

1 Mot. to Dismiss ("Mot."), ECF No. 11. County argues Elledge's
2 first, second, and fourth causes of action do not contain
3 sufficient factual matter to support a cause of relief. Id. at
4 3. Elledge filed an opposition. Opp'n, ECF No. 12. County
5 filed a reply. Reply, ECF No. 15.

6 I. FACTUAL ALLEGATIONS

7 The facts are taken from the Complaint and assumed to be true
8 for purposes of the Motion. In May of 2022, a San Joaquin County
9 Sheriff water patrol boat ("patrol boat") stopped Elledge's boat
10 while on the San Joaquin River. Compl. ¶ 11. The patrol boat
11 was operated by defendants John Canepa and Brian Merritt
12 (collectively, "Deputy Sheriffs"). Id. Deputy Sheriffs stopped
13 Elledge because they did not see a required registration sticker
14 adhered to his boat. Id. After the registration issue was
15 resolved, Deputy Sheriffs ordered Elledge to board the patrol
16 boat to submit to a blood alcohol test. Id. Elledge was
17 ordered, without any assistance from Deputy Sheriffs, to step on
18 the railing of the patrol boat, then step down approximately
19 three feet to the steel deck of the boat. Id. While stepping
20 down to the steel deck of the boat, Elledge landed hard on his
21 right foot, resulting in an injury to his right ankle and a
22 ruptured Achilles tendon. Id.

23 II. OPINION

24 A. Legal Standard

25 A Rule 12(b)(6) motion challenges the sufficiency of a
26 complaint for "failure to state a claim upon which relief can be
27 granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to
28 dismiss [under 12(b)(6)], a complaint must contain sufficient

1 factual matter, accepted as true, to state a claim for relief
2 that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S.
3 662, 678 (2009) (internal quotation marks and citation omitted).
4 Plausibility requires “factual content that allows the court to
5 draw a reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id. While “detailed factual allegations”
7 are unnecessary, the complaint must allege more than
8 “[t]hreadbare recitals of the elements of a cause of action,
9 supported by mere conclusory statements.” Id. Conclusory
10 allegations are not to be considered in the plausibility
11 analysis. Id. at 679 (“While legal conclusions can provide the
12 framework of a complaint, they must be supported by factual
13 allegations.”). When a plaintiff fails to “state a claim upon
14 which relief can be granted,” the Court must dismiss the claim.
15 Fed. R. Civ. P. 12(b)(6).

16 B. Analysis

17 1. First Cause of Action – 42 U.S.C. § 1983

18 Elledge’s first cause of action is for “Unreasonable
19 Detention, Custody, And Control, (42 U.S.C. § 1983)”
20 (hereinafter, “1983 Claim”). Compl. at 5, 6. The 1983 Claim
21 focuses on the actions of Deputy Sheriffs. Id. It is not clear
22 from the Complaint whether the claim is against all defendants,
23 or only Deputy Sheriffs. Id. However, Elledge does allege that
24 Deputy Sheriffs were under the control of County. Id. ¶ 15.
25 County seeks to dismiss the 1983 Claim with prejudice against
26 County on the grounds that “Elledge does not set forth any facts
27 that an unconstitutional County policy resulted in Elledge’s
28 alleged injury.” Mot. at 4. Assuming the 1983 Claim is against

1 both Deputy Sheriffs and County, the Court agrees.

2 To establish liability for governmental entities under
3 Section 1983, a plaintiff must prove the entity had "a policy,
4 practice, or custom" that was the "moving force" behind the
5 constitutional violation. Dougherty v. City of Covina, 654 F.3d
6 892, 900 (9th Cir. 2011) (citing Monell v. Dep't of Soc. Servs.
7 of the City of New York, 436 U.S. 658, 694 (1978)). An official
8 policy includes a formal policy, such as a rule or regulation,
9 adopted by the entity that directly results in the
10 constitutional violation in question. Pembaur v. City of
11 Cincinnati, 475 U.S. 469, 483-84 (1986). A practice or custom,
12 by contrast, includes repeated, widespread, and consistent
13 actions that constitute the standard operating procedure of the
14 entity. Ulrich v. City & Cnty. of S.F., 308 F.3d 968, 984 (9th
15 Cir. 2002).

