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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL MANCINI,  
Plaintiff,

v.

CITY OF CLOVERDALE POLICE  
DEPARTMENT, et al.,  
Defendants.

Case No. [15-cv-02804-JSC](#)

**ORDER REVIEWING SECOND  
AMENDED COMPLAINT UNDER  
SECTION 1915 AND ORDERING  
SERVICE BY THE MARSHAL**

Re: Dkt. No. 14

Plaintiff Daniel Mancini, proceeding *in forma pauperis*, filed the instant Second Amended Complaint (“SAC”) against the City of Cloverdale Police Department, retired Cloverdale Police Chief Mark Tuma and Retired Sergeant Keith King, and current Cloverdale Police Officers Michael Campbell and Officer Rose, as well as individuals Kenneth Roux, Adam Elbeck, and a number of Does. (Dkt. No. 14.) The SAC arises out of Roux and Elbeck’s false accusations that Plaintiff burglarized Roux’s Body Shop, and Plaintiff’s request that the Cloverdale Police Department press charges against Roux and Elbeck after they violently attacked him. Plaintiff alleges that Roux and Elbeck are liable for negligence, false imprisonment, and assault and battery. Plaintiff also alleges that Chief Tuma, Sergeant King, and Officers Campbell and Rose violated his civil rights and conspired to violate his civil rights, and that the City of Cloverdale is subject to municipal liability for those violations. Upon the review required by 28 U.S.C. § 1915(e)(2), the Court twice previously dismissed Plaintiff’s complaint with leave to amend, finding that the federal counts failed to state a claim upon which relief could be granted, such that there was no basis for federal jurisdiction over the state law claims. *See Mancini v. City of Cloverdale Police Dep’t*, No. 15-cv-02804-JSC, 2015 WL 4512274, at \*4-6 (N.D. Cal. July 24, 2015) (“*Mancini IP*”); *Mancini v. City of Cloverdale Police Dep’t*, No. 15-cv-02804-JSC, 2015

1 WL 3993216, at \*4-5 (N.D. Cal. June 30, 2015) (“*Mancini P*”).

2 **DISCUSSION**

3 The factual background of this case is detailed in the Court’s Orders reviewing the  
4 complaint and FAC under Section 1915, which the Court incorporates here in full. *Mancini II*,  
5 2015 WL 4512274, at \*1-2; *Mancini I*, 2015 WL 3993216, at \*1-2. As the factual allegations  
6 have not changed, the Court will not reiterate the factual background here. Suffice it to say that  
7 the claims arise out of an alleged corrupt agreement and cover up among officers at the Cloverdale  
8 Police Department to protect Plaintiff’s attackers from prosecution. The Court twice previously  
9 noted that Plaintiff has stated a claim for at least some of his common law counts (now Counts Six  
10 through Eight) against Roux and Elbeck, and therefore the claims against these individual  
11 defendants pass muster under Section 1915 and could proceed to service. The initial complaint  
12 and FAC failed to state a claim for any of the federal civil rights causes of action contained  
13 therein. For the reasons discussed below, Plaintiff has cured the defects the Court discussed for at  
14 least some of the federal claims such that the SAC may proceed to service.

15 **I. Count One: Deprivation of Civil Rights under Section 1983**

16 Plaintiff’s Section 1983 claim alleges that Chief Tuma, Sergeant King, and Officers  
17 Campbell and Rose violated Plaintiff’s Fourteenth Amendment rights to due process and equal  
18 protection under the law by failing to bring charges against Roux and Elbeck, to protect witnesses,  
19 to provide a police report to Plaintiff, or to discipline the involved officers all with the intent to  
20 cover up the police investigation and prevent Plaintiff from bringing suit. (*See* Dkt. No. 14 ¶¶ 78,  
21 81.) The Court previously dismissed the due process claim on the ground that the FAC did not  
22 allege facts supporting a concurrent equal protection violation as required, and that the equal  
23 protection violation failed because the FAC did allege facts giving rise to a plausible claim of  
24 class-of-one discrimination. *Mancini II*, 2015 WL 4512274, at \*4-5. The Court noted that the  
25 Ninth Circuit has not yet weighed in on whether a plaintiff can use class-of-one equal protection  
26 theory in the law enforcement failure-to-investigate or failure-to-prosecute context even in the  
27 presence of personal animus. *Id.* (citing *Le Fay v. Le Fay*, No. 1:13-cv-1362 AWI MJS, 2015 WL  
28 106262, at \*6 (E.D. Cal. Jan. 7, 2015); *Williams v. Cnty. of Alameda*, 26 F. Supp. 2d 925, 941

1 (N.D. Cal. 2014)). But in any event, the Court noted that while Plaintiff included allegations  
2 about the officers’ irrational motives towards Plaintiff, Plaintiff nonetheless failed to plead a class-  
3 of-one discrimination claim because there were no “allegations explaining to whom Plaintiff was  
4 similarly situated.” *Id.* at \*5.

5 In the SAC, Plaintiff now provides even more detail regarding the officers’ irrational  
6 motives, alleging that the officers intentionally treated Plaintiff different from others due to  
7 “nepotism and corruption” given their “long-standing friendship and business relationship with  
8 Roux” and because the officers had personal animus towards Plaintiff and thought he was a  
9 “loser.” (Dkt. No. 14 ¶¶ 69, 75.) What is more, Plaintiff now alleges that he “was treated  
10 intentionally differently from all other similarly situated citizens, including other Cloverdale and  
11 Sonoma County citizens who were victims of similar felonious assaults or terrorist threats[.]” (*Id.*  
12 ¶ 69; *see also id.* ¶¶ 18, 76 (alleging that Defendants did not respond to other Cloverdale and  
13 Sonoma County citizens who were crime victims with a cover up and refusal to prosecute). This  
14 allegation is enough to identify similarly situated individuals for the purposes of Section 1915  
15 review. Any argument that the Ninth Circuit does not countenance class-of-one discrimination  
16 claims in the context of discretionary police investigation and charging decisions, *see Long v.*  
17 *Cnty. of Fresno*, No. 1:13-cv-01810-AWI-SKO, 2014 WL 3689694, at \*6 (E.D. Cal. July 14,  
18 2014) (collecting cases finding that police discretionary decisions cannot be challenged in a class-  
19 of-one equal protection claim), is better suited for resolution once the SAC has been served and  
20 the issue fully briefed by both parties.

21 With respect to Plaintiff’s alleged due process violation, it may proceed given the  
22 concurrent failure to protect against discrimination.<sup>1</sup> *See Sexual Sin De Un Abdul Blue v. City of*  
23 *Los Angeles*, No. CV 09-7573-PA (JEM), 2010 WL 890172, at \*6 (C.D. Cal. Mar. 8, 2010)  
24 (noting that ordinarily “an inadequate investigation by police officers is not sufficient to state a  
25 § 1983 claim unless another recognized constitutional right is involved, such as failure to protect

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26  
27 <sup>1</sup> While Plaintiff urges that he has also alleged a due process violation based on destruction of  
28 evidence and witness tampering, citing *Hampton v. Hanrahan*, 600 F.2d 600 (7th Cir. 1979), this  
right pertains to that of the defendant in a criminal case subject to prosecution, not the  
complaining witness. *Id.* at 628.

1 against discrimination”).

2 **III. Counts Two through Four: Conspiracy to Violate Civil Rights in Violation of Section**  
3 **1985(1), (2), and (3)**

4 The second through fourth causes of action allege that Chief Tuma, Sergeant King, and  
5 Officers Campbell and Rose conspired to violate Plaintiff’s civil rights in violation of the three-  
6 subsections of Section 1985. Because Section 1985 is not a stand-alone substantive right and  
7 instead “provides remedial relief only after a violation of a specifically defined and designated  
8 federal right is first established[,]” *Harmon v. City of Fresno*, No. CV F 08-1311 LJO GSA, 2008  
9 WL 4690897, at \*9 (E.D. Cal. Oct. 21, 2008), the Court previously dismissed Plaintiff’s Section  
10 1985 claims for failure to state a plausible claim that Defendants violated any of his constitutional  
11 rights. However, as set forth above, Plaintiff’s SAC sufficiently alleges a violation of Plaintiff’s  
12 Fourteenth Amendment rights, so this particular defect has been cured for the purposes of Section  
13 1915 review.

14 Although Plaintiff brings three separate Section 1985 counts under the three subsections of  
15 the law, the substance of each claim is nearly identical. The gravamen of the conspiracy claims is  
16 that Defendants conspired to not press charges against Roux and Elbeck, intimidated and failed to  
17 protect witnesses, omitted information from the police report associated with the investigation into  
18 Roux and Elbeck, then refused to give a copy of that report to Plaintiff . (Dkt. No. 14 ¶¶ 100, 127,  
19 154.) In addition, in all three claims Plaintiff alleges that Defendants’ conspiracy was intended “to  
20 frustrate Plaintiff’s ability to bring a civil action against Roux and Elbeck,” knowing that “it  
21 would be far easier for [Plaintiff] to prevail in a civil action against them” if criminal charges were  
22 brought and “to cover this entire matter up and prevent [Plaintiff] from bringing a federal civil  
23 rights action against Chief Tuma, Sergeant King, Officer Campbell, Officer Rose, and the  
24 Cloverdale Police Department.” (*Id.* ¶¶ 105-106, 130-131, 137-138.) Although the substance is  
25 identical, the elements and standards of each type of Section 1985 differ.

26 A. Count Two: Section 1985(1)

27 Plaintiff’s second count is under Section 1985(1), which prohibits “two or more persons in  
28 any State or Territory” from “conspir[ing] to prevent, by force, intimidation, or threat, any person

1 from accepting or holding any office, trust, or place of confidence under the United States, or from  
 2 discharging any duties thereof[.]” Section 1985(1) affords protection only to federal officers and  
 3 prospective federal officers. *Canlis v. San Joaquin Sheriff’s Posse Comitatus*, 641 F.2d 711, 717  
 4 (9th Cir. 1981), *cert. denied*, 454 U.S. 967 (1981). Plaintiff nowhere alleges that he is a federal  
 5 officer; thus, he cannot claim protection under this statute. *See, e.g., Gozzi v. Cnty. of Monterey*,  
 6 No. 5:14-CV-03297-LHK, 2014 WL 6977632, at \*10 (N.D. Cal. Dec. 10, 20124); *Shoftner v. U.S.*  
 7 *Dep’t of Agric.*, No. CV F 12-0062 LJO JLT, 2012 WL 4662340, at \*6 (E.D. Cal. Oct. 1, 2012);  
 8 *Lukenbill v. Dep’t of U.S. Air Force*, No. CV F 10-1003 LJO SKO, 2010 WL 3717297, at \*7 (E.D.  
 9 Cal. Sept. 16, 2010). Accordingly, Plaintiff’s Section 1985(1) claim is dismissed with prejudice.

10 B. Count Three: Section 1985(2)

11 Section 1985(2) allows a person to file a lawsuit where “two or more persons conspire for  
 12 the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of  
 13 justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws,  
 14 or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any  
 15 person, or class of persons, to the equal protection of the laws[.]” As the Court discussed in its  
 16 Order dismissing the initial complaint, the first clause pertains to access to state courts, whereas  
 17 the second pertains to federal courts. *See Mancini I*, 2015 WL 3993216, at \*4 (citation omitted);  
 18 *see Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 909 (9th Cir. 1993).

19 Here, it appears that Plaintiff is proceeding with both prongs, as he alleges that the end-  
 20 goal of the conspiracy was to prevent him from bringing a civil action against Roux and Elbeck  
 21 (presumably, the state-law common law tort action) as well as a federal civil rights case against  
 22 the officers. However, the state-court prong of Section 1985(2) requires a plaintiff to plead class-  
 23 based animus. *Evans v. McKay*, 869 F.2d 1341, 1345 n.3 (9th Cir. 1989). Here, Plaintiff has  
 24 alleged that he is a “class of one”—*i.e.*, that the officers intentionally treated him differently due to  
 25 personal animus without any rational basis. *See Village of Willowbrook v. Olech*, 528 U.S. 562,  
 26 564 (2000). As it is not settled whether a Section 1985(2) state-court claim can be premised on a  
 27 class-of-one theory, this question is better suited to resolution after full briefing. Accordingly, this  
 28 claim may proceed to service.

1           The other prong proscribes conspiracies that interfere with “federal judicial proceedings.”  
2     *Kush v. Rutledge*, 460 U.S. 719, 724 (1983). No class-based animus is required. A plaintiff can  
3     plead a claim for conspiracy to deny access to federal court by showing the following: (1) a  
4     conspiracy by the defendants; (2) to deter, by force, intimidate, or threat, any party or witness from  
5     attending a court of the United States or testifying in a matter pending therein “freely, fully, and  
6     truthfully” or to injure a party or witness in his or her person or property on account of so  
7     attending or testifying; and (3) injury or damages to the plaintiff. *Portman*, 995 F. 2d at 909; *see*  
8     *also David v. United States*, 820 F.3d 1038, 1040 & n.3 (9th Cir. 1987). But the plaintiff must  
9     allege that there were some federal proceedings pending when the purported interference occurred.  
10    *See* 42 U.S.C. § 1985(2) (prohibiting conspiracy to deter any party or witness in federal court from  
11    attending or testifying “to any matter *pending* therein”). No such proceedings are alleged in the  
12    SAC; instead, Plaintiff’s claims allege that Defendants’ conspiracy sought to prevent him from  
13    bringing a federal suit in the first instance. Accordingly, Plaintiff’s state-court Section 1985(2)  
14    claim passes muster under Section 1915 and may proceed to service, but his federal-court Section  
15    1985(2) claim does not and therefore is dismissed.

16           C.     Count Four: Section 1985(3)

17           Count Four alleges conspiracy to violate civil rights in violation of Section 1985(3).  
18    Section 1985(3) “was enacted by the Reconstruction Congress to protect individuals—primarily  
19    blacks—from conspiracies to deprive them of their legally protected rights.” *Sever v. Alaska Pulp*  
20    *Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). To state a claim under Section 1985(3), a plaintiff  
21    must allege “(1) that some racial, or perhaps otherwise class-based, invidiously discriminatory  
22    animus [lay] behind the conspirators’ action, . . . and (2) that the conspiracy aimed at interfering  
23    with rights that are protected against private, as well as official, encroachment.” *Butler v. Elle*,  
24    281 F.3d 1014, 1028 (9th Cir. 2002) (citations omitted); *see also Griffen v. Breckenridge*, 403  
25    U.S. 88, 102 (1971) (plaintiff must allege “some racial or perhaps otherwise class-based,  
26    invidiously discriminatory animus behind the conspirator’s action”). The Ninth Circuit requires  
27    “either that the courts have designated the class in question a suspect or quasi-suspect  
28    classification requiring more exacting scrutiny or that Congress has indicated through legislation

1 that the class required special protection.” *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985).  
 2 The Ninth Circuit has recognized that Supreme Court jurisprudence requires “lower courts to  
 3 exercise restrained in extending [Section] 1985(3) beyond racial prejudice.” *Butler*, 281 F.3d at  
 4 1028 (citation omitted). As a result, district courts have rejected Section 1985(3) claims premised  
 5 on class-of-one discrimination due to personal animus. *See, e.g., Cobb v. Adams*, No. C 13-04917  
 6 JSW, 2014 WL 2212162, at \*5 (N.D. Cal. May 28, 2014) (citation omitted); *Kolstad v. Cnty. of*  
 7 *Amador*, No. CIV 2:13-01279 WBS EFB, 2013 WL 6065315, at \*9 n. 6 (E.D. Cal. Nov. 14,  
 8 2013). Here, Plaintiff’s Section 1985(3) claim is based solely on class-of-one discrimination. He  
 9 does not allege membership in any other suspect or quasi-suspect class. Accordingly, the SAC  
 10 fails to plead a plausible Section 1985(3) claim, and Count Four is therefore dismissed with  
 11 prejudice. *See Cobb*, 2014 WL 2212162, at \*5; *Kolstad*, 2013 WL 6065315, at \*9 n.6.

12 **III. Count Five: Municipal Liability**

13 Plaintiff now brings a Section 1983 municipal liability claim against the City of Cloverdale  
 14 under *Monell v. New York Department of Social Services*, 436 U.S. 658 (1978). Municipalities  
 15 may be held liable as “persons” under 42 U.S.C. § 1983, but not for the unconstitutional acts of  
 16 their employees based solely on respondeat superior. *Id.* at 691. Instead, a plaintiff seeking to  
 17 impose liability on a municipality under Section 1983 must “identify a municipal ‘policy’ or  
 18 ‘custom’ that caused the plaintiff’s injury.” *Johnson v. Shasta Cnty.*, --- F. Supp. 3d ---, No.  
 19 2:14-cv-01338-KJM, EFB, 2015 WL 75245, at \*9 (E.D. Cal. Jan. 6, 2015) (citations omitted).  
 20 Thus, to state a claim under Section 1983, a plaintiff must allege: (1) that the plaintiff possessed a  
 21 constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that  
 22 this policy amounts to deliberate indifference to the plaintiff’s constitutional rights; and (4) that  
 23 the policy is the moving force behind the violation. *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*,  
 24 130 F.3d 432, 438 (9th Cir. 1997). A *Monell* claim can take one of three forms: “(1) when official  
 25 policies or established customs inflict a constitutional injury; (2) when omissions or failures to act  
 26 amount to a local government policy of ‘deliberate indifference’ to constitutional rights; or (3)  
 27 when a local government official with final policy-making authority ratifies a subordinate’s  
 28 unconstitutional conduct.” *Brown v. Contra Costa Cnty.*, No. C 12-1923 PJH, 2014 WL 1347680,

1 at \*8 (N.D. Cal. Apr. 3, 2014) (citing *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249-50  
2 (9th Cir. 2010)).

3 In addressing Plaintiff’s FAC, the Court noted that Plaintiff did not bring a municipal  
4 liability claim but included certain allegations that implied he attempted to do so. *See Mancini II*,  
5 2015 WL 4512274, at \*6. In any event, the Court noted that such claim would fail for two  
6 reasons: because the FAC (1) did not allege any underlying constitutional violation and (2) failed  
7 to identify the custom, policy, or practice of the city that led to the violations. *Id.* Plaintiff has  
8 now specifically includes a municipal liability count and alleges facts to support both prior  
9 defects.

10 First, as discussed above, the SAC alleges facts sufficient to state a plausible claim that  
11 Defendants violated Plaintiff’s Fourteenth Amendment rights, at least for the purposes of Section  
12 1915 review. Thus, the constitutional violation predicate element is sufficiently pled. *See Doe v.*  
13 *Maher*, 795 F.2d 787, 790 (9th Cir. 1987) (noting that an “independent constitutional basis is  
14 necessary for a valid cause of action under section 1983”) (citations omitted).

15 With respect to the custom, policy or practice element, in the SAC Plaintiff alleges that  
16 officers’ unconstitutional conduct occurred as a result of a number of Cloverdale Police  
17 Department Policies, including: failure to use appropriate and generally accepted law enforcement  
18 procedures in handling criminal investigations; failure to institute, require, and enforce proper and  
19 adequate training, supervision, policies, and procedures concerning handling criminal  
20 investigations; a policy or practice of covering up violations of constitutional rights by failing to  
21 investigate complaints of unlawful assault, failing to investigate or discipline unconstitutional or  
22 unlawful police activity, and encouraging officers to file false reports, intimidate and coach  
23 witnesses, obstructing investigations, engage in nepotism and corruption; encouraging a “code of  
24 silence” whereby officers will not provide adverse information against another; insufficient  
25 handling of complaints of officer misconduct; and failure to train, supervise, or discipline officers.  
26 (Dkt. No. 14 ¶¶ 170, 171.) Plaintiff also alleges that the Police Department and its policy-making  
27 officials, including Chief Tuma and Sergeant King, ratified the officers’ unconstitutional conduct.  
28 (*Id.* ¶ 172.)



1 Without more, not all of these are adequately pleaded theories of municipal liability. For  
2 example, to the extent that the SAC asserts a claim of municipal liability based on the city’s  
3 failure to train its employees, Plaintiff “must allege facts showing a pattern and practice of  
4 ‘deliberate indifference’ to violations of constitutional rights.” *Connick v. Thompson*, 131 S. Ct.  
5 1350, 1359 (2011). Thus, where, as here, the pleadings only recount alleged constitutional  
6 violations against the plaintiff, there is no cognizable *Monell* claim. *See, e.g., Cannon v. City of*  
7 *Petaluma*, No. C 11-0651 PJH, 2012 WL 1183732, at \*19 (N.D. Cal. Apr. 6, 2012) (“[Plaintiff’s]  
8 allegations in the SAC relate solely to his own, isolated experiences, which cannot support a  
9 *Monell* claim for failure to train or supervise.”). However, the allegations that the officers acted  
10 pursuant to a particular, identified policy—*e.g.*, of nepotism, obstructing witnesses, covering up  
11 investigations due to corruption—are enough to eke out a claim against the City. *See AE ex rel.*  
12 *Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (noting that the plaintiff must  
13 identify the policy or practice in the complaint to state a plausible claim). Because at least some  
14 portion of Plaintiff’s municipal liability claim is adequately pleaded for the purposes of Section  
15 1915 review, this court should proceed to service on the City of Cloverdale.

16 **CONCLUSION**

17 For the reasons explained above, the SAC appears to state a claim upon which relief can be  
18 granted as to at least some causes of action, and therefore passes Section 1915 review. Counts  
19 Two and Four, which allege violation of Section 1985(1) and (3), respectively, are dismissed with  
20 prejudice. Count Three, which alleges violation of Section 1985(2), may only proceed on the  
21 grounds of interference with access to state court. The Clerk of Court shall issue the summons.  
22 Further, the U.S. Marshal for the Northern District of California shall serve, without prepayment  
23 of fees, a copy of the SAC, any amendments or attachments, and this Order upon Defendants. The  
24 Court’s decision to allow the SAC to proceed to service is without prejudice to Defendants  
25 moving to dismiss the claims on any ground.

26 **IT IS SO ORDERED.**

27 Dated: August 18, 2015

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*Jacqueline Scott Corley*  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge