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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS A. SPITZER, et al.,
Plaintiffs,
v.
TRISHA A. ALJOE, et al.,
Defendants.

Case No. [13-cv-05442-MEJ](#)
ORDER RE: MOTION TO DISMISS
Re: Dkt. No. 23

INTRODUCTION

Plaintiffs Thomas “Leroy” Spitzer and Craig J. Spitzer (“Plaintiffs”) filed this action on November 22, 2013, seeking damages stemming from the towing of Leroy’s truck and an abatement order for Plaintiffs’ property in Pleasanton, California. Pending before the Court is Defendants City of Pleasanton, Trisha A. Aljoe, Jonathan P. Lowell, George Thomas, and Walter Wickboldt’s (“Defendants”) Motion to Dismiss portions of Plaintiffs’ First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Dkt. No. 23. The Court finds this Motion suitable for disposition without oral argument and VACATES the April 17, 2014 hearing. Civ. L.R. 7-1(b). Having considered the parties’ papers, relevant legal authority, and the record in this case, the Court GRANTS IN PART and DENIES IN PART Defendants’ Motion for the reasons set forth below.

BACKGROUND

The following factual background is taken from Plaintiffs’ First Amended Complaint (“FAC”), filed February 13, 2014. Dkt. No. 19. Leroy and Craig Spitzer are co-owners of a single-family residence located at 4719 Orangewood Court in the City of Pleasanton (the “City”), California (the “Property”). FAC ¶ 5. Plaintiffs allege that Defendants Aljoe, Lowell, Thomas, and Wickboldt were all City employees at the time of the incident: the City retained Aljoe as Special Counsel to assist in code enforcement and building matters, provide legal advice, and litigate abatement actions; Lowell was the City Attorney; Thomas was Chief Building and Safety Official; and Wickboldt was a Senior Code Enforcement Officer. *Id.* ¶¶ 9-12. Plaintiffs allege

1 that Defendant McGrew was the court-appointed receiver of Plaintiffs’ real and personal property
2 at issue in this case. *Id.* ¶ 13.

3 **A. The Property**

4 On October 21, 2011, Aljoe obtained and executed an inspection warrant to enter the
5 Property. *Id.* ¶ 21. Wickboldt and Thomas were also among those that completed the inspection.
6 *Id.* Based on Aljoe’s advice, Thomas issued a Notice and Order to Repair and Abate the Property
7 on December 1, 2011. *Id.* ¶ 32. The Order provided that Plaintiffs must “Vacate Immediately”
8 and “Repair or Demolish and Abate.” *Id.* The Order included notice that “occupying or entering
9 the building, or any portion thereof **will** result in the arrest of the occupants for a misdemeanor
10 violation of the Pleasanton Municipal Code and the State Building Standards Code.” *Id.*
11 (emphasis in original). On that date, the first of multiple red tag notices was posted on the house,
12 “stating in large bold capital letters ‘**DO NOT ENTER OR OCCUPY.**’” *Id.* (emphasis in
13 original).

14 Upon receiving the Notice and Order to Repair and Abate, Leroy vacated his home, but left
15 his personal property. *Id.* ¶ 34. He subsequently conferred with Thomas about entering the home
16 to retrieve his personal property and making repairs. *Id.* ¶ 42. Although he told Leroy that “if you
17 need more time, just come and ask,” Thomas later denied Plaintiffs more time to retrieve the
18 personal property. *Id.* Despite multiple red tags on the house and written warnings that entry
19 upon the property was a criminal offense, Plaintiffs made several attempts to enter the home to
20 correct the cited violations. *Id.* ¶ 44.

21 Plaintiffs allege that Thomas failed to call for a hearing required by the Pleasanton
22 Municipal Code. *Id.* ¶ 35. Instead, Aljoe sent Plaintiffs a “Final Notice” and “Demand to Abate”
23 on February 3, 2012, stating that legal action would be commenced upon failure to comply with
24 the noticed demands by February 15, 2012. *Id.* ¶ 36.

25 On August 3, 2012, the City filed an Ex-Parte Petition to Appoint a Receiver on behalf of
26 the City. *Id.* ¶¶ 37, 58. Aljoe was listed as Special Counsel on the title page under City Attorney
27 Lowell’s name, and she signed the notice under Lowell’s name. *Id.* ¶ 37. The Notice provided
28 “the posting (red-tag) of a notice prohibiting entry and advising it is a misdemeanor to enter or

1 occupy the building.” *Id.* ¶ 51.

2 In the meantime, Leroy and his friends “worked continuously and vigorously” to remove
3 Leroy’s valuable items from the Property. *Id.* ¶ 49. On August 9, 2012, while Leroy and his
4 friends were removing items from the Property, Wickboldt appeared and stated, “We have
5 discussed this and decided to post this red tag.” *Id.* ¶ 52. Wickboldt posted the red tag pursuant to
6 Aljoe’s advice. *Id.* Leroy and his friends decided to continue working and risk arrest. *Id.* ¶ 53.

7 On August 14, 2012, Aljoe gave notice to Leroy of the hearing to appoint a receiver. *Id.* ¶
8 54. Plaintiffs allege that the use of the ex parte procedure was a tactical ploy by Defendants to
9 gain an unfair advantage over them. *Id.*

10 On August 23, 2012, a hearing on the City’s Petition to Appoint a Receiver was held. *Id.* ¶
11 58. Aljoe served the Petition in the courtroom that day, but the summons has never been served
12 on Plaintiffs. *Id.* Plaintiffs filed a sworn response to the City’s Petition, detailing the work they
13 had done and were doing to correct the cited violations. *Id.* ¶ 60. The court denied the City’s ex-
14 parte application, but issued an order to show cause why a receiver should not be appointed. *Id.* ¶
15 60. Plaintiffs allege that after the judge denied the application, Aljoe threatened to have them
16 arrested if they entered the Property. *Id.* ¶ 62.

17 On August 24, 2012, Wickboldt sent Plaintiffs a letter “Re: Notice of Scheduled
18 Inspection,” stating that “The city of Pleasanton has scheduled an inspection of your property to
19 evaluate current condition of the interior and exterior as it relates to compliance with the Notice
20 and Order issued December 1, 2011.” *Id.* ¶ 63. Wickboldt sent this letter pursuant to Aljoe’s
21 advice. *Id.* Leroy called Wickboldt and asked him to delay the inspection because the clean-up of
22 the interior was not completed. *Id.* ¶ 64. However, Wickboldt and two City police officers
23 showed up the next day and conducted the inspection. *Id.* ¶ 65. The officers told Leroy and his
24 friends that entering the house was a misdemeanor and anyone entering would be arrested. *Id.*

25 At the Order to Show Cause hearing¹, the City presented surprise evidence and a witness
26 that testified that Plaintiffs could not transport chemicals that had been stored at the Property. *Id.*

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28 ¹ The hearing date is not provided, although Plaintiffs do state that the court issued a tentative
ruling on September 10, 2012. *Id.* ¶ 75.

1 ¶¶ 76-77. The City asserted that mold contamination at the Property was a health and safety
2 hazard, and that there had been a “complete lack of meaningful abatement activities.” *Id.* ¶ 79.
3 Plaintiffs allege these statements were false and misleading because they had replaced the roof,
4 made entry into the house possible, and made ingress and egress through the side yards possible.
5 *Id.* ¶ 80.

6 Plaintiffs allege that both before and after the hearings, Leroy sent letters to Lowell, the
7 City Manager, and the Mayor of the City, complaining about Defendants Aljoe, Thomas, and
8 Wickboldt’s conduct, but he has not received a response. *Id.* ¶ 84.

9 On September 18, 2012, the California Superior Court appointed McGrew receiver of the
10 Property. *Id.* ¶ 101. McGrew took possession of the Property on September 25. *Id.* He allowed
11 Plaintiffs to work at the Property to remove Leroy’s personal possessions and do remediation
12 work. *Id.* ¶ 102. Plaintiffs worked through December 2012 to clean the Property, during which
13 time Plaintiffs allege McGrew admitted personal problems that prevented him from obtaining
14 financing to complete remediation work. *Id.* ¶ 105. However, after a break in Plaintiffs’ work
15 between December and February, McGrew barred Plaintiffs and their friends from working and
16 ceased all communication with them. *Id.* ¶ 106. Plaintiffs allege that Aljoe threatened to have
17 McGrew removed for allowing them to work on the Property. *Id.* ¶ 110.

18 Plaintiffs allege that McGrew failed to produce monthly reports required by the superior
19 court and failed to pay taxes on the property. *Id.* ¶ 107. On July 17, 2013, McGrew executed a
20 clean-up contract for an estimated \$120,000 without approval of the court.

21 **B. Plaintiffs’ Arrest**

22 On September 17, 2012, Leroy and Craig were arrested at the house by City police officers
23 for alleged manufacture of a controlled substance. *Id.* ¶ 88. After handcuffing Craig at the gate of
24 the backyard, an unidentified police officer entered the fenced backyard through the gate and
25 handcuffed Leroy. *Id.* ¶ 89. The officer entered without a warrant and without permission from
26 Plaintiffs. *Id.* After the first officer entered the backyard, several other officers also entered. *Id.*
27 Plaintiffs allege they were then imprisoned in the back of a police car under constructive arrest for
28 about four hours, where they remained handcuffed. *Id.* ¶ 90. While in the police car, Plaintiffs

1 observed several police officers holding their cell phones to their ears for long periods of time. *Id.*
2 ¶ 91. They also observed three police cars, several fire engines, ambulances, and civilian vehicles
3 arrive in response to calls from the police officers. *Id.* ¶ 92. They observed one or more
4 firefighters enter the backyard. *Id.*

5 Plaintiffs allege that the police officers did not state the reason for their arrest and
6 imprisonment until they were being taken to jail, at which time one officer told them that “you lost
7 your house you’re going to jail.” *Id.* ¶ 93. They did not learn that they had been charged with
8 manufacturing a controlled substance until after they were released and saw their jail records. *Id.*
9 Plaintiffs allege there was no probable cause for their arrest because there were no chemicals and
10 no manufacturing apparatus at the Property for the production of controlled substances. *Id.* ¶ 95.

11 Sometime after Plaintiffs were booked at the jail, the charges were dropped and they were
12 released on the same day they were arrested. *Id.* ¶ 94.

13 **C. Leroy’s Mazda Truck**

14 Plaintiffs allege that on an unspecified date, Leroy heard Aljoe state to Wickboldt, “I
15 thought we got rid of those vehicles,” during a meeting at the Property. *Id.* ¶ 21. Plaintiffs state
16 that “those vehicles” were two antique vehicles parked in the driveway. *Id.* Plaintiffs further
17 allege that Leroy heard Wickboldt explain to Aljoe that the abatement hearing officer decided in
18 favor of Leroy and against the City. *Id.*

19 On November 11, 2011, an unnamed California Highway Patrol officer ordered Leroy’s
20 Red Mazda pick-up truck towed while it was parked in front of the Property. *Id.* ¶ 22. Although
21 Leroy went to the City of Pleasanton Police Department to pay the required fee and pick up the
22 truck, he was unable to obtain a release because Police Department employees said the truck had
23 been abated. *Id.* ¶¶ 23-26. Although the department told him “we sent you a letter,” Leroy never
24 received notice that his truck was subject to an order of abatement. *Id.* ¶¶ 26-27. On December
25 15, 2011, the storage company that had towed and stored the truck sold it. *Id.* ¶ 28. Plaintiffs state
26 that Leroy’s truck had not been abandoned, and that the truck was abated pursuant to Aljoe’s
27 advice. *Id.* ¶ 30.

28

1 **D. Procedural Background**

2 On November 22, 2013, the Spitzers filed their initial Complaint, alleging four causes of
3 action: (1) unlawful seizure of vehicle; (2) procedural due process violations; (3) unlawful seizure
4 of home and personal property; and (4) unlawful arrest and search. Compl. ¶¶ 16-90. On January
5 23, 2014, Defendants a Motion to Dismiss. Dkt. No. 11. Although Plaintiffs filed an Opposition
6 on February 6, 2014, Dkt. No. 13, they subsequently filed the FAC before Defendants filed a
7 reply. Dkt. No. 19. Plaintiffs allege five causes of action: (1) unlawful seizure and unlawful
8 conspiracy to seize and deprive Leroy of his vehicle; (2) denial of and conspiracy to deny
9 Plaintiffs their procedural due process rights related to the Property abatement; (3) unlawful
10 seizure and unlawful conspiracy to seize and deprive Plaintiffs of the Property, and unlawful
11 denial of an unlawful conspiracy to deny Plaintiffs meaningful access to the courts; (4) unlawful
12 seizure and conspiracy to unlawfully seize Plaintiffs without warrant or probable cause, unlawful
13 search of the Property, false arrest, false imprisonment, and trespass; and (5) deprivation,
14 destruction, and conversion, and conspiracy to deprive, destroy, and convert Leroy’s personal
15 property without due process of law. FAC ¶¶ 17-112. Defendants filed the present Motion to
16 Dismiss on March 6, 2014.

17 **LEGAL STANDARD**

18 Under Federal Rule of Civil Procedure (“Rule”) 12(b)(6), a party may file a motion to
19 dismiss based on the failure to state a claim upon which relief may be granted. A Rule 12(b)(6)
20 motion challenges the sufficiency of a complaint as failing to allege “enough facts to state a claim
21 to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A
22 facial plausibility standard is not a “probability requirement” but mandates “more than a sheer
23 possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
24 (internal quotations and citations omitted). For purposes of ruling on a Rule 12(b)(6) motion, the
25 court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the
26 light most favorable to the non-moving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519
27 F.3d 1025, 1031 (9th Cir. 2008). “[D]ismissal may be based on either a lack of a cognizable legal
28 theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Johnson v.*

1 *Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir. 2008) (internal quotations and citations
2 omitted); *see also Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a
3 court to dismiss a claim on the basis of a dispositive issue of law”).

4 Even under the liberal pleading standard of Rule 8(a)(2), under which a party is only
5 required to make “a short and plain statement of the claim showing that the pleader is entitled to
6 relief,” a “pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of
7 a cause of action will not do.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555.)
8 “[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to
9 dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004); *see also Starr v. Baca*, 652
10 F.3d 1202, 1216 (9th Cir. 2011) (“[A]llegations in a complaint or counterclaim may not simply
11 recite the elements of a cause of action, but must contain sufficient allegations of underlying facts
12 to give fair notice and to enable the opposing party to defend itself effectively”). The court must
13 be able to “draw the reasonable inference that the defendant is liable for the misconduct alleged.”
14 *Iqbal*, 556 U.S. at 663. “Determining whether a complaint states a plausible claim for relief . . .
15 [is] a context-specific task that requires the reviewing court to draw on its judicial experience and
16 common sense.” *Id.* at 663-64.

17 If a Rule 12(b)(6) motion is granted, the “court should grant leave to amend even if no
18 request to amend the pleading was made, unless it determines that the pleading could not possibly
19 be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en
20 banc) (internal quotation marks and citations omitted).

21 DISCUSSION

22 A. First Cause of Action

23 Plaintiffs’ First Cause of Action relates to the seizure of Leroy’s Mazda truck.² It contains

24
25 ² In their Motion, Defendants argue that Craig’s First Cause of Action fails because he did not
26 own the seized truck. Mot. at 8. Plaintiffs fail to address this argument in their Opposition.
27 However, Plaintiffs’ First Cause of Action is captioned: “Unlawful Seizure and Unlawful
28 Conspiracy to Seize and deprive Plaintiff Thomas Spitzer of his Vehicle” and refers throughout to
deprivation of Leroy’s, not Craig’s, rights. FAC ¶¶ 17-30. Thus, although there are references to
both Plaintiffs, it does not appear that Craig intended to bring this cause of action on behalf of
himself. Further, “Fourth Amendment rights are personal rights which . . . may not be vicariously
asserted.” *Alderman v. United States*, 394 U.S. 165, 174 (1969). Thus, the general rule is that

1 seven distinct allegations: (1) unlawful seizure under the Fourth Amendment; (2) unlawful seizure
2 under the Fourteenth Amendment; (3) unlawful seizure under Article 1, section 1 to the California
3 Constitution; (4) unlawful seizure under Article 1, section 7 to the California Constitution; (5)
4 unlawful seizure under Article 1, section 13 to the California Constitution; (6) conspiracy; and (7)
5 municipality liability under *Monell v. Dep't of Soc. Serv.*, 436 U.S. 658 (1978). FAC ¶ 30.

6 Allegations (1)-(6) are against Aljoe, Lowell, Thomas, Wickboldt, Pleasanton police officer Doe
7 1, and other Does 1-10. *Id.* Allegation (7) is brought against the City. *Id.*

8 1. Fourth Amendment Claim

9 Defendants argue that the Fourth Amendment claim fails as to Lowell, Thomas, and
10 Wickboldt due to their lack of integral participation. Mot. at 8. The impoundment of a vehicle is
11 a seizure under the Fourth Amendment, and therefore must be reasonable. *Miranda v. City of*
12 *Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005); *Soldal v. Cook Cnty.*, 506 U.S. 56, 61 (1992) (A
13 seizure results if “there is some meaningful interference with an individual's possessory interests
14 in that property.”). In their role as community caretakers, “police officers may impound vehicles
15 that ‘jeopardize public safety and the efficient movement of vehicular traffic.’” *City of Cornelius*,
16 429 F.3d at 864 (quoting *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976)). “Whether an
17 impoundment is warranted under this community caretaking doctrine depends on the location of
18 the vehicle and the police officers’ duty to prevent it from creating a hazard to other drivers or
19 being a target for vandalism or theft.” *Id.* (citations omitted). In assessing whether the seizure of
20 a vehicle is justified, courts “must examine whether this seizure is reasonable based on all of the
21 facts presented.” *Id.* (citing *Cooper v. California*, 386 U.S. 58, 59 (1967)).

22 Here, Plaintiffs allege that an unnamed officer with the City Police Department ordered
23 Leroy’s pick-up truck towed while it was parked in front of the Property. FAC ¶ 22. When Leroy
24 went to the pay for and pick up the truck, Plaintiffs allege that an employee told him he could not
25

26 only the person whose Fourth Amendment rights were violated can sue to vindicate those rights.
27 *Smith v. City of Fontana*, 818 F.2d 1411, 1417 (9th Cir. 1987); *Moreland v. Las Vegas Metro.*
28 *Police Dep't*, 159 F.3d 365, 369 (9th Cir. 1998). Therefore, as Plaintiffs have failed to allege that
Craig had any ownership rights to the Mazda truck, any claims brought by Craig related to seizure
of the truck would fail.

1 release it because it had been “abated.” *Id.* ¶¶ 23-26. They further allege that Aljoe, Lowell,
2 Thomas, Wickboldt, and the Doe Defendants “jointly acted, and agreed or had a meeting of the
3 minds at the Oct. 21, 2011 inspection to unlawfully seize and abate Leroy’s Mazda without notice,
4 process, or hearing.” *Id.* ¶ 30(d). Accepting these allegations as true and construing them in the
5 light most favorable to Plaintiffs, the Court finds that Plaintiffs have alleged enough facts to state a
6 Fourth Amendment claim that is plausible on its face.

7 Defendants argue that none of the seizure-related facts concern Lowell, Thomas, or
8 Wickboldt, nor do they show integral participation, and the Fourth Amendment claim must
9 therefore be dismissed as to them. They cite to *Blankenhorn v. City of Orange*, which provides:
10 “An officer’s liability under section 1983 is predicated on his integral participation in the alleged
11 violation.” 485 F.3d 463, 481, n.12 (9th Cir. 2007) (citing *Chuman v. Wright*, 76 F.3d 292, 294-
12 95 (9th Cir. 1996)). However, *Blankenhorn* does not limit liability to the officer that actually
13 seizes the vehicle; rather, it provides that “integral participation . . . require[s] some fundamental
14 involvement in the conduct that allegedly caused the violation.” *Id.* (quoting *Boyd v. Benton*
15 *Cnty.*, 374 F.3d 773, 780 (9th Cir. 2004). Thus, it is possible that Lowell, Thomas, and Wickboldt
16 could be liable if they participated in the alleged violations. *Taylor v. List*, 880 F.2d 1040, 1045
17 (9th Cir. 1989) (A supervisor is liable for constitutional violations of his subordinates if the
18 supervisor participated in or directed the violations, or knew of the violations and failed to act to
19 prevent them).

20 Plaintiffs allege that Aljoe, Lowell, Thomas, and Wickboldt had a “meeting of the minds,”
21 including at the October 21, 2011 inspection and at other times, to unlawfully seize and abate the
22 truck. FAC ¶ 30(d). The Court finds that, at this stage in the proceedings, Plaintiffs have
23 provided enough facts to state a claim to relief that is plausible on its face. Based on this analysis,
24 the Court finds that Plaintiffs have alleged enough facts to state a Fourth Amendment claim
25 against Lowell, Thomas, and Wickboldt based on the seizure of Leroy’s truck. Accordingly,
26 Defendants’ Motion to Dismiss Plaintiffs’ Fourth Amendment claim is DENIED.

27 2. Fourteenth Amendment Claim

28 Defendants argue that Plaintiffs’ Fourteenth Amendment allegation fails as a matter of law

1 because Leroy’s claim must be analyzed under a specific constitutional provision if another is
2 available. Mot. at 8. Thus, as Plaintiffs’ claim is properly analyzed under the Fourth Amendment,
3 they argue that Leroy does not have a separate claim for due process under the Fourteenth
4 Amendment. *Id.*

5 a. *Substantive Due Process*

6 The Supreme Court has been reluctant to view claims for constitutional wrongs as
7 sounding in substantive due process when the wrong complained of could more aptly be placed
8 within “the specific guarantees of the various provisions of the Bill of Rights.” *Albright v. Oliver*,
9 510 U.S. 266, 273 (1994). In *Albright*, the Court rejected a petitioner’s claim that his arrest
10 without probable cause violated his substantive due process rights. Holding instead that “it is the
11 Fourth Amendment . . . under which petitioner Albright’s claim must be judged,” the Court stated,
12 “where a particular Amendment provides an explicit textual source of constitutional protection
13 against a particular sort of government behavior, that Amendment, not the more generalized
14 notion of substantive due process, must be the guide for analyzing these claims.” *Id.* Likewise,
15 the Court in *Graham v. Connor*, 490 U.S. 386 (1989), refused to construe a petitioner’s excessive
16 force claim as a violation of his substantive due process rights when it could more appropriately
17 be framed as a violation of his rights under the Fourth Amendment. *Id.* at 395 (holding that
18 “because the Fourth Amendment provides an explicit textual source of constitutional protection
19 against this sort of physically intrusive governmental conduct, that Amendment, not the more
20 generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.”).

21 Here, as discussed above, it is clear that the unnamed Doe officer’s order for the truck to
22 be towed is a seizure under the Fourth Amendment. *City of Cornelius*, 429 F.3d at 862. Thus, any
23 claim related to the actual seizure may only be brought under the Fourth Amendment, and not as a
24 separate substantive due process claim. Accordingly, Defendants’ Motion is GRANTED
25 WITHOUT LEAVE TO AMEND as to Plaintiffs’ substantive due process claim under the
26 Fourteenth Amendment.

27 b. *Procedural Due Process*

28 However, Plaintiffs’ First Cause of Action also raises separate procedural due process

1 claims. The Due Process Clause of the Fourteenth Amendment prohibits states from depriving
2 “any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV,
3 § 1. This provision imposes “procedural limitations on a State’s power to take away protected
4 entitlements.” *Dist. Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 67 (2009).
5 This Clause provides individuals with the right to both substantive and procedural due process.
6 Procedural due process requires that the government’s deprivation of life, liberty, or property,
7 even if consistent with substantive due process, “be implemented in a fair manner.” *United States*
8 *v. Salerno*, 481 U.S. 739, 746 (1987) (analyzing the Due Process Clause of the Fifth Amendment)
9 (internal quotation marks and citation omitted).

10 In addition to the initial seizure, Plaintiffs allege that Leroy went to the Police Department
11 and was told that his truck could not be released “and to come back later to talk to defendant
12 police officer Doe 1 who was not then available.” FAC ¶ 24. Plaintiffs allege that Leroy returned
13 to the department and called for over a week, but was told that the officer was not available. *Id.* ¶
14 25. When Leroy did finally meet the officer, he told Leroy that he could not release the truck and
15 “waved the paper in his hand saying ‘we sent you a letter,’ as if it was the authority for his
16 statement, but he did not show the letter to Leroy.” *Id.* ¶ 26. Plaintiffs allege that Leroy never
17 received a notice or order stating that his truck was subject to abatement, as a result of which he
18 lost permanent possession of the truck. *Id.* ¶¶ 27-28. Plaintiffs further allege that Aljoe, Lowell,
19 Thomas, and Wickboldt had a “meeting of the minds” and acted to seize the truck as part of their
20 overall conspiracy to deprive them of their property. *Id.* ¶ 30(d).

21 Based on this analysis, the Court finds that Plaintiffs have alleged enough facts to state a
22 Fourteenth Amendment procedural due process claim against Lowell, Thomas, and Wickboldt that
23 is plausible on its face. Accordingly, Defendants’ Motion is DENIED as to Plaintiffs’ Fourteenth
24 Amendment procedural due process claim.

25 3. Unlawful Seizure under Article 1 of the California Constitution

26 Defendants argue that Plaintiffs’ Article 1 allegations fail because Article 1 to the
27 California Constitution is not a specified right; rather, it is a list of 31 separate sections, each with
28 their own particular rights. Mot. at 9. Defendants thus argue that Plaintiffs must specify the

1 provision under which they seek relief. *Id.* However, while Plaintiffs failed to specify a provision
2 in their initial Complaint, the FAC alleges that Defendants violated their rights under Article 1,
3 sections 1, 7, and 13.³ Accordingly, the Court DENIES Defendants’ Motion to Dismiss Plaintiffs’
4 California Constitution, Article 1 claims.⁴

5 4. Conspiracy

6 Defendants argue that Plaintiffs’ conspiracy claim fails because they do not provide facts
7 showing (1) an agreement/meeting of the minds or (2) sharing in a common objective. Mot. at 9-
8 10. To establish liability for a conspiracy, Plaintiffs must

9 demonstrate the existence of “‘an agreement or ‘meeting of the
10 minds’ to violate constitutional rights.’” *United Steelworkers of Am.*
11 *v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989) (en
12 banc) (quoting *Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir. 1983)).
13 The defendants must have, “‘by some concerted action, intend[ed] to
14 accomplish some unlawful objective for the purpose of harming
15 another which results in damage.’” *Gilbrook v. City of Westminster*,
16 177 F.3d 839, 856 (9th Cir. 1999) (quoting *Vieux v. East Bay Reg’l*
17 *Park Dist.*, 906 F.2d 1330, 1343 (9th Cir. 1990)). ... Whether
18 defendants were involved in an unlawful conspiracy is generally a
19 factual issue and should be resolved by the jury, “‘so long as there is
20 a possibility that the jury can ‘infer from the circumstances (that the
21 alleged conspirators) had a ‘meeting of the minds’ and thus reached
22 a[n] understanding’ to achieve the conspiracy’s objectives.”
23 *Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir. 1979), *reversed*
24 *in part on other grounds*, 446 U.S. 754, 100 S.Ct. 1987, 64 L.Ed.2d
25 670 (1980)) (quoting *Adickes v. Kress & Co.*, 398 U.S. 144, 158-59,
26 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)). “‘To be liable, each
27 participant in the conspiracy need not know the exact details of the
28 plan, but each participant must at least share the common objective
of the conspiracy.” *Phelps Dodge*, 865 F.2d at 1541.

20 *Mendocino Env’tl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1301-02 (9th Cir. 1999)

21 Here, Plaintiffs allege that Leroy’s truck was seized on November 7, 2011, in close
22 proximity of time to the October 21 inspection of Plaintiffs’ house by Aljoe, Thomas, Wickboldt,
23 and other unnamed defendants, pursuant to a warrant obtained and executed by Aljoe. FAC ¶¶ 21,
24 30(d). At a later meeting at the Property, Leroy alleges he overheard Aljoe state to Wickboldt “I

26 ³ As explained in the Conclusion below, Plaintiffs must still amend their California Constitution
27 claims to provide separate headings for each cause of action, and to separately state with some
28 degree of particularity the facts in which Defendants engaged to support each claim.

⁴ In their Motion, Defendants did not raise any other arguments regarding Plaintiffs’ California
Constitution claims under the First Cause of Action. Accordingly, this Order does not address any
potential defenses that Defendants might raise if Plaintiffs file a second amended complaint.

1 thought we got rid of those vehicles.” *Id.* ¶ 21. In response to Aljoe’s question, Leroy heard
2 Wickboldt explain to Aljoe that the abatement hearing on “those vehicles” was decided in Leroy’s
3 favor. *Id.* Plaintiffs further allege that, as of the October 21 inspection, Aljoe, Lowell, Thomas,
4 and Wickboldt had a meeting of the minds to unlawfully seize and abate Leroy’s truck without
5 notice, process, or a hearing. *Id.* ¶ 30(d).

6 At this stage in the proceedings, the Court finds that Plaintiffs have stated a claim that is
7 plausible on its face. Defendants’ agreement need not be overt, and may be inferred based on
8 circumstantial evidence such as Defendants’ actions. *Gilbrook*, 177 F.3d at 856. Thus, “a
9 showing that the alleged conspirators have committed acts that are unlikely to have been
10 undertaken without an agreement may allow a jury to infer the existence of a conspiracy.”
11 *Mendocino Env’tl. Ctr.*, 192 F.3d at 1301 (internal quotation and citation omitted). Accordingly,
12 the Court DENIES Defendants’ Motion to dismiss Plaintiffs’ conspiracy claim.

13 **B. Second Cause of Action**

14 Plaintiffs bring their Second Cause of Action against four named defendants: Aljoe,
15 Lowell, Thomas, and the City of Pleasanton; as well as Does 1-10. FAC ¶¶ 31-39. It alleges
16 seven distinct claims: (1) due process violation under the Fourth Amendment; (2) due process
17 violation under the Fourteenth Amendment; (3) due process violation under Article 1, section 1 to
18 the California Constitution; (4) due process violation under Article 1, section 7 to the California
19 Constitution; (5) due process violation under Article 1, section 13 to the California Constitution;
20 (6) conspiracy; and (7) *Monell* liability. *Id.* ¶ 39. Allegations (1)-(6) are against Aljoe, Lowell,
21 Thomas, and Does 1-10. *Id.* Allegation (7) is brought against the City of Pleasanton. *Id.*

22 1. Fourth Amendment Claim

23 Plaintiffs’ Second Cause of Action alleges that Defendants violated their due process rights
24 by failing to hold an administrative hearing related to the Notice and Order to Repair and Abate.
25 *Id.* ¶¶ 35, 39. Defendants argue that this claim must fail as to Plaintiffs’ Fourth Amendment claim
26 because the Fourteenth Amendment governs due process allegations. Mot. at 10. In reviewing the
27 FAC, the Court notes that Plaintiffs’ Second and Third Causes of Action are somewhat
28 duplicative. The Second Cause of Action alleges due process violations related to the Property

1 under the Fourth and Fourteenth Amendments, while the Third Cause of Action alleges claims for
2 unlawful seizure related to the Property under the Fourth and Fourteenth Amendments. As
3 discussed above, Plaintiffs may be able to establish separate Fourth Amendment seizure and
4 Fourteenth Amendment due process violations, but it is improper to allege both causes of action
5 twice under each constitutional provision. Accordingly, the Court GRANTS Defendants' Motion
6 as to Plaintiffs' Second Cause of Action for violation of their due process rights under the Fourth
7 Amendment WITHOUT LEAVE TO AMEND.

8 2. Fourteenth Amendment Claim

9 Defendants argue that Plaintiffs' Fourteenth Amendment Due Process claim fails as to
10 Aljoe and Lowell because they did not integrally participate in the purported violations. Mot. at
11 10. They further argue that Aljoe and Lowell cannot deprive Plaintiffs of a hearing over which
12 they have no control. *Id.* at 10-11. In the alternative, Defendants argue that even if Plaintiffs
13 could establish integral participation, Aljoe and Lowell possess absolute immunity against
14 Plaintiffs' Fourteenth Amendment allegations. *Id.* at 11.

15 In their FAC, Plaintiffs allege that Thomas issued the Notice and Order to Repair and
16 Abate on December 1, 2011, but he failed to call a hearing as required by Pleasanton Municipal
17 Code section 20.32.020.4.01B6. FAC ¶¶ 32, 35. Plaintiffs further allege that instead of calling the
18 required hearing, Aljoe sent Plaintiffs a final notice stating that legal action would be commenced
19 upon failure to comply. *Id.* ¶ 36. On August 3, 2012, the City filed a Petition to Appoint a
20 Receiver, for which Aljoe was listed as Special Counsel under the name of City Attorney Lowell.
21 *Id.* ¶ 37. Plaintiffs allege that no administrative hearing was held. *Id.* ¶ 38. Accepting these
22 factual allegations as true and construing them in the light most favorable to Plaintiffs, the Court
23 finds that Plaintiffs have stated enough facts to state a claim to relief that is plausible on its face.⁵

24 _____
25 ⁵ Even if Defendants failed to conduct a hearing at a specified time, the Court notes that the lack of
26 a hearing does not automatically violate an individual's due process rights. "Due process is
27 flexible and calls for such procedural protections as the particular situation demands." *Gilbert v.*
28 *Homar*, 520 U.S. 924, 931 (1997) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). The
Supreme Court has held that due process does not always require a pre-deprivation hearing and
"where a State must act quickly, or where it would be impractical to provide pre-deprivation
process, post-deprivation process satisfies the requirements of the Due Process Clause." *Id.* at
930. "An important government interest, accompanied by a substantial assurance that the

1 Assuming Plaintiffs are able to establish Aljoe and Lowell’s integral participation in these
2 allegations, Defendants argue that they possess absolute immunity as their actions fall within their
3 prosecution of the City’s administrative code enforcement action against Plaintiffs. Mot. at 11.
4 State prosecuting officials are entitled to absolute immunity from a 42 U.S.C. § 1983 lawsuit.
5 *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976). Such immunity is not limited to prosecutors in
6 a criminal setting as it turns upon the function of the person claiming immunity. *Butz v.*
7 *Economou*, 438 U.S. 478, 515 (1978) (“We also believe that agency officials performing certain
8 functions analogous to those of a prosecutor should be able to claim absolute immunity with
9 respect to such acts. The decision to initiate administrative proceedings against an individual or
10 corporation is very much like the prosecutor’s decision to initiate or move forward with a criminal
11 prosecution.”); *see also Forrester v. White*, 484 U.S. 219, 229 (1988) (“the nature of the function
12 performed, not the identity of the actor who performed it, that informed our immunity analysis.”).
13 “[T]he official seeking absolute immunity bears the burden of showing that such immunity is
14 justified for the function in question.” *Burns v. Reed*, 500 U.S. 478, 486 (1991).

15 Absolute prosecutorial “immunity does leave the genuinely wronged defendant without
16 civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty. But
17 the alternative of qualifying a prosecutor’s immunity would disserve the broader public interest.”
18 *Milstein v. Cooley*, 257 F.3d 1004, 1007-08 (9th Cir. 2001) (quoting *Imbler*, 424 U.S. at 427.
19 Moreover, prosecutorial misconduct is deterred “by the threat of criminal prosecution and
20 professional discipline, and by prosecutors’ accountability to either superiors or the electorate.”
21 *Id.* at 1008.

22 Here, it appears that Defendants Aljoe and Lowell are entitled to absolute immunity
23 because their purported conduct fell within their prosecution of the City’s administrative code
24 enforcement action against Plaintiffs. Plaintiffs seek to impose liability based upon their failure to
25 conduct an administrative proceeding, as well as the initiation and prosecution of Plaintiffs’ civil
26

27 deprivation is not baseless or unwarranted, may in limited cases demanding prompt action justify
28 postponing the opportunity to be heard until after the initial deprivation.” *Fed. Deposit Ins. Corp.*
v. Mallen, 486 U.S. 230, 240 (1988). Here, however, the Court is unable to make this
determination at this early stage in the proceedings.

1 enforcement proceeding. Thus, their conduct was “intimately associated with the judicial phase”
2 of the proceedings “and were functions to which the reasons for absolute immunity apply with full
3 force.” *Imbler*, 424 U.S. at 430.

4 Plaintiffs argue that Defendants are not entitled to immunity because there were no quasi-
5 judicial or judicial proceedings related to the issuance of the Notice and Order. Opp’n at 8.
6 However, “[a]bsolute immunity also protects those functions in which the prosecutor acts as an
7 ‘advocate for the State,’ even if they ‘involve actions preliminary to the initiation of a prosecution
8 and actions apart from the courtroom.’” *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 912 (9th Cir.
9 2012) (quoting *Burns*, 500 U.S. at 486). “These actions need not relate to a particular trial and
10 may even be administrative in nature, yet are connected to the trial process and ‘necessarily
11 require legal knowledge and the exercise of related discretion.’” *Id.* (quoting *Van de Kamp v.*
12 *Goldstein*, 555 U.S. 335, 344 (2009)). Thus, even if the Court were to find that Aljoe and Lowell
13 failed to call and hold a hearing, they are “absolutely immune from liability for the consequences
14 of their advocacy, however inept or malicious.” *Id.* at 913.

15 Based on this analysis, the Court GRANTS Defendants’ Motion as to Plaintiffs’ Second
16 Cause of Action against Aljoe and Lowell for violation of their due process rights under the
17 Fourteenth Amendment WITHOUT LEAVE TO AMEND.

18 3. Due Process under the California Constitution

19 Defendants argue that Plaintiffs’ California Constitution allegations in their Second Cause
20 of Action fail for the same reasons as their First Cause of Action. Mot. at 11. However, as
21 discussed above, while Plaintiffs failed to provide specific sections in their initial Complaint, the
22 FAC alleges that Defendants violated their rights under Article 1, sections 1, 7, and 13.
23 Regardless, Plaintiffs’ allegations as to Aljoe, Thomas, and Lowell fail under California
24 Government Code section 821.6, which provides that “[a] public employee is not liable for injury
25 caused by his instituting or prosecuting any judicial or administrative proceeding within the scope
26 of his employment, even if he acts maliciously and without probable cause.” Cal. Gov’t Code §
27 821.6. California courts interpret section 821.6 broadly: “Under California law, the immunity
28 statute is given an ‘expansive interpretation’ in order to best further the rationale of the immunity,

1 that is to allow the free exercise of the prosecutor’s discretion and protect public officers from
2 harassment in the performance of their duties.” *Ingram v. Flippo*, 74 Cal. App. 4th 1280, 1292
3 (1999) (citations omitted). Thus, for the same reasons as discussed above, Aljoe, Thomas, and
4 Lowell are immune from liability for the consequences of their actions, however inept or
5 malicious. Their purported conduct was wholly related to, and arose from, the City’s code
6 enforcement actions against Plaintiffs.

7 Based on this analysis, the Court GRANTS Defendants’ Motion as to Plaintiffs’ Second
8 Cause of Action against Aljoe, Thomas, and Lowell for violation of their due process rights under
9 the California Constitution WITHOUT LEAVE TO AMEND.

10 4. Conspiracy

11 Defendants argue that Plaintiffs’ conspiracy claim fails because they “only allege
12 conclusions.” Mot. at 11. However, at this stage in the proceedings, the Court finds that Plaintiffs
13 have stated a claim that is plausible on its face. Plaintiffs allege that Aljoe, Thomas, Wickboldt,
14 and Lowell had a meeting of the minds to deprive Plaintiffs of their Property without required
15 notice and due process. FAC ¶ 39. As discussed above, Defendants’ agreement need not be overt
16 and may be inferred based on circumstantial evidence. Accordingly, the Court DENIES
17 Defendants’ Motion as to Plaintiffs’ conspiracy claim.

18 **C. Third Cause of Action**

19 Plaintiffs bring their Third Cause of Action against five named defendants: Aljoe, Lowell,
20 Thomas, Wickboldt, and the City of Pleasanton; as well as Pleasanton police officers Does 1-3 and
21 other Does 1-10. FAC ¶¶ 40-85. It alleges eight distinct claims based upon Defendants’ code
22 enforcement actions related to the Property: (1) unlawful seizure under the First Amendment; (2)
23 unlawful seizure under the Fourth Amendment; (3) unlawful seizure under the Fourteenth
24 Amendment; (4) unlawful seizure under Article 1, section 1 to the California Constitution; (5)
25 unlawful seizure under Article 1, section 7 to the California Constitution; (6) unlawful seizure
26 under Article 1, section 13 to the California Constitution; (7) conspiracy; and (8) *Monell* liability.
27 *Id.* ¶ 80. Allegations (1)-(7) are against Aljoe, Lowell, Thomas, Wickboldt, Pleasanton police
28 officers Does 2-4 and other Does 1-10. *Id.* Allegation (8) is brought against the City. *Id.*

1 1. First Amendment

2 In their Third Cause of Action, Plaintiffs do not state which allegations relate to their First
3 Amendment claim, merely stating that “The Spitzers’ house and Leroy’s personal property
4 contained in it were unlawfully seized by denial to the Spitzers of entry necessary to accomplish
5 the Spitzer’s [sic] lawful objectives of vacating the house of Leroy’s personal property, to do the
6 work required to abate the violations, and to receive the help of their friends in doing so in
7 violation of the [First Amendment].” *Id.* ¶ 79(b). Defendants argue that Plaintiffs’ First
8 Amendment allegation fails because they have not pled First Amendment retaliation. Mot. at 12.

9 “Official reprisal for protected speech ‘offends the Constitution [because] it threatens to
10 inhibit exercise of the protected right[’;] . . . the First Amendment prohibits government officials
11 from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking
12 out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (first alteration in original) (citation omitted)
13 (quoting *Crawford–El v. Britton*, 523 U.S. 574, 588 n. 10 (1998)). “[T]o demonstrate a First
14 Amendment violation, a plaintiff must provide evidence showing that ‘by his actions [the
15 defendant] deterred or chilled [the plaintiff’s] political speech and such deterrence was a
16 substantial or motivating factor in [the defendant’s] conduct.’” *Lacey*, 693 F.3d at 916 (quoting
17 *Mendocino Env’tl. Ctr.*, 192 F.3d at 1300. A plaintiff “need not show his ‘speech was actually
18 inhibited or suppressed.’ . . . Rather, [courts] consider ‘whether an official’s acts would chill or
19 silence a person of ordinary firmness from future First Amendment activities.’” *Id.* (quoting
20 *Mendocino Env’tl. Ctr.*, 192 F.3d at 1300). A plaintiff “must allege facts ultimately enabling him
21 to ‘prove the elements of retaliatory animus as the cause of injury,’ with causation being
22 ‘understood to be but-for causation.’” *Id.* at 917 (quoting *Hartman*, 547 U.S. at 260).

23 Here, accepting Plaintiffs’ factual allegations as true and construing the pleadings in the
24 light most favorable to them, the Court finds that the FAC as a whole provides enough facts to
25 state a plausible First Amendment retaliation claim. However, Plaintiffs have simply listed a First
26 Amendment claim under their Third Cause of Action for unlawful seizure and unlawful
27 conspiracy, without any reference to retaliation or facts that are specific to such a claim. In
28 reviewing the FAC, it appears that Plaintiffs are attempting to allege that one or more Defendants’

1 primary intent was to silence Plaintiffs’ protected speech related to the Property. However,
2 Plaintiffs fail to specify which and whose actions are alleged to chill their protected speech, and
3 whether such actions were intended to punish them for their First Amendment activities and deter
4 them from future activities. *Lacey*, 693 F.3d at 917.

5 Based on this analysis, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ First
6 Amendment claim WITH LEAVE TO AMEND. If Plaintiffs intend to pursue a First Amendment
7 claim, they must set forth specific allegations showing that Defendants deterred or chilled
8 Plaintiffs’ political speech and such deterrence was a substantial or motivating factor in
9 Defendants’ conduct. *Id.* at 916. Plaintiffs “must allege facts ultimately enabling [them] to prove
10 the elements of retaliatory animus as the cause of injury, with causation being understood to be
11 but-for causation.” *Id.* at 917 (internal quotations and citations omitted).

12 Defendants also argue that Plaintiffs’ First Amendment allegations should be dismissed as
13 to Aljoe and Lowell due to absolute immunity. Mot. at 13. However, as it is not clear which
14 allegations are tied to Plaintiffs’ First Amendment claim, it is not clear whether Plaintiffs’
15 allegations are premised entirely upon Aljoe and Lowell’s actions while prosecuting the City’s
16 code enforcement suit against Plaintiffs. As such, the Court declines to make such a ruling at this
17 juncture. Plaintiffs should be mindful that any First Amendment claim against Aljoe and Lowell
18 must include factual allegations that fall outside the scope of any immunity to which they would
19 be entitled.

20 2. Fourth Amendment Claim

21 Defendants argue that Plaintiffs’ Fourth Amendment allegation fails against Lowell due to
22 a lack of integral participation. Mot. at 13. Defendants contend that the FAC does not allege he
23 personally prosecuted Plaintiffs’ civil action or was otherwise involved, and the reference to his
24 name on court papers is immaterial as that was solely a function of his office as City Attorney. *Id.*

25 As discussed above, liability under § 1983 is predicated on a defendant’s integral
26 participation in the alleged violation. *Blankenhorn*, 485 F. 3d at 481, n. 12 (citation omitted).
27 Here, accepting Plaintiffs’ factual allegations as true and construing the pleadings in the light most
28 favorable to them, the Court finds that Plaintiffs have stated enough facts to state a claim to relief

1 that is plausible on its face: Plaintiffs allege that Lowell acted to set in motion the series of acts
2 that resulted in the order barring Plaintiffs from the Property. FAC ¶¶ 39(d), 85(c).

3 However, Defendants also argue that Plaintiffs' Fourth Amendment allegations should be
4 dismissed as to Aljoe and Lowell due to absolute immunity. Mot. at 13. The Court agrees. As
5 discussed above, even if Plaintiffs are able to establish Aljoe and Lowell's integral participation,
6 they possess absolute immunity as to any actions that fall within their prosecution of the City's
7 administrative code enforcement action against Plaintiffs. Here, as Aljoe and Lowell's purported
8 conduct fell within their prosecution of the City's enforcement action against Plaintiffs, their
9 conduct was "intimately associated with the judicial phase" of the proceedings "and thus were
10 functions to which the reasons for absolute immunity apply with full force." *Imbler*, 424 U.S. at
11 430. Further, "[a]bsolute immunity also protects those functions in which the prosecutor acts as
12 an 'advocate for the State,' even if they 'involve actions preliminary to the initiation of a
13 prosecution and actions apart from the courtroom.'" *Lacey*, 693 F.3d at 912 (quoting *Burns*, 500
14 U.S. at 486).

15 Based on this analysis, the Court GRANTS Defendants' Motion as to Plaintiffs' Fourth
16 Amendment claim under their Third Cause of Action against Aljoe and Lowell WITHOUT
17 LEAVE TO AMEND.

18 3. Fourteenth Amendment Claim

19 As with their Second Cause of Action, Plaintiffs' Third Cause of Action alleges violations
20 of both the Fourth and Fourteenth Amendments. However, as these claims are duplicative, the
21 Court GRANTS Defendants' Motion as to Plaintiffs' Third Cause of Action for violation of the
22 Fourteenth Amendment WITHOUT LEAVE TO AMEND.

23 4. Due Process under the California Constitution

24 Defendants argue that Plaintiffs' California Constitution allegations in their Third Cause of
25 Action fail for the same reasons as their First Cause of Action. Mot. at 13. However, as discussed
26 above, while Plaintiffs failed to provide specific sections in their initial Complaint, the FAC
27 alleges that Defendants violated their rights under Article 1, sections 1, 7, and 13. Regardless, as
28 with their Second Cause of Action, Plaintiffs' allegations as to Aljoe, Thomas, Wickboldt, and

1 Lowell fail under California Government Code section 821.6 because their purported conduct was
2 wholly related to their conduct in prosecuting Plaintiffs.

3 Based on this analysis, the Court GRANTS Defendants’ Motion as to Plaintiffs’ Third
4 Cause of Action against Aljoe, Thomas, Wickboldt, and Lowell for violation of their due process
5 rights under the California Constitution WITHOUT LEAVE TO AMEND.

6 5. Conspiracy

7 Defendants again argue that Plaintiffs’ conspiracy claim fails because they “only allege
8 conclusions.” Mot. at 13. However, at this stage in the proceedings, the Court finds that Plaintiffs
9 have stated a claim that is plausible on its face. Accordingly, the Court DENIES Defendants’
10 Motion as to Plaintiffs’ conspiracy claim.

11 **D. Fourth Cause of Action**

12 Plaintiffs bring their Fourth Cause of Action against Aljoe, Lowell, Thomas, Wickboldt,
13 the City of Pleasanton, Pleasanton police officers Does 5-10, and other Does 1-10. FAC ¶¶ 86-99.
14 It alleges seven distinct claims related to Plaintiffs’ arrest and subsequent search of their home: (1)
15 unlawful arrest/search under the Fourth Amendment; (2) unlawful arrest/search under the
16 Fourteenth Amendment; (3) unlawful arrest/search under Article 1, section 1 to the California
17 Constitution; (4) unlawful arrest/search under Article 1, section 7 to the California Constitution;
18 (5) unlawful arrest/search under Article 1, section 13 to the California Constitution; (6)
19 conspiracy; and (7) *Monell* liability. *Id.* ¶ 99. Allegations (1)-(6) are against Aljoe, Thomas,
20 Lowell, Wickboldt, Pleasanton police officers Does 5-10 and other Does 1-10. *Id.* Allegation (7)
21 is brought against the City. *Id.*

22 1. Fourth Amendment Claim

23 Defendants argue that Plaintiffs’ Fourth Amendment allegation fails against Aljoe,
24 Thomas, and Lowell due to their lack of integral participation. Mot. at 14. In the alternative,
25 Defendants argue that the claim should be dismissed as to Aljoe and Lowell due to absolute
26 immunity. *Id.*

27 As discussed above, liability under § 1983 is predicated on a defendant’s integral
28 participation in the alleged violation. *Blankenhorn*, 485 F. 3d at 481, n. 12 (citation omitted).

1 Here, it is undisputed that Aljoe, Thomas, and Lowell were not present at the scene for Plaintiffs’
2 arrest and the subsequent search of the Property, while Leroy believes that Wickboldt was present.
3 FAC ¶ 92. Regardless, accepting Plaintiffs’ factual allegations as true and construing the
4 pleadings in the light most favorable to them, the Court finds that Plaintiffs have stated enough
5 facts to state a claim to relief that is plausible on its face. Plaintiffs appear to allege that Aljoe,
6 Thomas, Wickboldt, and Lowell set in motion the series of acts that resulted in Plaintiffs’ arrest
7 and acted with the arresting officers by providing them guidance at the scene. FAC ¶¶ 91-92, 99.

8 However, the Court finds that Plaintiffs’ Fourth Amendment allegations must be dismissed
9 as to Aljoe and Lowell due to absolute immunity. As discussed above, even if Plaintiffs are able
10 to establish Aljoe and Lowell’s integral participation, they possess absolute immunity as to any
11 actions that fall within their prosecution of the City’s administrative code enforcement action
12 against Plaintiffs. Here, Plaintiffs allege that Aljoe and Lowell acted in furtherance of their plan to
13 deprive Plaintiffs of their property. FAC ¶ 99(b). Thus, as Aljoe and Lowell’s purported conduct
14 fell within their prosecution of the City’s administrative code enforcement action against
15 Plaintiffs, their conduct was “intimately associated with the judicial phase” of the proceedings
16 “and thus were functions to which the reasons for absolute immunity apply with full force.”
17 *Imbler*, 424 U.S. at 430. Further, “[a]bsolute immunity also protects those functions in which the
18 prosecutor acts as an ‘advocate for the State,’ even if they ‘involve actions preliminary to the
19 initiation of a prosecution and actions apart from the courtroom.’” *Lacey*, 693 F.3d at 912
20 (quoting *Burns*, 500 U.S. at 486). Accordingly, the Court GRANTS Defendants’ Motion to
21 Dismiss Plaintiffs’ Fourth Amendment claim as to Aljoe and Lowell WITHOUT LEAVE TO
22 AMEND. Defendants’ Motion is DENIED as to the remaining Defendants.

23 2. Fourteenth Amendment Claim

24 Defendants argue that Plaintiffs’ Fourteenth Amendment allegation fails as a matter of law
25 because their claims must be analyzed under the Fourth Amendment. Mot. at 14. Plaintiffs do not
26 address this argument; instead, the Fourth Cause of Action argument in their Opposition focuses
27 solely on their unreasonable seizure claim under the Fourth Amendment. Opp’n at 17-18. As
28 discussed above, a claim for unreasonable seizure must be brought under the specific guarantees

1 of the Fourth Amendment. *Albright*, 510 U.S. at 273 (rejecting a petitioner’s claim that his arrest
2 without probable cause violated his substantive due process rights and holding instead that “it is
3 the Fourth Amendment . . . under which petitioner Albright’s claim must be judged”). Thus, to
4 the extent Plaintiffs’ FAC alleges a Fourteenth Amendment unlawful seizure claim, the Court
5 GRANTS Defendants’ Motion WITHOUT LEAVE TO AMEND.

6 3. California Constitution Claims

7 Defendants argue that Plaintiffs’ California Constitution allegations in their Third Cause of
8 Action fail for the same reasons as their First Cause of Action. Mot. at 14. However, as discussed
9 above, while Plaintiffs failed to provide specific sections in their initial Complaint, the FAC
10 alleges that Defendants violated their rights under Article 1, sections 1, 7, and 13. Regardless, as
11 with their Second Cause of Action, Plaintiffs’ allegations as to Aljoe, Thomas, Wickboldt, and
12 Lowell fail under California Government Code section 821.6 because their purported conduct was
13 wholly related to their conduct in prosecuting Plaintiffs.

14 Based on this analysis, the Court GRANTS Defendants’ Motion as to Plaintiffs’ Fourth
15 Cause of Action against Aljoe, Thomas, Wickboldt, and Lowell for violation of their due process
16 rights under the California Constitution WITHOUT LEAVE TO AMEND.

17 4. Conspiracy

18 Defendants again argue that Plaintiffs’ conspiracy claim fails because they “only allege
19 conclusions.” Mot. at 14. However, at this stage in the proceedings, the Court finds that Plaintiffs
20 have stated a claim that is plausible on its face. Accordingly, the Court DENIES Defendants’
21 Motion as to Plaintiffs’ conspiracy claim.

22 **E. Fifth Cause of Action**

23 Plaintiffs bring their Fifth Cause of Action against Aljoe, Lowell, Thomas, Wickboldt,
24 McGrew, the City of Pleasanton, and Does 1-10. FAC ¶¶ 100-112. It alleges seven distinct
25 claims related to the destruction of Leroy’s personal property during the receivership⁶: (1)

26 _____
27 ⁶ As with the First Cause of Action, Defendants argue that Craig’s Fifth Cause of Action fails
28 because he did not own the personal property allegedly destroyed. Mot. at 15. Plaintiffs’ Fifth
Cause of Action is captioned: “Final deprivation, destruction, and conversion . . . [of] Leroy’s
personal property” and refers throughout to deprivation of Leroy’s, not Craig’s, rights. FAC ¶¶

1 unlawful seizure and denial of meaningful access to the courts under the First Amendment; (2) due
2 process violation under the Fourteenth Amendment; (3) due process violation under Article 1,
3 section 1 to the California Constitution; (4) due process violation under Article 1, section 7 to the
4 California Constitution; (5) due process violation under Article 1, section 13 to the California
5 Constitution; (6) conspiracy; and (7) *Monell* liability. *Id.* ¶ 112. Allegations (1)-(6) are against
6 Aljoe, Thomas, Lowell, Wickboldt, McGrew, and other Does 1-10. *Id.* Allegation (7) is brought
7 against the City. *Id.*

8 1. First Amendment Claim

9 In their Fifth Cause of Action, Leroy does not state which allegations relate to his First
10 Amendment claim, merely stating that “Plaintiff Leroy’s personal property stored in his garage
11 was finally deprived, destroyed, and converted, and the Spitzers were denied meaningful access to
12 the courts by Aljoe’s avoidance of or side-stepping the judicial process on the matters of the
13 reasonableness of its disposal and the cost of disposal, in violation of the [First Amendment].” *Id.*
14 ¶ 112(b). To the extent that Leroy is attempting to bring a cause of action for unlawful seizure
15 under the First Amendment, no such cause of action exists. Accordingly, Plaintiffs’ First
16 Amendment unlawful seizure claim is DISMISSED WITHOUT LEAVE TO AMEND.

17 To the extent that Leroy is attempting to bring a First Amendment retaliation claim, the
18 analysis from Plaintiffs’ Third Cause of Action applies here as well: Plaintiffs must provide
19 evidence showing that Defendants deterred or chilled their political speech, and such deterrence
20 was a substantial or motivating factor in Defendants’ conduct. *Lacey*, 693 F.3d at 916. Here,
21 accepting Plaintiffs’ factual allegations as true and construing the pleadings in the light most
22 favorable to them, the Court finds that the FAC as a whole provides enough facts to state a
23 plausible First Amendment retaliation claim. However, Plaintiffs have simply listed a First
24 Amendment claim under their Fifth Cause of Action, without any reference to retaliation or facts

25
26 100-12. Thus, although there are references to both Plaintiffs, it does not appear that Craig
27 intended to bring this cause of action on behalf of himself. Further, as stated above, “Fourth
28 Amendment rights are personal rights which . . . may not be vicariously asserted.” *Alderman*, 394
U.S. at 174. Thus, as Plaintiffs have failed to allege that Craig had any ownership rights to
Leroy’s personal property, any claims brought by Craig would fail.

1 that are specific to such a claim. In reviewing the FAC, it appears that Plaintiffs are attempting to
2 allege that one or more Defendants' primary intent was to silence Leroy's protected speech related
3 to his personal property. However, Plaintiffs fail to specify which and whose actions are alleged
4 to chill Leroy's protected speech, and whether such actions were intended to punish him for First
5 Amendment activities and deter him from future activities. *Lacey*, 693 F.3d at 917.

6 Based on this analysis, the Court DISMISSES Plaintiffs' First Amendment claim WITH
7 LEAVE TO AMEND. If Leroy intends to pursue a First Amendment claim, he must set forth
8 allegations showing that Defendants deterred or chilled his political speech and such deterrence
9 was a substantial or motivating factor in Defendants' conduct. *Id.* at 916. Leroy "must allege
10 facts ultimately enabling [them] to prove the elements of retaliatory animus as the cause of injury,
11 with causation being understood to be but-for causation." *Id.* at 917 (internal quotations and
12 citations omitted). As discussed above, Leroy should also be mindful of individual defendants'
13 potential immunity if his allegations are premised upon their actions while prosecuting the City's
14 code enforcement suit against Plaintiffs.

