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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CONNIE A. CARDINALE,
Plaintiff,
v.
SCOTT R. JONES, et al.,
Defendants.

No. 2:20-cv-01325-MCE-CKD

MEMORANDUM AND ORDER

On July 1, 2020, Plaintiff Connie A. Cardinale (“Plaintiff”) initiated the present action by filing the operative Complaint against Defendants Sheriff Scott R. Jones (“Jones”), Detective Clinton Robinson (“Robinson”), County of Sacramento (the “County”), and Sacramento County Sheriff’s Department (“SCSD”) (collectively, “Defendants”).¹ Presently before the Court is Plaintiff’s Motion for Partial Summary Judgment, which has been fully briefed. ECF Nos. 45 (“Pl.’s Mot.”), 50 (“Defs.’ Opp’n”), 54 (“Pl.’s Reply”). Plaintiff has also filed two Motions to Strike Defense Exhibits A and D, which Defendants oppose. ECF Nos. 51, 52, 57, 58, 59. In addition, Defendants subsequently filed their own Motion for Summary Judgment, ECF No. 61, which Plaintiff seeks to strike as well, ECF No. 63. For the following reasons, Plaintiff’s Motions to

¹ Defendant Xavier Becerra was previously dismissed pursuant to stipulation on August 17, 2021. See ECF Nos. 39, 41.

1 Strike portions of Defendants’ evidence are GRANTED in part and DENIED as moot in
2 part, Plaintiff’s Motion to Strike Defendant’s Summary Judgment Motion is DENIED,
3 Defendants’ Motion for Summary Judgment is GRANTED, and Plaintiff’s Motion for
4 Partial Summary Judgment is DENIED.²

5
6 **BACKGROUND³**
7

8 **A. Events Occurring on December 25, 2019**

9 On December 25, 2019, Plaintiff and her son Ryan Stucky (“Stucky”), who suffers
10 from schizophrenia, were having Christmas dinner when Stucky “had to go to the
11 restroom and the only restroom [that] was working at the time was the one in [her]
12 bedroom.” Ex. B, Cook Decl., ECF No. 45-2, at 26 (police report); see also id. at 2 ¶ 5
13 (stating that the report incorrectly lists the event date as December 26, when it should
14 have been December 25). Plaintiff explained the following:

15 I don’t have people go in my room because I keep guns in there
16 and I have one gun under my pillow I sleep with which was a
17 .38 caliber [Smith & Wesson revolver, serial number
CPR8043]. I keep two guns in my safe which I only know the
code to and a couple rifles in my closet.

18 Ex. B, id., at 26. While Stucky was in the bathroom, Plaintiff “was hanging clothes up in
19 the closet while [she] waited for him to come out of the bathroom.” Id. When he came
20 out, Stucky asked for something and although Plaintiff could not recall what he asked
21 for, she remembered saying no. Id. Stucky “started to yell at [her] and out of nowhere
22 he started punching [her] several times to the face.” Id. He then repeatedly kicked
23 Plaintiff in the face, body slammed her, and hit her with a wooden dowel taken from the
24

25 _____
26 ² Because oral argument would not have been of material assistance, the Court did not set these
matters for a hearing and instead decides them on the briefs. E.D. Local Rule 230(g).

27 ³ Unless otherwise noted, the following recitation of facts is taken, primarily verbatim, from
28 Plaintiff’s Separate Statement of Undisputed Facts and Defendants’ Response thereto. See ECF Nos. 45-
1, 50-1.

1 sliding glass door. See id.⁴ Stucky eventually left the bedroom at which point Plaintiff
2 “crawled to the bathroom and locked the door.” Id. at 27. She texted a friend for help
3 using her iPad and remained in the bathroom to wait for the police. See id. Meanwhile,
4 Stucky fled the house and took the .38 caliber revolver Plaintiff kept under her pillow.

5 Three SCSD deputies were dispatched to respond to a family disturbance based
6 on the following: “The text of the call related the caller received a text message from
7 their friend, [Plaintiff], who told the caller tha[t] [Plaintiff]’s son, [Stucky], was trying to kill
8 [Plaintiff] and that he had a gun. The text further related [Plaintiff] was locked in a
9 bathroom.” Ex. B, Paul Decl., ECF No. 50-2, at 20. The responding SCSD deputies
10 found Plaintiff in the bathroom, and she informed them that Stucky stole her .38 caliber
11 revolver and that she had more firearms in the closet. Ex. C, Cook Decl., ECF No. 45-2,
12 at 32–33 (police report). One deputy “observed an open black handgun case on the bed
13 in the master bedroom,” which was empty. Id. at 32. It is undisputed that Stucky did not
14 physically assault Plaintiff with the revolver.

15 Plaintiff also claims that she told the deputies at this time that Stucky did not live
16 in her home, he did not have access, and he was only there for Christmas dinner. See
17 Cardinale Decl., ECF No. 10-1, ¶ 3. However, in one of the police reports, the deputy
18 wrote that Plaintiff was only “complaining of extreme pain to her face and upper torso[,]”
19 and that “at the time she appeared to be completely bewildered.” Ex. B, Paul Decl., ECF
20 No. 50-2, at 29. Furthermore, in her statement to a SCSD deputy the following day,
21 Plaintiff stated, in relevant part, that Stucky “lives in the trailer in the back of the house[,]”
22 that Plaintiff does not allow him in her house, and that she is the only one with keys to
23 her house. Id. at 25. In any event, the responding deputies summoned medical aid for
24 Plaintiff, and she was eventually taken to the hospital. See Ex. C, Cook Decl., ECF No.

25
26 ⁴ Plaintiff moves to strike Defendants’ Exhibits A (photos of Plaintiff in the aftermath of her attack)
27 and D (a police Computer-Aided Dispatch (“CAD”) report). The Court concludes that the photos are
28 unnecessary to resolve the instant motion and there is no basis on which to leave them in the public
record. Plaintiff’s Motion to Strike Exhibit A is thus GRANTED. As for the CAD report, it was also
unnecessary to the Court’s resolution of this case, but there is no reason to strike it from the record.
Plaintiff’s Motion to Strike Exhibit D is thus DENIED as moot.

1 45-2, at 32. Stucky was not located that night. See id.

2 During a search of Plaintiff's house, the deputies seized the following rifles and
3 shotgun from the walk-in bedroom closet ("Long Guns"): (1) Remington 870 Pump .20
4 guage Shotgun, serial number RS50085H; (2) Savage 99E Bolt Action 243-caliber Rifle,
5 serial number 1111846; (3) Ruger 10-22 Semi-Automatic .22 caliber Rifle, serial number
6 35754232; and (4) Winchester 270 22-caliber Rifle. The guns were seized for
7 "safekeeping" but without a warrant or Plaintiff's consent.

8 **B. Events Occurring on December 26, 2019**

9 The following day, on December 26, 2019, two SCSD deputies were dispatched
10 to Plaintiff's residence at 12:23 p.m. based on a call that Plaintiff "and a friend were
11 trying to return to the scene but they wanted Deputies to check the residence for [Stucky]
12 first." Ex. C, Cook Decl., ECF No. 45-2, at 33. Plaintiff "was advised to not arrive at the
13 scene." Id. A SCSD canine handler, multiple deputies, and the Special Enforcement
14 Detail ("SED") also responded, and they established a perimeter around the residence.
15 See id. Two of the deputies noted in their reports that Stucky was "possibly armed with
16 a firearm[,] that Plaintiff's "firearm had been stolen during the incident" the night before,
17 and that a records check of Stucky "revealed he was prohibited from possessing
18 firearms." Ex. C, Paul Decl., ECF No. 50-2, at 40, 48.

19 One of the deputies made 26 phone calls and sent three text messages to
20 Stucky's cell phone during a 50-minute period beginning at 2:41 p.m., but Stucky never
21 answered his phone, and the deputy was unable to leave a voicemail. See Ex. C, Cook
22 Decl., ECF No. 45-2, at 33. The canine handler and SED personnel eventually observed
23 Stucky but in response to their commands, Stucky "ran into an out building on the south
24 side of the property." Ex. C, Paul Decl., ECF No. 50-2, at 48. The officers then
25 established another perimeter around the outbuilding, but Stucky was subsequently
26 seen exiting the building "holding a silver revolver with a black grip in his right hand." Id.
27 "For the next several hours, [Stucky] refused to comply with deputies[]" orders to exit the
28 building." Id. At 5:31 p.m., a chemical agent was deployed into the outbuilding and

1 Stucky finally exited. Id. Stucky was thereafter detained and taken into custody. See
2 Ex. C, Cook Decl., ECF No. 45-2, at 33. The stolen .38 caliber revolver was
3 subsequently recovered. Id. (“A search of the room where [Stucky] was barricaded
4 revealed the Smith & Wesson firearm he had stolen from [Plaintiff].”).

5 **C. Search Warrant**

6 To assist the assigned SCSD deputies, Robinson offered to prepare a search
7 warrant application for the premises owned by Plaintiff for submission to the State of
8 California Superior Court. It is undisputed that Robinson never went to the residence
9 and that he relied on information and verbal reports from deputies and SCSD’s
10 Computer Aided Dispatch (“CAD”) entries regarding the events of December 25–26,
11 2019. Robinson’s search warrant application consisted of 14 pages, but the application
12 did not contain any police reports. See generally Ex. F, Cook Decl., ECF No. 45-2, at
13 39–52 (“Search Warrant”). The search warrant application sought authorization to
14 search Plaintiff’s entire property and all vehicles, as well as, among other things, the
15 following:

16 2. Items related to firearms including firearms, expended
17 slugs, spent casings, bullet holes, ammunition, magazines,
18 gun cleaning kits, gun purchase receipts/registration papers,
19 holsters, gun cases.

19 . . .

20 4. Any and all financial documents tending to establish if
21 the motive for the attempted homicide was for financial gain.

22 6. Items of personal property tending to establish the
23 identity of the persons in control of the premises including
24 utility company receipts, rent receipts, addressed envelopes,
25 vehicle registration, identification cards, photographs,
26 video/audio tapes and keys.

27 7. Telephone directories, address books, calendars and
28 documents with names and telephone numbers tending to
establish the identity of friends, associates and family
members of the persons in control of the premises.

8. Digital storage devices including, but not limited to,
computers, computer hard drives, computer storage media
including compact discs, DVD’s and removable storage
devices, digital cameras, personal digital assistance (i.e.: Palm

1 Pilots, Blackberry's, etc.), and digital audio recorders. Any
2 writings, paper medium, notebooks and loose paper sheets,
3 any computing or data processing software, stored on any type
4 of medium such as hard disks, floppy disks, cassette tapes,
5 compact disks, RAM or ROM units, or other permanent or
6 transient storage medium, any computing or data processing
7 device(s) and associated peripheral equipment, including but
8 not limited to computer units, keyboards, video display tubes,
9 printers, hard disk drives, floppy disk drives, floppy diskettes,
10 optical disk drives, optical diskettes, tape drives, magnetic
11 tape, compact disk drives, compact diskettes, interconnection
12 cables, and modems, whether acoustic or electric. Any
13 computing or data processing literature including instruction
14 books, manuals, or listed computer programs in whole or in
15 part for the above computer or data processing equipment;
16 and records which show dominion, ownership or control of any
17 of the items to be seized, including bills of sale for computers
18 or modems, repair bills for computers or modems, and sales
19 receipts for floppy disks. Deputies are permitted to conduct a
20 detailed search of the electronic contents of these digital
21 storage devices through means of forensic examination.

12 9. Wireless electronic devices/cellular telephones and
13 cellular telephone accessories including, but not limited to, SIM
14 cards, and electrical cords for charging phones.
15 Wireless/cellular telephones to include SIM cards, flash
16 memory, and memory chips for each telephone.

17 . . .

18 10. Any and all locked safes, locked boxes, chests, etc.,
19 which could contain evidence related to the shooting.

20 11. Any and all illegal narcotics and prescription narcotics
21 within the confines of the residence.

22 Id. at 41–42 (no item number 5 listed).

23 In his deposition, Robinson estimated that he submitted the search warrant
24 application to the district attorney around 4 p.m. on December 26, 2019. See Ex. G,
25 Robinson Dep., ECF No. 45-2, at 59–60. The state court magistrate signed the warrant
26 application on December 26, 2019, at 6:32 p.m., after Stucky was taken into custody.
27 See Ex. F, Cook Decl., ECF No. 45-2, at 43. SCSD deputies subsequently seized the
28 following handguns from inside Plaintiff's safe: (1) Smith & Wesson .40-caliber semi-
automatic, serial number PAH7163; and (2) Kahr 9MM semiautomatic, serial number
EF3234.

29 **D. Subsequent Events**

1 Stucky was charged with violating California Penal Code §§ 245(a)(1) (assault
2 with a deadly weapon other than a firearm), 368(b)(1) (infliction of serious harm on an
3 elder), 29800(a)(1) (felon in possession of a firearm), and 148(a)(1) (resisting and
4 delaying a police officer). He was sentenced to four years in state prison.

5 It is undisputed that Plaintiff lawfully acquired all her firearms and submitted to the
6 required background checks when she purchased them. After Stucky was convicted,
7 beginning in March 2020 and continuing thereafter, Plaintiff made repeated requests to
8 the SCSD and California Bureau of Firearms (the “Bureau”), an agency within the
9 California Department of Justice, for the return of her firearms, but the SCSD and
10 Bureau rejected her requests. On June 12, 2020, by letter sent via email to Jones and
11 the Sacramento District Attorney, Plaintiff’s counsel demanded that SCSD return the
12 seized firearms to Plaintiff. In response, the Sacramento District Attorney’s Office sent
13 the following email: “Our records indicate our office issued a property release that was
14 sent to the Sheriff’s Department on 2/26/20.” Ex. M, Cook Decl., ECF No. 45-2, at 143
15 (email dated June 12, 2020).

16 Ultimately, SCSD refused to return Plaintiff’s firearms until she received statutory
17 authorization from the Bureau pursuant to California Penal Code § 33855. According to
18 a declaration from Plaintiff’s counsel, neither the SCSD nor the Bureau responded to his
19 June 12, 2020, letter. See Cook Decl., ECF No. 45-2, at 4 ¶ 15. However, defense
20 counsel counters in his own declaration that after accepting assignment of this case, he
21 “promptly contacted Plaintiff’s counsel to discuss the return of Plaintiff’s firearms” and
22 took affirmative actions to procure the forms and records required by the Bureau. See
23 Paul Decl., ECF No. 50-2, at 2–3 ¶¶ 4–14; see also Ex. H, id., at 96–121 (email
24 correspondence between counsel). Counsel for Defendants was informed that Plaintiff’s
25 long guns were not registered under “Cardinale,” but her former name “Stucky.” Defs.’
26 Sep. Statement of Undisputed Facts and Pl.’s Responses Thereto, ECF No. 64-1, No.
27 66. The State of California Department of Justice, Bureau of Firearms required that
28 Cardinale provide her marriage certificate reflecting her married name “Stucky” and that

1 Ms. Cardinale complete a Firearm Ownership Report. Id. Plaintiff did not complete the
2 forms until June 2021, and her firearms were released to her very shortly thereafter. Id.,
3 Nos. 72, 74-75.

4 STANDARD

5
6 The Federal Rules of Civil Procedure⁵ provide for summary judgment when “the
7 movant shows that there is no genuine dispute as to any material fact and the movant is
8 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
9 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
10 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

11 Rule 56 also allows a court to grant summary judgment on part of a claim or
12 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) (“A party may
13 move for summary judgment, identifying each claim or defense—or the part of each
14 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
15 Madan, 889 F. Supp. 374, 378–79 (C.D. Cal. 1995). The standard that applies to a
16 motion for partial summary judgment is the same as that which applies to a motion for
17 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic
18 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
19 judgment standard to motion for summary adjudication).

20 In a summary judgment motion, the moving party always bears the initial
21 responsibility of informing the court of the basis for the motion and identifying the
22 portions in the record “which it believes demonstrate the absence of a genuine issue of
23 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
24 responsibility, the burden then shifts to the opposing party to establish that a genuine
25 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co., Ltd. v.
26 Zenith Radio Corp., 475 U.S. 574, 586–87 (1986); First Nat’l Bank v. Cities Serv. Co.,
27 391 U.S. 253, 288–89 (1968).

28 ⁵ All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure.

1 In attempting to establish the existence or non-existence of a genuine factual
2 dispute, the party must support its assertion by “citing to particular parts of materials in
3 the record, including depositions, documents, electronically stored information,
4 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do
5 not establish the absence or presence of a genuine dispute, or that an adverse party
6 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
7 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
8 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,
9 Inc., 477 U.S. 242, 248, 251–52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
10 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1992). The opposing party must also
11 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is
12 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
13 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
14 before the evidence is left to the jury of “not whether there is literally no evidence, but
15 whether there is any upon which a jury could properly proceed to find a verdict for the
16 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
17 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
18 As the Supreme Court explained, “[w]hen the moving party has carried its burden under
19 Rule [56(a)], its opponent must do more than simply show that there is some
20 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
21 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
22 non-moving party, there is no ‘genuine issue for trial.’” Id. at 587.

23 In resolving a summary judgment motion, the evidence of the opposing party is to
24 be believed, and all reasonable inferences that may be drawn from the facts placed
25 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
26 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
27 obligation to produce a factual predicate from which the inference may be drawn.
28 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244–45 (E.D. Cal. 1985), aff’d,

1 810 F.2d 898 (9th Cir. 1987).

2
3 **ANALYSIS**

4
5 **A. The Parties' Positions**

6 Both sides seek judgment, at least in part, under Rule 56. Plaintiff seeks partial
7 summary judgment as to all claims against the County and SCSD. She contends that:
8 (1) the warrantless seizure of her guns on December 25 violated the Second and Fourth
9 Amendments; (2) the warrant issued on December 26 was overbroad in violation of the
10 Fourth Amendment; (3) the December 26 seizure of her guns pursuant to that warrant
11 violated the Second and Fourth Amendment; and (4) the County's continued seizure of
12 her weapons was also in contravention of both the second and Fourth Amendments.

13 Defendants seek judgment on each of Plaintiff's claims in their entirety.⁶
14 According to Defendants, Plaintiff cannot show she is entitled to judgment on any of
15 those causes of action because: (1) although Defendants admit their actions were
16 undertaken pursuant to policies, customs, and training, Plaintiff has not identified any
17 specific policy, custom, etc., that was a moving force behind the alleged constitutional
18 violations; (2) Plaintiff has not shown that Sheriff Jones personally participated in any of
19 the conduct underlying the Complaint; (3) neither the initial seizures nor the ongoing of
20 retention of Plaintiff's weapons violated the Second or Fourth Amendments; (4)
21 Defendant Robinson is entitled to qualified immunity in any event; and (5) Plaintiff has
22 offered no facts to support her Bane Act claim.

23 The Court addresses a few threshold matters before moving to the more
24 substantive issues. First, the Court agrees with Defendants that Plaintiff has not shown
25 that Sheriff Jones personally participated in or failed to prevent any deprivation of
26 Plaintiff's constitutional rights. Nor has Plaintiff made a showing of "threat, intimidation,

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⁶ The Court concludes that Defendants' Motion for Summary Judgment was timely and DENIES
28 Plaintiff's Motion to Strike directed at Defendants' moving papers.

1 or coercion.” Cal. Civ. Code § 52.1. Accordingly, Defendants’ Motion for Summary
2 Judgment is GRANTED as to Sheriff Jones and as to Plaintiff’s Bane Act claim.

3 Second, Plaintiff seeks judgment that the warrant was overbroad to the extent it
4 authorized the search of personal property, financial documents, etc. See Pl.’s Mot.,
5 ECF No. 45, at 16-17. Plaintiff’s Complaint does not even remotely allude to these
6 additional components of the warrant however, and the Court concludes that they are
7 beyond the scope of this case. Plaintiff’s Motion is thus DENIED as moot to the extent
8 she seeks judgment on the overbreadth of the warrant on any basis not related to the
9 taking of the firearms (i.e., as to items 4, 6, 7, 8, 9, 10, 11, and the unnumbered request
10 concerning vehicles). Claims regarding those items are not before the Court and will not
11 be considered.

12 The Court addresses the remainder of Plaintiff’s causes of action in turn.

13 **A. The December 25 seizure of Plaintiff’s long guns**

14 Plaintiff argues the seizure of the long guns in her closet was unconstitutional
15 because (1) they were seized without a warrant or consent, and (2) they were neither
16 contraband nor evidence of a crime. See Pl.’s Mot., at 13–14. Plaintiff relies on the
17 United States Supreme Court’s decision in Caniglia v. Strom, 593 U.S. 194 (2021)
18 (“Caniglia”), which, according to her, held that the community caretaking exception to the
19 Fourth Amendment “cannot justify seizing firearms without consent and where the
20 firearms were not evidence of crime or contraband.” Id. at 14. However, the Supreme
21 Court’s holding was not so specific and the facts of Caniglia are easily distinguishable.

22 In Caniglia, during an argument with his wife, the petitioner “retrieved a handgun
23 from the bedroom, put it on the dining room table, and asked his wife to ‘shoot him now
24 and get it over with.’” 593 U.S. at 196 (alteration omitted). After declining to do so, the
25 petitioner’s wife left to spend the night at a hotel but called the police the next morning
26 when she could not reach the petitioner by telephone and requested a welfare check.
27 See id. Police officers subsequently “accompanied petitioner’s wife to the home, where
28 they encountered petitioner on the porch.” Id. The petitioner spoke to the officers and

1 “confirmed his wife’s account of the argument, but denied that he was suicidal.” Id.
2 Nevertheless, the officers “thought that petitioner posed a risk to himself or others[,]” and
3 called an ambulance. Id. The petitioner “agreed to go to the hospital for a psychiatric
4 evaluation—but only after [the officers] allegedly promised not to confiscate his firearms.”
5 Id. at 196-97. However, once the petitioner left in the ambulance, the officers entered
6 the home and took two handguns. See id. at 197.

7 The petitioner later sued the police officers on grounds that they “violated the
8 Fourth Amendment when they entered his home and seized him and his firearms without
9 a warrant.” Id. The district court granted summary judgment in favor of the police
10 officers, and “the First Circuit affirmed solely on the ground that the decision to remove
11 petitioner and his firearms from the premises fell within a ‘community caretaking
12 exception’ to the warrant requirement[.]” Id. In reversing the lower courts’ decisions, the
13 Supreme Court rejected “a freestanding community-caretaking exception” to the warrant
14 requirement, but nonetheless reiterated that “law enforcement officers may enter private
15 property without a warrant when certain exigent circumstances exist, including the need
16 to render emergency assistance to an injured occupant or to protect an occupant from
17 imminent injury.”⁷ See id. at 198 (quoting Kentucky v. King, 563 U.S. 452, 460 (2011))
18 (internal quotation marks omitted).

19 Unlike in Caniglia, where the petitioner was found on his porch and taken to a
20 hospital for a psychiatric evaluation, Stucky was not located that night and it is
21 undisputed that he resided at the same address as Plaintiff, even if it turned out he lived
22 in a separate building on the property. Furthermore, the SCSD deputies were
23 responding to a call that Plaintiff’s son was trying to kill her and that he had a gun, see
24 Ex. B, Paul Decl., ECF No. 50-2, at 20, whereas the officers in Caniglia were performing

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26 ⁷ The Supreme Court primarily took issue with the First Circuit’s reliance on Cady v. Dombrowski,
27 413 U.S. 433 (1973) (“Cady”), which held that “a warrantless search of an impounded vehicle for an
28 unsecured firearm did not violate the Fourth Amendment.” See Caniglia, 141 S. Ct. at 1598–99.
Ultimately, the Court’s decision in Caniglia reiterated the longstanding principle that “[w]hat is reasonable
[under the Fourth Amendment] for vehicles is different from what is reasonable for homes,” and declined to
apply Cady to justify warrantless searches and seizures in the home. See id. at 1599–1600.

1 a welfare check at the request of the petitioner’s wife. 593 U.S. at 196. “No emergency
2 circumstances existed in Caniglia that justified a warrantless entry to confiscate firearms
3 inside the home of a man who was taken away for a psychiatric evaluation.” Villegas v.
4 City of L.A., No. 2:20-cv-07469-SB-JC, 2021 WL 6144184, at *5 (C.D. Cal. Nov. 24,
5 2021). The same cannot be said here with Stucky still at large and him already stealing
6 one of Plaintiff’s firearms from Plaintiff’s bedroom, where it was likely he knew he could
7 obtain more weapons. See District of Columbia v. Heller, 554 U.S. 570, 626 (2008)
8 (stating that “the right secured by the Second Amendment is not unlimited” and that it is
9 “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for
10 whatever purpose.”).

11 Based on the undisputed facts and differences with Caniglia, it can be reasonably
12 inferred that exigent circumstances existed (i.e., protecting Plaintiff from imminent injury)
13 and thus the deputies’ seizure of Plaintiff’s long guns for “safekeeping” was reasonable.
14 Accordingly, Defendant’s Motion for Summary Judgment as to the December 25 seizure
15 of Plaintiff’s firearms is GRANTED.

16 **B. The validity of the December 26 warrant**

17 The Fourth Amendment provides that “no Warrants shall issue, but upon probable
18 cause, supported by Oath or affirmation, and particularly describing the place to be
19 searched, and the persons or things to be seized.” In determining whether a warrant is
20 overbroad, “there must be probable cause to seize the particular things named in the
21 warrant.” United States v. SDI Future Health, Inc., 568 F.3d 684, 702–03 (9th Cir. 2009)
22 (citation and alterations omitted); see also United States v. Diaz, 491 F.3d 1074, 1078
23 (9th Cir. 2007) (defining probable cause as “a fair probability that contraband or
24 evidence of a crime will be found in a particular place, based on the totality of the
25 circumstances.”).

26 Here, Plaintiff argues that the December 26, 2019, warrant was overbroad,
27 specifically that SCSD deputies had no probable cause to search for and seize her
28 firearms. See Pl.’s Mot., at 14–17. Given the specific circumstances of this case, the

1 Court disagrees.

2 According to Plaintiff, there was no probable cause to seize her other firearms
3 because the SCSD deputies:

4 knew (a) no firearms or other weapon of any type was used in
5 the assault on [Plaintiff] other than a wooden dowel; (b) Stucky
6 was the only suspect, he acted alone, had no accomplices and
7 was likely motivated by his mental illness (schizophrenia); (c)
8 there was no evidence or suspicion of any illegal drug activity
9 of any type at [Plaintiff's] residence; (d) [Plaintiff] was the lawful
10 owner of firearms that had no connection of any type to
11 Stucky's assault on his mother; (e) the only firearm-related
12 offense was Stucky taking, upon fleeing his mother's house, a
13 specifically identified (by make, model and serial number)
14 handgun lawfully owned by [Plaintiff], thus giving rise to crimes
15 of possible theft and felon in possession of a firearm; and (f)
16 deputies recovered that handgun before Robinson submitted
17 his warrant application to the superior court.

18 Id. at 16. The problem with Plaintiff's arguments is that they all assert facts we know
19 now but that were not established at the time and that officers had a duty to investigate.
20 At the time the warrant was sought and issued, the investigation was rapidly evolving. It
21 is undisputed that Stucky resided at the same address as Plaintiff, even if it has now
22 been confirmed he lived in a different building. Stucky was a felon who had taken at
23 least one firearm from his mother's residence and should not have had access to any of
24 them. There was no way for officers to confirm before the warrant application was
25 submitted that the handgun recovered from Stucky was the exact handgun Plaintiff
26 indicated he had taken. Nor were officers required to accept as true that Stucky could
27 not access the safe or that it was impossible for him to have located other firearms on
28 the property. If Stucky had access to the safe or to additional weapons, that would be
yet another basis for charging him as a felon in possession. In addition, while Plaintiff
advised officers that only a wooden dowel was used in her attack, they were still obliged
to investigate the scene to determine whether that was the case.

