle was reasonable.

3 As to Officer Hachler's use of the baton, an intermediate use of force, there is a
4 dispute of fact as to how many times he struck Duarte. Officer Hachler claims he struck
5 Duarte once, but Duarte claims he was struck at least six times. Regardless of the exact
6 number of baton strikes, however, it is undisputed that Duarte was not struck again after
7 officers were able to handcuff him. At no point did Duarte advise officers that he could
8 not put his hands behind his back, and it was reasonable for Gandy and Hachler to treat
9 his noncompliance as active resistance by an unsearched individual under dangerous
10 circumstances. Indeed, Duarte does not offer evidence that utilizing a lesser number of
11 baton strikes would have been reasonable when he continued to fail to comply with
12 orders to put his hands behind his back throughout all of them. In fact, Duarte appears
13 to contend the baton should not have been used at all because he was simply unable to
14 comply. That argument is foreclosed, however, by the fact that despite his other
15 utterances, he never tried to convey that fact to officers. Under the totality of the
16 circumstances set forth above, which were objectively dangerous for both officers and
17 bystanders, utilizing intermediate force to gain compliance of an individual who
18 disobeyed multiple commands was objectively reasonable. Defendants' Motion is
19 GRANTED as to Duarte's excessive force claims as well.

20
21 **CONCLUSION**
22

23 For the reasons just stated, Defendants' Motion for Summary Judgment (ECF No.
24 137) is GRANTED. The Clerk of the Court is directed to enter judgment for Defendants
25 and close this case.

26 IT IS SO ORDERED.

27 DATED: February 6, 2024

28 
MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE