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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**
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11 OLGA ZAMORA, Guardian ad litem for
12 Maria Zamora, and JOSE ZAMORA,
13 Guardian ad litem for Omar Zamora and
14 Edgar Zamora,

15 Plaintiffs,

16 v.

17 CITY OF OAKLAND, ANTHONY BATTS,
18 CITY OF SAN FRANCISCO and GEORGE
19 GASCÓN,

20 Defendants.

Case No. 12-cv-02734 NC

**ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
AS TO THE FIRST AND SECOND
CAUSES OF ACTION**

Re: Dkt. No. 31

21 Pending before the Court is a motion for summary judgment by defendants City of
22 San Francisco and George Gascón on plaintiffs' claims under 42 U.S.C. § 1983 and state
23 law arising out of the execution of a search warrant at plaintiffs' residence. The primary
24 issues addressed in this order are (1) plaintiffs' request that the Court deny the summary
25 judgment motion or allow additional time to take discovery based on Federal Rule of Civil
26 Procedure 56(d); and (2) defendants' contention that plaintiffs have failed to raise a genuine
27 issue of material fact that the officers' conduct was pursuant to an unconstitutional policy or
28 custom as required to hold the City liable under § 1983. For the reasons set forth below, the
Court DENIES plaintiffs' request for relief under Rule 56(d), GRANTS the summary

Case No. 12-cv-02734 NC
ORDER RE: MOTION FOR
SUMMARY JUDGMENT

1 judgment motion as to the § 1983 claims, and takes the motion under submission as to the
2 state law claims, pending the parties’ briefing as to whether the Court should decline to
3 exercise supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(c).

4 **I. BACKGROUND**

5 This case arises from a “night service,” “no-knock” search warrant executed by San
6 Francisco Police Department officers at plaintiffs’ residence in March 2011. Dkt. Nos. 32-
7 6; 32-8 at 10, 26-27. Plaintiffs Olga and Jose Zamora, in their individual capacities and
8 acting as guardian ad litem for their children Maria, Omar, and Edgar Zamora, initiated this
9 action in the Alameda County Superior Court on March 22, 2012, suing the City of
10 Oakland, Anthony Batts, as Chief of Police of the Oakland Police Department, the City of
11 San Francisco, George Gascón, as Chief of Police of the San Francisco Police Department,
12 and Does 1-100. Dkt. No. 1 at 5. Plaintiffs alleged that they endured “unreasonable seizure
13 of Plaintiffs’ persons, excessive force, false arrest during a search warrant execution,
14 unlawful gunpoint detention, seizure of a minor, the lack of probable cause to issue a search
15 warrant and/or execute a search, police brutality, police misconduct, battery, violation of the
16 Bane Act, violation of California Civil Code Section 43, and negligence.” *Id.* at 6.
17 Plaintiffs asserted five causes of action against all defendants, including claims under 42
18 U.S.C. § 1983 for excessive force and denial of medical care, violation of the Bane Act,
19 California Civil Code § 52.1, and two common law claims for battery and negligence. *Id.* at
20 13-20. The complaint states that defendants Batts and Gascón are sued in both their
21 individual and official capacities. *Id.* at 8-9. Plaintiffs did not name any other individual
22 defendants.

23 On May 29, 2012, the defendants who had been served—the City of Oakland, City
24 of San Francisco, and George Gascón —removed the case to this Court based on federal
25 question jurisdiction. *Id.* at 1-4; 28 U.S.C. § 1331; 42 U.S.C. § 1983. On August 29, 2012,
26 the Court held a case management conference and issued a scheduling order, setting a
27 deadline of October 31, 2012 to amend the pleadings and add parties, and a deadline to
28 complete all non-expert discovery by June 7, 2013. Dkt. No. 24. Trial was scheduled for

1 September 16, 2013. *Id.* The Court noted that plaintiffs had not yet served defendant Batts,
2 and ordered them to do so by September 19, 2012. *Id.*

3 On May 31, 2013, the parties filed a stipulation pursuant to Federal Rule of Civil
4 Procedure, Rule 41(a)(1) dismissing the action as to the City of Oakland. Dkt. No. 30.
5 While the stipulation only refers to defendant City of Oakland, at the hearing on the motion
6 for summary judgment plaintiffs' counsel represented that plaintiffs have not served Batts,
7 that they are no longer pursuing this action against him, and that the intent of the stipulation
8 was to dismiss the action as to him as well.

9 On June 27, 2013, the remaining defendants, the City of San Francisco and George
10 Gascón, moved for summary judgment. Dkt. No. 31. Plaintiffs filed an opposition to
11 defendants' motion, including a request under Federal Rule of Civil Procedure 56(d) that
12 the Court deny defendants' motion for summary judgment or allow additional time to take
13 discovery. Dkt. No. 33. As ordered by the Court, plaintiffs provided a supplemental
14 declaration to support their Rule 56(d) request, and defendants filed a response to that
15 declaration. Dkt. Nos. 36-39. On August 6, 2013, the night before the hearing on
16 defendants' motion for summary judgment, plaintiffs filed a motion for leave to file an
17 amended complaint "to include the names of all of the police officers directly involved in
18 occupying Plaintiffs' residence." Dkt. No. 40.

19 This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1367. The parties consented
20 to the jurisdiction of a magistrate judge under 29 U.S.C. § 636(c). Dkt. Nos. 4, 13, 15.

21 **II. LEGAL STANDARD**

22 Summary judgment may be granted only when, drawing all inferences and resolving
23 all doubts in favor of the nonmoving party, there are no genuine issues of material fact and
24 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex*
25 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under governing
26 substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*,
27 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine if "the evidence is
28 such that a reasonable jury could return a verdict for the nonmoving party." *Id.* Bald

1 assertions that genuine issues of material fact exist are insufficient. *Galen v. Cnty. of Los*
2 *Angeles*, 477 F.3d 652, 658 (9th Cir. 2007).

3 The moving party bears the burden of identifying those portions of the pleadings,
4 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact.
5 *Celotex*, 477 U.S. at 323. Once the moving party meets its initial burden, the nonmoving
6 party must go beyond the pleadings and, by its own affidavits or discovery, set forth
7 specific facts showing that a genuine issue of fact exists for trial. Fed. R. Civ. P. 56(c);
8 *Ruffin v. Cnty. of Los Angeles*, 607 F.2d 1276, 1280 (9th Cir. 1979). All reasonable
9 inferences, however, must be drawn in the light most favorable to the nonmoving party.
10 *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004).

11 III. DISCUSSION

12 A. Plaintiffs' Rule 56(d) Request

13 As a preliminary matter, the Court addresses plaintiffs' argument that they cannot
14 present facts essential to justify their opposition to defendants' motion for summary
15 judgment. Dkt. No. 33. Plaintiffs request that the Court deny the summary judgment
16 motion or allow additional time to take discovery based on Federal Rule of Civil Procedure
17 56(d) (providing that the Court may issue any appropriate order "[i]f a nonmovant shows by
18 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify
19 its opposition.").

20 A party seeking relief under Rule 56(d) must show "(1) that they have set forth in
21 affidavit form the specific facts that they hope to elicit from further discovery, (2) that the
22 facts sought exist, and (3) that these sought-after facts are 'essential' to resist the summary
23 judgment motion." *State of Cal., on Behalf of California Dep't of Toxic Substances Control*
24 *v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998).¹ The burden is on the party seeking
25 additional discovery to proffer sufficient facts to show that the evidence sought exists, and
26

27 ¹ Rule 56(d) was formerly Rule 56(f). Precedent under Rule 56(f) applies to Rule 56(d). *Brocade*
28 *Comm'ns Sys., Inc. v. A10 Networks, Inc.*, 843 F. Supp. 2d 1018, 1027 n.3 (N.D. Cal. 2012).

1 that it would prevent summary judgment. *Conkle v. Jeong*, 73 F.3d 909, 914 (9th Cir.
2 1995) (citation omitted); *see, e.g., Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090,
3 1100-01 (9th Cir. 2006) (holding that district court did not abuse its discretion by denying
4 request for a continuance under Rule 56(f) where plaintiff did not show that additional
5 discovery would have revealed specific facts precluding summary judgment). The court
6 may deny further discovery if the movant has failed diligently to pursue discovery in the
7 past. *Conkle*, 73 F.3d at 914.

8 Here, plaintiffs' opposition and supporting declaration by counsel generally assert
9 that the City of San Francisco has failed to produce documents, including audiotapes,
10 videotapes, and photographs of the incident, and has also refused to make available for
11 deposition any of the SFPD officers directly involved in the incident. Dkt. Nos. 33 at 7-8;
12 33-1. Because these assertions are insufficient to establish the existence of facts "essential"
13 to plaintiffs' opposition, or that they were diligent in pursuing discovery, the Court
14 permitted plaintiffs to file a supplemental declaration in support of their Rule 56(d) request.
15 Dkt. No. 36.

16 The supplemental declaration submitted by plaintiffs' counsel makes the conclusory
17 assertion that plaintiffs "timely noticed the depositions," without specifying when those
18 requests were made. Dkt. No. 37 at 2. The declaration also states that the City of San
19 Francisco has failed to produce the following categories of documents: (1) photographs and
20 video recordings referred to in incident reports; (2) a "Certified Incident Recall Dispatch"
21 and "Suspect and Witness Audio Statements" referred to as exhibits "To Be Inserted" on
22 two placeholder pages of the City of Oakland's initial disclosures; and (3) municipal
23 policies. Dkt. Nos. 37; 37-1. The declaration further states that this discovery is essential
24 because "it is clear" that it "would contain admissible evidence with respect to defendant's
25 municipal polices, the details of the deponents' involvement in the incident, and any
26 irregularities and violations committed as well." Dkt. No. 37 at 5. The declaration relies on
27 a document titled "incident report" which refers to "digital photos and a digital video
28 recording" of damage caused by the SFPD in executing the warrant. Dkt. No. at 37-1 at 3.

1 With respect to these materials, plaintiffs’ counsel submits that “not having seen them I
2 have no idea what they might in fact depict, or what else may be shown in either.” Dkt. No.
3 37 at 3. A document titled “incident report statement” also refers to photographs of the
4 damage and “post operations video.” Dkt. No. at 37-1 at 6. In addition, plaintiffs’ counsel
5 speculates that, because the City of Oakland produced various municipal policies, he “can
6 only surmise” that the City of San Francisco must have “similar” documents. Dkt. No. 37
7 at 4-5.

8 In response to plaintiffs’ assertions, defendants filed a declaration by their counsel
9 which states that plaintiffs made no effort to notice depositions until three weeks before the
10 close of discovery, June 7, 2013. Dkt. No. 39. The declaration further explains that, while
11 plaintiffs requested photographs and video recordings in late April 2013, it wasn’t until
12 May 2013 that defendants realized plaintiffs wished to receive the photographs of the
13 physical damage. *Id.* According to the declaration, and as confirmed by defendants’
14 counsel at the summary judgment hearing, the SFPD does not have any such photographs or
15 videos in their possession, custody, or control. *Id.*

16 The Court finds that, on this record, plaintiffs have failed to meet their burden in
17 justifying relief under Rule 56(d). First, plaintiffs have provided no reason why they waited
18 more than a year since the filing of the case and until three weeks before the discovery cut-
19 off to notice the depositions of the officers involved in the incident, especially where their
20 names appeared on the incident reports produced by the City of Oakland as part of its initial
21 disclosures in this case. Dkt. Nos. 37 ¶¶ 7-8; 37-1 at 1-6. Likewise, if plaintiffs believed
22 that defendants were withholding relevant municipal policies and other documents related
23 to the incident, they have not explained why they did not move to compel or seek to extend
24 the discovery deadline before it expired and before defendants moved for summary
25 judgment. Plaintiffs thus have not shown that they have been diligent in pursuing the
26 discovery they now claim is essential to their case. A party’s failure to conduct diligent
27 discovery is not cured by belated attempts to secure discovery after the cutoff date, and
28 could be a basis to deny relief under Rule 56(d). *See, e.g., Cornwell v. Electra Cent. Credit*

1 *Union*, 439 F.3d 1018, 1026-27 (9th Cir. 2006) (district court did not abuse its discretion in
2 denying request to reopen discovery to obtain highly probative testimony where counsel
3 made a strategic decision not to preserve that testimony in the pretrial record); *Bank of Am.,*
4 *NT & SA v. PENGWIN*, 175 F.3d 1109, 1117-18 (9th Cir. 1999) (party’s failure to timely
5 move to compel discovery, despite knowing about other party’s refusal to produce
6 documents, was grounds to not allow additional discovery under Rule 56(f)); *Hauser v.*
7 *Farrell*, 14 F.3d 1338, 1340-41 (9th Cir. 1994) (denial of Rule 56(f) motion proper in light
8 of failure to depose witness during the twenty-seven months between the start of litigation
9 and the close of discovery).

10 Second, plaintiffs have failed to set forth the facts they hope to elicit. While plaintiffs
11 generally assert that deposing officers and obtaining photographs and video recordings
12 related to the incident would provide further details about the incident, no showing has been
13 made that any such details are essential in opposing the motion for summary judgment. To
14 the contrary, because the motion relies on plaintiffs’ version of the events, it is unclear why
15 plaintiffs would need any documents or testimony by the officers to oppose the motion. *See*
16 *Dkt. No. 34 at 4; P.A. on behalf of ELA v. United States*, No. 10-cv-2811 PSG, 2013 WL
17 3864452, at *6 (N.D. Cal. July 24, 2013) (denying relief under Rule 56(d), and observing
18 that “Plaintiffs give no clue as to what admissions they hope to gain from the agents to
19 counter Defendants’ motion, which is not obvious to the court considering Defendants do
20 not rely on agent statements to dispute Plaintiffs’ testimony of their encounters with the
21 agents.”). With respect to the remaining documents sought by plaintiffs, there is no
22 showing that the evidence actually exists or that it would prevent summary judgment. As
23 plaintiffs concede, the incident reports indicate that the photographs and videos were taken
24 of the property damage related to the incident. Even if such materials were available, which
25 does not appear to be the case based on the uncontroverted representations of defendants’
26 counsel, plaintiffs have not shown how they would be essential to opposing the pending
27 motion for summary judgment. Plaintiffs’ speculation about the existence of municipal
28 policies is also insufficient to support their Rule 56(d) request, especially where there is no

1 showing made of the specific facts that plaintiffs hope to elicit to defeat summary judgment.
2 “Denial of a Rule 56(f) application is proper where it is clear that the evidence sought is
3 almost certainly nonexistent or is the object of pure speculation.” *State of Cal., on Behalf of*
4 *California Dep’t of Toxic Substances Control v. Campbell*, 138 F.3d 772, 779-80 (9th Cir.
5 1998) (quoting *Terrell v. Brewer*, 935 F.2d 1015, 1018 (9th Cir. 1991)).