26 ///

27 There was thus ample probable cause to justify seizing Plaintiffs' firearms.⁸ Defendants'

28

⁸ For the same reasons, the Court concludes that Robinson is entitled to qualified immunity

1 Motion for Summary Judgment is GRANTED as to the seizure of the weapons on
2 December 26.⁹

3 **C. Defendants' delay in returning Plaintiff's firearms**

4 Plaintiff next contends that Defendants' ongoing retention of her firearms was
5 unconstitutional under the Second, Fourth, and Fourteenth Amendments. Once Stucky
6 was convicted, Plaintiff sought the return of her guns, and Defendants advised that she
7 had to seek authorization from the Bureau for their release under California Penal Code
8 § 33855. Section 33855 provides, in pertinent part:

9 A law enforcement agency or court that has taken custody of
10 any firearm, ammunition feeding device, or ammunition shall
11 not return the firearm, ammunition feeding device, or
12 ammunition to any individual unless all of the following
13 requirements are satisfied:

14 (a) The individual presents to the agency or court notification
15 of a determination by the department pursuant to Section
16 33865 that the person is eligible to possess a firearm,
17 ammunition feeding device, or ammunition.

18 (b) If the seized property is a firearm and the agency or court
19 has direct access to the Automated Firearms System, the
20 agency or court has verified that the firearm is not listed as
21 stolen pursuant to Section 11108.2, and that the firearm has
22 been recorded in the Automated Firearms System in the name
23 of the individual who seeks its return.

24 It is undisputed that once Plaintiff submitted the requisite paperwork, her guns
25 were released to her. The question then is whether Defendants' adherence to this state
26 regime violated Plaintiff's constitutional rights. The Court concludes it did not.

27 In Cupp v. Harris, Case No. 2:16-cv-00523-TLN-KJN, 2023 WL 5488420, (E.D.
28 Cal. 2023), another court in this district considered a challenge to the constitutionality of

because it was reasonable for him to believe that there was probable cause supporting the warrant. See Messerschmidt v. Millender, 565 U.S. 535, 549 (2012).

⁹ Plaintiff has not specifically challenged the December 26 seizure of her firearms on Second Amendment grounds. Regardless, because the Court concludes that because the warrant was not overbroad, the Fourth Amendment was not violated and the seizure was thus proper, any Second Amendment argument would fail as well. Plaintiff has identified no case law, nor has the Court found any, standing for the proposition that a constitutionally permissible Fourth Amendment seizure of firearms can nonetheless give rise to a Second Amendment claim. Accordingly, to the extent Plaintiff is attempting to make that argument here, it is rejected and Defendants are entitled to judgment on any Second Amendment cause of action as to the confiscation pursuant to the warrant.

1 California’s Law Enforcement Gun Release “LEGR” regime and concluded no violation
2 had been identified under the framework set forth in New York Rifle & Pistol Ass’n, Inc.
3 v. Bruen, 597 U.S. 215 (2022). That analysis is instructive:

4 Under the second step of the Bruen framework, the
5 government bears the burden to show the prohibition at issue
6 is “consistent with the Nation’s historical tradition of firearm
7 regulation.” Bruen, 142 S. Ct. at 2126. This inquiry will be
8 straightforward in some cases while in others it “will often
9 involve reasoning by analogy.” Id. at 2131. The Attorney
10 General asserts additional expert discovery is necessary
11 before this Court can reach step two of the Bruen analysis.
12 (ECF No. 105 at 8–9.) The Court disagrees.

13 Plaintiffs argue the state can “produce no historical analog as
14 to why Plaintiffs are required to make an application and pay a
15 fee for the return of their arms when they committed no crime.”
16 (ECF No. 108 at 13.) Plaintiffs claim, “there is no historical
17 analog as to why Plaintiffs’ property was not returned just as a
18 wallet or knife is returned as personal property.” (Id. at 14.)
19 Plaintiffs’ arguments, however, have a fatal flaw — they fail to
20 account for the narrowest holding of Bruen, which speaks to
21 shall-issue style regulations.

22 In applying step two to the New York regulation, the Supreme
23 Court explicitly noted “nothing in our analysis should be
24 interpreted to suggest the unconstitutionality of the 43 States
25 ‘shall-issue’ licensing regimes.” Bruen, 142 S. Ct. at n. 9. This
26 is because, as the Court explained “shall-issue regimes, which
27 often require applicants to undergo a background check or
28 pass a firearms safety course, are designed to ensure only that
those bearing arms in the jurisdiction are, in fact, law-abiding,
responsible citizens.” Id. (internal quotations omitted). This is
further outlined by the narrowing concurrence. The
concurrence is clear that shall-issue regimes, which may
require “fingerprinting, a background check, a mental health
records check, and training in firearms handling and in laws
regarding the use of force, among other possible
requirements” “are constitutionally permissible, subject of
course to an as-applied challenge if a shall-issue licensing
regime does not operate in that manner in practice.” Id. at
2162. Accordingly, shall-issue style regulatory regimes that
are designed to ensure only law-abiding, responsible citizens
bear arms, are lawful. Id. This is subject only to an as-applied
challenge that the shall-issue regime fails to operate properly
in practice. See id. (“shall-issue regimes do not grant open-
ended discretion to licensing officials and do not require a
showing of some special need apart from self-defense . . .
shall-issue licensing regimes are constitutionally permissible,
subject of course to an as-applied challenge if a shall-issue
licensing regime does not operate in that manner in practice.”)

Guided by this holding, the Court finds Plaintiffs fail to state a

1 claim challenging the LEGR framework, which requires a
2 background check, filling out a form, and paying a nominal fee.
3 The FAC outlines the LEGR process, including the eligibility
4 application requirement (Cal. Penal Code § 33850), the firearm
5 return process requirements (Cal. Penal Code § 33855), and
6 the fee requirements (Cal. Penal Code §§ 33860, 33880.)
7 (ECF No. 83 at 6–7.) The FAC also alleges facts related to
8 Cupp's arrest, seizure of alleged arms, as well as his criminal
9 case and its subsequent dismissal. (Id. at 7–8.) The FAC
10 further alleges facts related to Haven's arrest, dismissal of his
11 criminal case, and the seizure of his alleged arms. (Id. at 8–
12 12.) Plaintiffs allege “[b]y failing to immediately return
13 Plaintiffs’ firearms once it was determined that no crime had
14 been committed, [the Attorney General] has deprived Plaintiffs
15 of their ability to exercise their Second Amendment right”
16 (Id. at 10.)

17 These facts are insufficient to state a claim for relief. The
18 LEGR process mandates that once a firearm or ammunition is
19 in the custody or control of a law enforcement agency or court,
20 the owner of that firearm must proceed through a process to
21 ensure they can lawfully possess that firearm or ammunition
22 before the firearm can be returned. This is made clear from
23 the text of the LEGR regulations which are outlined in the FAC.
24 The LEGR process, therefore, is an analogue to the shall-issue
25 regimes discussed in Bruen and for that reason are lawful. To
26 challenge these regulations, the complaint must contain
27 factual allegations that this shall-issue style regime fails to
28 operate properly in practice. Bruen, 142 S. Ct. at 2162.
Plaintiffs fail to do this. There are no allegations in the FAC
that the LEGR process is different in practice than any other
shall-issue style regime, no allegations that the LEGR process
provides for discretionary decision making by the Attorney
General, no allegations that it functions more as a may-issue
regulation, and no allegations that it is or was applied to
Plaintiffs in an improper way. For these reasons, the FAC fails
to state a claim as to a Second Amendment violation.

20 Id., at *5-6.

21 The facts of this case are materially indistinguishable from Cupp. It is undisputed
22 that once Plaintiff resolved her name issue and submitted the requisite paperwork, her
23 firearms were returned to her. The California statute in this case operated no differently
24 than the “shall-issue” schemes contemplated in Bruen. Accordingly, there can be no
25 constitutional violation. Defendants’ Motion for Summary Judgment as to the ongoing
26 retention of Plaintiff’s weapons is thus GRANTED.¹⁰

27 ¹⁰ Given the Court’s forgoing holdings, it need not reach the question of whether Plaintiff can
28 establish Monell liability as to the entity Defendants. The County and SCSD argue that Plaintiff has not
identified the policies that purportedly led to her constitutional violations. The Court is troubled, however,

1 **CONCLUSION**

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3 For the foregoing reasons, it is hereby ordered that:

4 1. Plaintiff's Motion to Strike Exhibit A, ECF No. 51, is GRANTED;

5 2. Plaintiff's Motion to Strike Exhibit D, ECF No. 52, is DENIED as moot;

6 3. Plaintiff's Motion to Strike Defendant's Motion for Summary Judgment,
7 ECF No. 63, is DENIED.

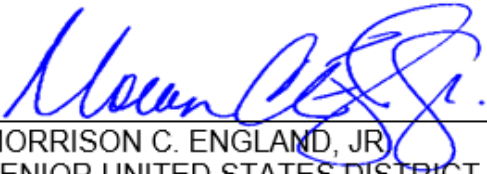
8 4. Plaintiff's Motion for Partial Summary Judgment, ECF No. 45, is DENIED.

9 5. Defendants' Motion for Summary Judgment, or in the Alternative Partial
10 Summary Judgment, ECF No. 61, is GRANTED in its entirety.

11 6. The Clerk of the Court is directed to enter judgment in Defendants' favor
12 and close this case.

13 IT IS SO ORDERED.

14 Dated: May 13, 2024

15 
16 MORRISON C. ENGLAND, JR.
17 SENIOR UNITED STATES DISTRICT JUDGE

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27 by the fact that Defendants admitted that each of their actions in this case was taken pursuant to some
28 unarticulated policy or custom. While the Court could not grant judgment on Monell liability in Plaintiff's
favor, without knowing what those policies might be, denying Plaintiff relief would also seem to be in
tension with Defendants' admissions. As indicated, that tension need not be resolved today. Should the
Court be squarely faced with the question in the future, however, more detailed discussion from both sides
would be warranted.