16 Upon review of Elledge's 1983 Claim, the only mention of
17 County includes the following allegation: "[t]he conduct of
18 [Deputy Sheriffs] was done under the [instruction, orders, and
19 control] of command level officers and managers of [County's]
20 Sheriff's Office." Id. ¶ 15. The bulk of the 1983 Claim
21 focuses on the actions of Deputy Sheriffs. Id. ¶¶ 13-15, 17.
22 Elledge does not provide sufficient facts in his first cause of
23 action to allow the Court to draw a reasonable inference that a
24 policy, practice, or custom of County's led to Elledge's alleged
25 constitutional violation. Dougherty, 654 F.3d at 900.

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1 Looking beyond the 1983 Claim and to the Complaint as a
2 whole, Elledge's "Introduction" alleges:

3 The policies and customs behind the detention and
4 taking into custody and control of boat operators on
5 the San Joaquin River in the County of San Joaquin
6 without probable cause to believe said boat operators
7 were under the influence of alcohol are fundamentally
8 unconstitutional and constitute a menace of major
9 proportions to the public. . . .

10 Compl. ¶ 2. Albeit confusing, Elledge appears to contend that
11 County has an unconstitutional policy and custom of detaining
12 boat operators on the San Joaquin River and accusing them,
13 without probable cause, of operating under the influence. This
14 conclusory allegation does not pass muster under the Twombly
15 plausibility standard.

16 Elledge does not allege any specific facts that there is a
17 formal policy of County's, such as a rule or regulation, that led
18 to any alleged constitutional violation. Pembaur, 475 U.S. at
19 483-84. Elledge also does not allege any specific facts that
20 there is a widespread practice or custom that led to any alleged
21 constitutional violation. Bd. of the Cty. Comm'rs v. Brown, 520
22 U.S. 397, 404 (1997). Elledge takes a single, isolated event and
23 make a conclusory statement that there was a policy and custom in
24 place that caused the alleged constitutional violation. Isolated
25 or sporadic incidents alone cannot form the basis of a 1983 Claim
26 against government entities. Sabra v. Maricopa Cnty. Cmty. Coll.
27 Dist., 44 F.4th 867, 884 (9th Cir. 2022). The Complaint lacks
28 sufficient factual allegations regarding the key elements of a

1 possible 1983 Claim against County and therefore Elledge's first
2 cause of action against County is dismissed with leave to amend.

3 2. Second Cause of Action - California Civil Code
4 § 52.1

5 Elledge's second cause of action is for "Violation of
6 California Civil Rights Act - Civil Code §52.1" (hereinafter,
7 "Bane Act Claim") against all defendants. Compl. at 6.

8 County seeks to dismiss the Bane Act Claim with prejudice
9 because "there are no facts that the individual defendants
10 engaged in egregious activity and intended to cause Elledge's
11 alleged injury." Mot. at 3. County does not mention itself in
12 its Bane Act argument and focuses solely on the actions of
13 Deputy Sheriffs. Id. at 5.

14 To the extent County seeks to make arguments on behalf of
15 Deputy Sheriffs, the Court declines to address such arguments.
16 Haley v. Ornelas, No. CV 16-3177-AG(E), 2016 U.S. Dist. LEXIS
17 202077, at *6 (C.D. Cal. Dec. 21, 2016). The Motion is filed on
18 behalf of County alone. See Mot. County admits neither of the
19 Deputy Sheriffs have been served yet. Id. at 1. Subject to a
20 limited exception, a party must assert their own legal rights or
21 interests, not those of third parties. Kowalski v. Tesmer, 543
22 U.S. 125, 129-30 (2004) (discussing the limited exception as
23 "(1) the party asserting the right has a close relationship with
24 the person who possesses that right and (2) whether there is a
25 hindrance to the possessor's ability to protect their own
26 interests."). County does not provide any legal analysis or
27 support for its belief that it can assert the rights of Deputy
28 Sheriffs in this motion. County "may not properly act as a

1 surrogate" for Deputy Sheriffs. Ornelas, 2016 U.S. Dist. LEXIS
2 202077, at *6. To the extent County is attempting to dismiss
3 the Bane Act Claim on behalf of Deputy Sheriffs, this request is
4 denied without prejudice.

5 If County is attempting to dismiss the Bane Act Claim
6 against itself, without even mentioning itself, County has
7 failed to provide any factual or legal grounds to support its
8 dismissal motion. Fed. R. Civ. 7(b) (a motion must state with
9 particularity the grounds for seeking the order.). County's
10 motion to dismiss the Bane Act Claim against itself is also
11 denied without prejudice.

12 3. Fourth Cause of Action - Intentional Infliction of
13 Injury

14 Elledge's fourth cause of action is labeled as a claim for
15 "Intentional Infliction of Injury" against Deputy Sheriffs.
16 Compl. at 9. Based on the header alone, this cause of action
17 appears to be a battery claim against Deputy Sheriffs. However,
18 the cause of action includes the following allegations:

19 [County's] Sheriff's Office, and its management and
20 command officers, "deliberately and purposely
21 neglected and failed to instruct, to so train and
22 teach all deputy sheriffs, at all levels of the
23 [County's] Sheriff's Office. . . .

24 [Defendants] and each of them . . . knew, [sic] were
25 subject to a duty of care to know and to train and
26 teach all deputy sheriffs . . . what acts and conduct
27 that violated the law . . .

28 [Defendants] knew they were . . . to train and teach

1 all deputy sheriffs, at all levels to determine if any
2 laws were broken by [Elledge] before detaining
3 [Elledge] . . .

4 [Deputy Sheriffs] knew . . . what acts and conduct
5 violated the laws . . . detained [Elledge] . . .
6 without any probable cause . . .

7 The conduct of [Deputy Sheriffs] . . . was in total
8 and utter disregard of the rights of [Elledge] and
9 with the knowledge that [Elledge] would be subject to
10 a dangerous condition . . . Said conduct was
11 malicious, wanton, oppressive, and fraudulent. Said
12 conduct was extreme and outrageous . . . [Elledge]
13 suffered severe personal injuries, pain and suffering,
14 medical and incidental expenses, loss of income and
15 extreme mental and emotional distress and
16 consequential damages. . . .

17 See Compl. ¶¶ 29-33. Based on these allegations, the fourth
18 cause of action appears to not only be a battery claim against
19 Deputy Sheriffs, but also a failure to train claim against
20 County, a deliberate indifference claim against Deputy Sheriffs,
21 and an emotional distress claim against Deputy Sheriffs or
22 County or both. County interprets this cause of action as only
23 an intentional infliction of emotional distress claim ("IIED")
24 against Deputy Sheriffs. Mot. at 5-7.

25 Elledge's opposition to the County's motion fails to
26 provide any clarity. The opposition focuses only on the acts of
27 Deputy Sheriffs, includes an irrelevant discussion on peace
28 officers' standards and trainings, and concludes that Deputy

1 Sheriffs were in violation of Elledge's constitutional rights to
2 be "free from search and seizure" which was "extreme and
3 outrageous." Opp'n at 11-12. Not only is the opposition
4 inconsistent with the multiple legal theories discussed in the
5 Complaint, but it also mirrors Elledge's first cause of action
6 for "Unreasonable Detention, Custody, And Control." Compl.
7 ¶¶ 12-17.

8 What is unambiguously clear to the Court is that this cause
9 of action, as currently pled, cannot go forward. Elledge fails
10 to present a cognizable claim and put the defendants or the
11 Court on fair notice of the grounds entitling him to relief.
12 Bell Atl. Corp. v. Twombly, 550 U.S. at 555; Fed. R. Civ. P. 8,
13 10. "The Court should not be required to ascertain what are or
14 will be the litigable issues of fact and law by a process of
15 speculation or surmise." Weiss v. Tenney Corp., 47 F.R.D. 283,
16 287 (S.D.N.Y. 1969). Therefore, the Court sua sponte DISMISSES
17 Elledge's fourth cause of action in its entirety with leave to
18 amend. County's motion to dismiss the fourth cause of action is
19 DENIED as moot.


20 III. ORDER

21 For the reasons set forth above, the Court GRANTS County's
22 motion to dismiss Elledge's first cause of action, the 1983
23 Claim, with leave to amend. The Court DENIES County's motion to
24 dismiss Elledge's second cause of action, the Bane Act Claim,
25 without prejudice. The Court, on its own motion, DISMISSES
26 Elledge's fourth cause of action in its entirety with leave to
27 amend. County's motion to dismiss Elledge's fourth cause of
28 action is DENIED as moot.

1 If Elledge elects to file an amended complaint, he must do so
2 no later than twenty days from the date of this Order.
3 Defendants shall file their responsive pleadings no later than
4 twenty (20) days thereafter.

5 IT IS SO ORDERED.

6 Dated: May 7, 2024

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9 JOHN A. MENDEZ
10 SENIOR UNITED STATES DISTRICT JUDGE
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