15 2. Fourteenth Amendment Claim

16 As to Plaintiffs' Fourteenth Amendment claim, Defendants argue that it fails as to Aljoe,
17 Lowell, Thomas, and Wickboldt due to lack of integral participation. Mot. at 15. The FAC
18 alleges that McGrew was appointed Receiver, that he oversaw Plaintiffs' clean-up of the house,
19 that he failed various Receiver duties, and that he executed a contract with DECON. FAC ¶¶ 101-
20 08. The executed contract allegedly led to destruction of Leroy's personal property. *Id.* ¶ 109.
21 While this conduct might not involve Aljoe, Lowell, Thomas, or Wickboldt, the Court must accept
22 Plaintiffs' factual allegations as true and construe them in the light most favorable to them.
23 Plaintiffs also allege that Aljoe, Lowell, Thomas, and Wickboldt jointly acted and participated in
24 this deprivation of personal property in furtherance of a conspiracy. FAC ¶ 112. Accordingly, at
25 this stage in the proceedings, the Court finds that Plaintiffs have stated enough facts to state a
26 claim to relief that is plausible on its face.

27 However, Defendants also argue that Plaintiffs' Fourteenth Amendment allegations should
28 be dismissed as to Aljoe and Lowell due to absolute immunity. Mot. at 15. The Court agrees. As

1 discussed above, even if Plaintiffs are able to establish Aljoe and Lowell’s integral participation,
2 they possess absolute immunity as to any actions that fall within their prosecution of the City’s
3 administrative code enforcement action against Plaintiffs. Here, as Aljoe and Lowell’s purported
4 conduct fell within their prosecution of the City’s enforcement action against Plaintiffs, their
5 conduct was “intimately associated with the judicial phase” of the proceedings “and thus were
6 functions to which the reasons for absolute immunity apply with full force.” *Imbler*, 424 U.S. at
7 430. Further, “[a]bsolute immunity also protects those functions in which the prosecutor acts as
8 an ‘advocate for the State,’ even if they ‘involve actions preliminary to the initiation of a
9 prosecution and actions apart from the courtroom.’” *Lacey*, 693 F.3d at 912 (quoting *Burns*, 500
10 U.S. at 486).

11 Based on this analysis, the Court GRANTS Defendants’ Motion as to Plaintiffs’ Fifth
12 Cause of Action against Aljoe and Lowell for violation of Leroy’s due process rights under the
13 Fourteenth Amendment WITHOUT LEAVE TO AMEND. The Court DENIES Defendants’
14 Motion as to the remaining Defendants.

15 3. California Constitution Claims

16 Defendants argue that Plaintiffs’ California Constitution allegations fail for the same
17 reasons as above. Mot. at 15. Regarding these claims, as discussed above, while Plaintiffs failed
18 to provide specific sections in their initial Complaint, the FAC alleges that Defendants violated
19 their rights under Article 1, sections 1, 7, and 13. However, Defendants also argue that Plaintiffs’
20 claims against Aljoe, Lowell, Thomas, and Wickboldt must fail under California Government
21 Code section 821.6 because they are entitled to state-law immunity. *Id.* The Court agrees, as
22 Plaintiffs’ allegations arise entirely from their code enforcement actions related to the Property.
23 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ California
24 Constitution claims against Aljoe, Lowell, Thomas, and Wickboldt WITHOUT LEAVE TO
25 AMEND.

26 4. Conspiracy

27 As to Plaintiffs’ conspiracy claim, Defendants argue that it fails because it offers “nothing
28 but conclusions.” Mot. at 15. However, at this stage in the proceedings, the Court finds that

1 Plaintiffs have stated a claim that is plausible on its face. Accordingly, the Court DENIES
2 Defendants' Motion as to Plaintiffs' conspiracy claim.

3 **F. Punitive Damages**

4 Defendants argue that Plaintiffs' punitive damages claim against the City should be dismissed
5 because public entities are immune from punitive damages. Mot. at 15. Plaintiffs do not address this
6 argument, but the Court agrees. The Supreme Court has also held that, with respect to federal claims
7 brought under § 1983, municipalities are immune from punitive damages. *City of Newport v. Fact*
8 *Concerts, Inc.*, 453 U.S. 247, 271 (1981). With respect to Plaintiffs' state law claims, California
9 Government Code section 818 bars the award of punitive damages against a public entity. *Westlands*
10 *Water Dist. v. Amoco Chem. Co.*, 953 F.2d 1109, 1113 (9th Cir. 1991) (punitive damages are barred
11 for the reason that payment by a public entity of punitive damages in effect punishes the taxpayer
12 rather than the entity itself). Thus, to the extent Plaintiffs' prayer for relief seeks punitive damages
13 against the City, Defendants' Motion to Dismiss is GRANTED WITHOUT LEAVE TO AMEND.

14 **G. Supervisory Liability**

15 In their Opposition, Plaintiffs argue that Lowell has supervisory liability under § 1983 and
16 final policy-maker liability under *Monell*. However, these claims are not properly alleged in their FAC
17 as independent causes of action, and the Court therefore need not consider Plaintiffs' argument at this
18 juncture. If Plaintiffs include these claims in their second amended complaint, they must provide
19 separate headings for each cause of action and state with some degree of particularity the facts in
20 which Defendants engaged to support each claim.

21 **CONCLUSION**

22 Based on the analysis above, the Court hereby GRANTS IN PART and DENIES IN PART
23 Defendants' Motion to Dismiss as follows.

24 **First Cause of Action:**

25 Defendants' Motion is

- 26 1. DENIED as to Plaintiffs' Fourth Amendment claim;
27 2. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourteenth Amendment
28 substantive due process claim;

- 1 3. DENIED as to Plaintiffs' Fourteenth Amendment procedural due process claim;
- 2 4. DENIED as to Plaintiffs' California Constitution claims; and
- 3 5. DENIED as to Plaintiffs' conspiracy claim.

4 **Second Cause of Action:**

5 Defendants' Motion is

- 6 1. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourth Amendment due
- 7 process claim;
- 8 2. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourteenth Amendment
- 9 claim against Aljoe and Lowell;
- 10 3. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' California Constitution
- 11 claims against Aljoe, Thomas, and Lowell; and
- 12 4. DENIED as to Plaintiffs' conspiracy claim.

13 **Third Cause of Action:**

14 Defendants' Motion is

- 15 1. GRANTED WITH LEAVE TO AMEND as to Plaintiffs' First Amendment claim;
- 16 2. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourth Amendment claim
- 17 against Aljoe and Lowell;
- 18 3. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourteenth Amendment
- 19 claim;
- 20 4. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' California Constitution
- 21 claims against Aljoe, Thomas, Wickboldt, and Lowell; and
- 22 5. DENIED as to Plaintiffs' conspiracy claim.

23 **Fourth Cause of Action:**

24 Defendants' Motion is:

- 25 1. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourth Amendment claim
- 26 against Aljoe and Lowell;
- 27 2. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourteenth Amendment
- 28 claim;

1 3. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' California Constitution
2 claims against Aljoe, Thomas, Wickboldt, and Lowell; and

3 4. DENIED as to Plaintiffs' conspiracy claim.

4 **Fifth Cause of Action:**

5 1. GRANTED WITH LEAVE TO AMEND as to Plaintiffs' First Amendment claim;

6 2. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' Fourteenth Amendment
7 claim against Aljoe and Lowell;

8 3. GRANTED WITHOUT LEAVE TO AMEND as to Plaintiffs' California Constitution
9 claims against Aljoe, Thomas, Wickboldt, and Lowell; and

10 4. DENIED as to Plaintiffs' conspiracy claim.

11 **Punitive Damages:**

12 To the extent Plaintiffs' prayer for relief seeks punitive damages against the City,
13 Defendants' Motion to Dismiss is GRANTED WITHOUT LEAVE TO AMEND.

14 **Second Amended Complaint**

15 If Plaintiffs choose to file an amended complaint, it must comply with the guidelines set
16 forth in Rule 8(a), which requires a short and plain statement of the claim showing that the pleader
17 is entitled to relief. In their amended complaint, Plaintiffs must allege with at least some degree of
18 particularity the facts in which Defendants engaged to support their claims. *Jones v. Cmty. Redev.*
19 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Thus, in their amended complaint, Plaintiffs are
20 ORDERED to (1) provide separate headings for each cause of action (i.e., Plaintiffs shall not
21 include multiple claims under each cause of action, as they did with their initial Complaint); and
22 (2) for each cause of action, separately state with some degree of particularity the facts in which
23 Defendants engaged to support each claim. It is not enough for Plaintiffs to state that "each and
24 every allegation" contained in the complaint supports their claims.

25 Plaintiffs shall file their second amended complaint by April 21, 2014.

26 **IT IS SO ORDERED.**

27 Dated: March 20, 2014

28 

MARIA-ELENA JAMES
United States Magistrate Judge