6 In light of the lack of specificity and failure to demonstrate diligence, plaintiffs’
7 request under Rule 56(d) appears to be a classic example of a fishing expedition that would
8 lead to an unjustified delay in the disposition of this case. *See Keebler Co. v. Murray*
9 *Bakery Products*, 866 F.2d 1386, 1389 (Fed. Cir. 1989) (“If all one had to do to obtain a
10 grant of a Rule 56(f) motion were to allege possession by movant of ‘certain information’
11 and ‘other evidence’, every summary judgment decision would have to be delayed while the
12 non-movant goes fishing in the movant’s files. . . . ‘Summary judgment need not be denied
13 merely to satisfy a litigant’s speculative hope of finding some evidence [through discovery]
14 that might tend to support a complaint.’” (citations omitted)). Accordingly, plaintiffs’ Rule
15 56(d) request is denied, and the Court will proceed on the merits of the summary judgment
16 motion.

17 **B. Plaintiffs’ Claims under 42 U.S.C. § 1983 against the City**

18 The first issue raised in defendants’ motion for summary judgment is whether
19 plaintiffs have demonstrated that a genuine issue of fact exists for trial to hold defendants
20 liable under 42 U.S.C. § 1983. Plaintiffs allege two causes of action under § 1983, for
21 excessive force and denial of medical care, seeking to hold the City liable for the actions of
22 officers who were not named as defendants in this case. Dkt. No. 1 at 13-17. Defendants
23 argue that summary judgment should be granted on these claims in favor of the City
24 because plaintiffs have failed to develop any evidence during discovery that would
25 substantiate a *Monell* claim.

26 It is well established that “a municipality cannot be held liable *solely* because it
27 employs a tortfeasor-or, in other words, a municipality cannot be held liable under § 1983
28 on a *respondeat superior* theory.” *Monell v. Dep’t of Soc. Servs. of City of New York*, 436

1 U.S. 658, 691 (1978). For the City to be liable under § 1983, a municipal “policy or
2 custom” must have caused the constitutional injury. *Id.* at 694. “A policy can be one of
3 action or inaction.” *Waggy v. Spokane Cnty. Washington*, 594 F.3d 707, 713 (9th Cir.
4 2010) (citations omitted). “[I]t is not enough for a § 1983 plaintiff merely to identify
5 conduct properly attributable to the municipality,” however; “[t]he plaintiff must also
6 demonstrate that, through its *deliberate* conduct, the municipality was the ‘moving force’
7 behind the injury alleged.” *Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v. Brown*, 520 U.S.
8 397, 404 (1997). Municipal liability under § 1983 may be established in any one of three
9 ways: (1) “the plaintiff may prove that a city employee committed the alleged constitutional
10 violation pursuant to a formal governmental policy or a longstanding practice or custom
11 which constitutes the standard operating procedure of the local governmental entity”; (2)
12 “the plaintiff may establish that the individual who committed the constitutional tort was an
13 official with final policy-making authority and that the challenged action itself thus
14 constituted an act of official governmental policy”; or (3) “the plaintiff may prove that an
15 official with final policy-making authority ratified a subordinate’s unconstitutional decision
16 or action and the basis for it.” *Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992)
17 (citations and internal quotation marks omitted).

18 In their complaint, plaintiffs allege that the City of San Francisco has “condoned an
19 ongoing pattern of brutality” committed by its officers, and that it has “maintained or
20 permitted one or more of” of a list of “official policies, customs, or practices,” including an
21 alleged failure to provide adequate training and supervision, and failure to discipline,
22 among others. Dkt. No. 1 at 12. Despite having had the opportunity to conduct discovery,
23 plaintiffs have provided no factual support for these conclusory allegations such as evidence
24 pointing to the existence of an unconstitutional policy or custom beyond a recitation of the
25 facts underlying the single incident alleged in the complaint. Individual incidents of
26 unconstitutional action by a non-policymaking employee, however, are insufficient to
27 establish *Monell* liability. *McDade v. W.*, 223 F.3d 1135, 1141 (9th Cir. 2000). Plaintiffs
28 have failed to raise a genuine issue of material fact that the officers’ conduct was pursuant

1 to an unconstitutional “policy or custom” as required to hold the City liable under § 1983.
2 *See, e.g., Waggy*, 594 F.3d at 713-14 (affirming summary judgment for county where
3 plaintiff failed to provide any evidence of county policy, practice or custom, or of
4 inadequate training and supervision that caused the alleged constitutional injury); *McSherry*
5 *v. City of Long Beach*, 584 F.3d 1129, 1147 (9th Cir. 2009) (affirming summary judgment
6 for city in § 1983 action where plaintiff failed to tender facts of policy or custom other than
7 officers’ alleged personal misdeeds); *Justin v. City & Cnty. of San Francisco*, No. 05-cv-
8 4812 MEJ, 2008 WL 1990819, at *6-7 (N.D. Cal. May 5, 2008) (granting summary
9 judgment on § 1983 claim in favor of city where the only support for plaintiffs’ *Monell*
10 claim were conclusory allegations and facts showing an isolated incident).

11 Accordingly, the City of San Francisco is entitled to summary judgment on plaintiffs’
12 first and second causes of action under 42 U.S.C. § 1983.

13 **C. Plaintiffs’ Claims under 42 U.S.C. § 1983 against Chief of Police Gascón**

14 The complaint names the Chief of Police of the SFPD, George Gascón, as a defendant
15 in his individual and official capacity. Dkt. No. 1 ¶¶ 14-17. Gascón moves for summary
16 judgment on all causes of action brought against him in his individual capacity, on the
17 grounds that plaintiffs have not identified any personal involvement in the incident or any
18 other basis of liability. The Court agrees that Gascón is entitled to judgment as a matter of
19 law on plaintiffs’ § 1983 claims in both his official and individual capacity.

20 An “official capacity” suit against a governmental officer is equivalent to a suit
21 against the governmental entity itself. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th
22 Cir. 1991) (citation omitted). Thus, such an officer could only be liable on the basis of an
23 official policy or custom, or a one-time decision by a governmentally authorized
24 decisionmaker. *Id.* Because the Court has found that there is no genuine issue of material
25 fact that the SFPD officers’ conduct was pursuant to an unconstitutional policy or custom,
26 Gascón, like the City, may not be held liable under § 1983. Moreover, “if individuals are
27 being sued in their official capacity as municipal officials *and* the municipal entity itself is
28 also being sued, then the claims against the individuals are duplicative and should be

1 dismissed.” *Vance v. Cnty. of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996); *see*
2 *also Haines v. Brand*, No. 11-cv-1335 EMC, 2011 WL 6014459, at *3 (N.D. Cal. Dec. 2,
3 2011) (dismissing with prejudice § 1983 claims against city employees on the ground that
4 an “official capacity” suit would “only duplicate Plaintiff’s claim against the City, as they
5 both depend on the same theory of liability.”). Accordingly, summary judgment is
6 appropriate on the § 1983 claims against Gascón in his official capacity.

7 Additionally, as the alleged supervisor of the officers involved in the underlying
8 incident, Gascón may be held liable in his individual capacity under § 1983 if he “was
9 personally involved in the constitutional deprivation or a sufficient causal connection exists
10 between the supervisor’s unlawful conduct and the constitutional violation.” *Edgerly v.*
11 *City & Cnty. of San Francisco*, 599 F.3d 946, 961 (9th Cir. 2010) (quoting *Lolli v. County*
12 *of Orange*, 351 F.3d 410, 418 (9th Cir. 2003)). Supervisors “can be held liable for: (1) their
13 own culpable action or inaction in the training, supervision, or control of subordinates; (2)
14 their acquiescence in the constitutional deprivation of which a complaint is made; or (3) for
15 conduct that showed a reckless or callous indifference to the rights of others.” *Id.* (quoting
16 *Cunningham v. Gates*, 229 F.3d 1271, 1292 (9th Cir. 2000)); *see also Larez*, 946 F.2d at
17 645-46 (a supervisor’s individual liability “hinges upon his participation in the deprivation
18 of constitutional rights,” which “may involve the setting in motion of acts which cause
19 others to inflict constitutional injury.”).

20 At the hearing on the motion for summary judgment, plaintiffs conceded that Gascón
21 had no personal involvement in the alleged unconstitutional conduct of the officers, and that
22 he was sued based on his alleged implementation of an unconstitutional custom or policy.
23 Plaintiffs’ complaint alleges that Gascón was responsible for the supervision, training,
24 and/or discipline of SFPD officers, including the implementation and enforcement of that
25 department’s customs, policies, and operational plans or procedures governing the official
26 use of force by SFPD employees, and that he failed to take steps to prevent the officers’
27 actions despite his knowledge of unspecified prior incidents of excessive force. *Id.* ¶¶ 15-
28 16, 39, 42, 44. Plaintiffs, however, have failed to set forth any *facts* linking Gascón to the

1 constitutional violations at issue in this case. At the hearing, plaintiffs argued that their
2 failure to provide facts to support these allegations was due to defendants' refusal to
3 produce policy documents. As the Court explained in denying the Rule 56(d) request,
4 plaintiffs have not established that they were diligent in pursuing this discovery, that the
5 existence of such documents is more than a speculation, what facts they hope the documents
6 will reveal, or how they would be essential in showing Gascón's participation in the alleged
7 unconstitutional conduct. Because plaintiffs have failed to establish a genuine issue of
8 material fact as to Gascón's participation in the alleged violations, he is entitled to a
9 judgment as a matter of law on the § 1983 claims against him in his individual capacity.

10 **D. Plaintiffs' State Law Claims**

11 Because of the Court's ruling that defendants are entitled to judgment as a matter of
12 law on the two federal law claims, it is appropriate for the Court to consider whether it
13 should decline to exercise supplemental jurisdiction over plaintiffs' state law claims under
14 28 U.S.C. § 1367(c) before turning to the merits of those claims. *See Carnegie-Mellon*
15 *Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *Acri v. Varian Associates, Inc.*, 114 F.3d 999,
16 1001 (9th Cir. 1997). Accordingly, the Court takes defendants' summary judgment motion
17 on the state law claims under submission pending further briefing by the parties of the
18 jurisdictional issue as ordered by the Court.

19 **IV. CONCLUSION**

20 Accordingly, it is hereby ordered as follows:

- 21 1. This action is dismissed as to defendant Anthony Batts in his individual and
22 official capacity.
- 23 2. The Court GRANTS defendants' motion for summary judgment on plaintiffs'
24 § 1983 claims against the City of San Francisco and George Gascón in his official and
25 individual capacity.
- 26 3. Defendants' summary judgment motion on plaintiffs' state law claims is taken
27 under submission.
- 28 4. By August 14, 2013, plaintiffs may submit a brief addressing the issue of

1 whether the Court should decline to exercise supplemental jurisdiction over plaintiffs' state-
2 law claims under 28 U.S.C. § 1367(c) and remand the case to state court. Defendants may
3 submit a brief on this issue by August 19, 2013. No further briefs on this issue may be filed
4 without leave of Court.

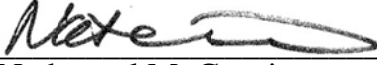
5 5. By August 19, 2013, defendants may file an opposition to plaintiffs' motion
6 for leave to file an amended complaint, Dkt. No. 40.

7 6. The Court continues the hearing on the summary judgment motion to August
8 21, 2013 at 1:00 p.m. in Courtroom A, 15th Floor, U.S. District Court, 450 Golden Gate
9 Avenue, San Francisco, California.

10 7. The August 14, 2013 deadline for the parties to file a joint pretrial statement,
11 *see* Dkt. No. 24, is vacated. At the August 21 hearing, the Court will also address whether
12 there is a need for any further modifications of the case schedule.

13 IT IS SO ORDERED.

14 Date: August 12, 2013



Nathanael M. Cousins
United States Magistrate Judge