

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C.R., et al.,

Plaintiffs,

v.

CITY OF ANTIOCH, et al.,

Defendants.

Case No. 16-cv-03742-JST

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

Re: ECF No. 50

Before the Court is Defendants' motion for summary judgment. ECF No. 50. The Court will grant the motion in part and deny it in part.

**I. BACKGROUND**

Rakeem Rucks died after a June 10, 2015 interaction with City of Antioch police officers. His mother and children bring this suit alleging violations of the Fourth and Fourteenth Amendments and various state laws.

Many of the facts are undisputed. Defendant Officers Casey Brogdon and Chris Kidd responded to a 911 call from a male, later determined to be Rucks, reporting that people were chasing and trying to shoot him. Although the location was initially vague, dispatch subsequently directed the officers to the Delta Pines apartment complex and informed them that the caller had mentioned apartment 160.

Brogdon and Kidd found the door to apartment 160 to be open, with a broken door jamb. They did not see anyone in the apartment, nor did it appear that the contents of the apartment had been disturbed. Outside the apartment, they spoke with neighbors, who told them that the 911 caller was the person who broke down the door, that he was not being chased, and that he was high on drugs.

1 Lawrence Pernell, the resident of apartment 160, arrived on the scene and confirmed that  
2 he did not see anything missing from his apartment. Unidentified witnesses told Pernell that  
3 Rucks was the person who broke the door of his apartment. Pernell identified Rucks to Brogdon  
4 and Kidd when they saw Rucks at the top of a stairwell in another building of the same apartment  
5 complex.

6 Kidd recognized Rucks from a previous interaction, a year and half or two years prior, in  
7 which he witnessed a different officer pursue Rucks on foot. During that pursuit, Rucks stopped  
8 and turned to face the officer, appearing ready to fight. The officer then used force to take Rucks  
9 to the ground and subsequently arrested him.

10 Brogdon and Kidd asked Rucks to come downstairs to speak with them. Rucks complied,  
11 and Brogdon handcuffed Rucks, with his hands behind his back, without incident. Based on  
12 Rucks's appearance, both officers believed that he was under the influence of drugs.

13 The officers planned to detain Rucks in Brogdon's patrol car while they continued to  
14 investigate. Brogdon was walking with Rucks, while Kidd and Pernell followed. Rucks initially  
15 was responsive to questions but subsequently became increasingly "aggressive," according to  
16 Brogdon, ECF No. 50-1 at 45, and "agitated," according to Pernell, ECF No. 61-3 at 6.<sup>1</sup> Brogdon  
17 testified that Rucks "was pulling aways [sic] from me and trying to turn around and face me."  
18 ECF No. 50-1 at 43. Brogdon tried to pull Rucks to the ground by the shoulder, but he was unable  
19 to do so. Kidd then performed a leg sweep, and Rucks landed on the ground, in an area with grass  
20 and dirt.

21 \_\_\_\_\_  
22 <sup>1</sup> Defendants object to the Court's consideration of deposition transcripts submitted by Plaintiffs  
23 on grounds that "Plaintiffs failed to attach any certification by any Court reporter, certifying the  
24 witnesses were sworn and that the pages are true and correct versions of the record." ECF No. 66  
25 at 19. However, the deposition transcripts submitted with Plaintiffs' amended opposition include  
26 the required certifications. ECF No. 61-2 at 48, 99; ECF No. 61-3 at 35, 56; ECF 61-4 at 56; see  
27 ECF No. 59 (order striking original opposition for failure to comply with Civil Local Rules and  
28 setting deadline for filing amended opposition). Although the transcripts submitted with  
Plaintiffs' original opposition did not have the certifications, the Court finds no prejudice to  
considering Plaintiffs' submitted deposition transcripts, which now include the proper  
certifications. Defendants had an opportunity to reply to the amended opposition on its merits. In  
addition, they rely on the same deposition transcripts, including some of the same testimony,  
relied on by Plaintiffs.

1 Rucks continued to move around, even though he was handcuffed and on his stomach,  
2 with his face on the ground but pointing to the side. The officers testified that Rucks was reaching  
3 at Kidd’s duty belt, which contained tools and weapons. Kidd placed Rucks into a figure-four leg  
4 hold, and Brogdon held down Rucks’s upper body. At one point, Brogdon also pulled Rucks’s  
5 hands towards his head so that Kidd’s duty belt would be out of reach. The record is unclear  
6 whether Brogdon used only his upper body to hold Rucks down, or whether Brogdon ever held his  
7 knee against Rucks’s jaw and neck areas and, if so, for how long. The officers told Rucks to calm  
8 down and that they were not trying to hurt him.

9 Defendant Corporal Rick Smith responded to the scene while Brogdon, Kidd, and Rucks  
10 were on the ground. He determined that Rucks should be placed in a WRAP device, a type of  
11 body restraint. He did not have one in his vehicle, so he called another officer to respond to the  
12 scene with a WRAP. Smith observed that Rucks was “surprisingly able to lift [Kidd] up in the air  
13 off that hold, basically with one leg.” ECF No. 50-3 at 9. He ran over to assist Brogdon and  
14 Kidd, and he joined Brogdon in trying to hold down Rucks’s upper body. He also tried to calm  
15 Rucks by calling him “by his first name and trying to see if I can establish a rapport,” saying,  
16 “Calm down. We’re not here to hurt you.” Id. at 12, 14. At some point, Rucks calmed down  
17 “[d]ramatically,” “stopped bucking around, stopped trying to kick Officer Kidd off,” and he made  
18 eye contact with Smith. Id. at 12-14.

19 As Rucks’s legs were being placed in the WRAP, Smith “noticed that something’s not  
20 right.” Id. at 20. He directed the officers to roll Rucks over, and Smith could find no pulse. Fire  
21 personnel arrived around the same time, and an ambulance arrived shortly thereafter.

22 Rucks was pronounced dead later that day. An autopsy performed four days after his death  
23 concluded that the cause of death was, “Cardiopulmonary arrest while in struggle with officers  
24 while under the influence of methamphetamine (minutes).” ECF No. 50-3 at 40. Rucks’s blood  
25 tested positive for methamphetamine, at a level of 340 nanograms per milliliter.

26 The parties dispute whether Rucks expressed difficulty breathing during his encounter with  
27 Defendants. Pernell testified that he heard Rucks say at some point while he was on the ground,  
28 “Get me up out of the dirt. I’m breathing dirt. It’s hard to breathe.” ECF No. 61-3 at 14. He

1 recalled one officer “ma[king] a comment like, if you would quit agitating and be still we’ll gladly  
2 pick you up out [of] the dirt, or something of that nature.” *Id.* When asked whether “it sound[ed]  
3 like [Rucks] was heaving, like he was having trouble catching his breath,” Pernell responded,  
4 “Just more out of breath than anything.”<sup>2</sup> ECF No. 50-2 at 68. The officers testified that they  
5 never heard Rucks say he could not breathe. Smith also testified that Rucks’s breathing was not  
6 any different from what he would expect of “someone in a struggle. . . . My officers were  
7 breathing heavy. I was breathing heavy because we’re struggling with a gentleman that’s – I  
8 believe he was almost bigger than me and he was abnormally strong.” ECF No. 50-3 at 18.

9 Defendants now move for summary judgment on all claims.

## 10 **II. LEGAL STANDARD**

11 Summary judgment is proper when a “movant shows that there is no genuine dispute as to  
12 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).  
13 A dispute is genuine only if there is sufficient evidence “such that a reasonable jury could return a  
14 verdict for the nonmoving party,” and a fact is material only if it might affect the outcome of the  
15 case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When deciding a motion for  
16 summary judgment, the court must draw “all justifiable inferences” in the nonmoving party’s  
17 favor and may not weigh evidence or make credibility determinations. *Id.* at 255.

18 Where the party moving for summary judgment would bear the burden of proof at trial,  
19 that party “has the initial burden of establishing the absence of a genuine issue of fact on each  
20 issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474,  
21 480 (9th Cir. 2000). Where the party moving for summary judgment would not bear the burden of  
22 proof at trial, that party “must either produce evidence negating an essential element of the  
23 nonmoving party’s claim or defense or show that the nonmoving party does not have enough  
24 evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire &*

---

25  
26 <sup>2</sup> Plaintiffs also cite an audio interview with Andral Hill as evidence that Rucks said that he could  
27 not breathe. ECF No. 61 at 9. The cited evidence appears to be an audio interview with a police  
28 detective. The audio recording has not been authenticated, and the Court therefore cannot  
consider it at summary judgment. *Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th Cir. 2002). In  
addition, Hill’s statements do not appear to have been made under oath.

1 Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party satisfies  
2 its initial burden of production, the nonmoving party must produce admissible evidence to show  
3 that a genuine issue of material fact exists. Id. at 1102-03. If the nonmoving party fails to make  
4 this showing, the moving party is entitled to summary judgment. Celotex Corp. v. Catrett, 477  
5 U.S. 317, 322-23 (1986).

6 **III. DISCUSSION**

7 **A. Fourth Amendment Claim**

8 Plaintiffs' Fourth Amendment claim is based on their contention that Defendants used  
9 unreasonable force on Rucks after he was already handcuffed. "Determining whether the force  
10 used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful  
11 balancing of the nature and quality of the intrusion on the individual's Fourth Amendment  
12 interests against the countervailing governmental interests at stake." Graham v. Connor, 490 U.S.  
13 386, 396 (1989) (internal quotation marks and citations omitted). This analysis "requires careful  
14 attention to the facts and circumstances of each particular case, including the severity of the crime  
15 at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and  
16 whether he is actively resisting arrest or attempting to evade arrest by flight." Id. These factors  
17 "are not exclusive," and courts must "examine the totality of the circumstances." Bryan v.  
18 MacPherson, 630 F.3d 805, 826 (9th Cir. 2010). "The 'reasonableness' of a particular use of force  
19 must be judged from the perspective of a reasonable officer on the scene, rather than with the  
20 20/20 vision of hindsight." Graham, 490 U.S. at 396.

21 The Ninth Circuit has "held on many occasions that summary judgment or judgment as a  
22 matter of law in excessive force cases should be granted sparingly. This is because police  
23 misconduct cases almost always turn on a jury's credibility determinations." Santos v. Gates, 287  
24 F.3d 846, 853 (9th Cir. 2002) (citation omitted). Additionally, cases where "the victim of alleged  
25 excessive force has died pose a particularly difficult problem in assessing whether the police acted  
26 reasonably, because the witness most likely to contradict the officers' story is unable to testify."  
27 Gregory v. County of Maui, 523 F.3d 1103, 1107 (9th Cir. 2008) (internal quotation marks,  
28 alterations, and citation omitted).

1 Two Ninth Circuit cases are particularly relevant to the Court’s analysis of the facts  
2 presented by this case. First, in Drummond ex rel. Drummond v. City of Anaheim, the Ninth  
3 Circuit held that the defendant “officers – indeed, any reasonable person – should have known that  
4 squeezing the breath from a compliant, prone, and handcuffed individual despite his pleas for air  
5 involves a degree of force that is greater than reasonable.” 343 F.3d 1052, 1059 (9th Cir. 2003).  
6 In Drummond, witnesses testified that the officers put their knees and body weight on  
7 Drummond’s neck and back. Id. at 1054. Five years later, the Ninth Circuit held that officers’ use  
8 of force to restrain an individual who threatened officers with a pen was reasonable and not  
9 excessive, even though the individual “repeatedly shouted that he could not breathe, which [one  
10 officer] told him was impossible because he could talk.” Gregory, 523 F.3d at 1105-07. The court  
11 distinguished Drummond in part because the officers “ceased using force once Gregory was  
12 handcuffed.” Id. at 1109 (citing Drummond, 343 F.3d at 1057-58 (“After he was knock[ed] . . . to  
13 the ground where the officers cuffed his arms behind his back as [he] lay on his stomach, a jury  
14 could reasonably find that he posed only a minimal threat to anyone’s safety.” (alterations and  
15 omissions in Gregory)).

16 The facts of this case are similar to Drummond. Unlike the force found to be reasonable in  
17 Gregory, all of the force at issue in this case occurred after Rucks was already handcuffed with his  
18 hands behind his back, and much of it occurred while he was on the ground in a prone position. In  
19 addition, the amount of pressure applied by the officers is in dispute. Although the officers  
20 testified that they did not use their entire body weight to restrain Rucks, a jury might “find the  
21 officers’ testimony that they were restrained in their use of force not credible.” Santos, 287 F.3d  
22 at 852. Likewise, although a jury might agree with Pernell, who testified that he did not think  
23 Brogdon and Kidd did anything “inappropriate” to Rucks, and that they were “holding that man  
24 down, because if he’d have got up he would have got away from them, point blank, period,” a  
25 reasonable juror might reach a different conclusion. ECF No. 66-1 at 62. Viewing the evidence in  
26 a light most favorable to Plaintiffs, as the Court must at summary judgment, a jury might  
27 disbelieve the officers’ recollection that Rucks never said he was struggling to breathe and instead  
28 believe testimony that Rucks explicitly made such statements. A jury might also find that Rucks

1 was moving around because he was having a hard time breathing, rather than because he was  
2 being combative. Unlike in Bel-Montez v. City of Stockton, a case on which Defendants rely, it  
3 would be reasonable for a jury to infer that a reasonable officer in Defendants' position would  
4 have known that Rucks could not breathe. Case No. 2:10-cv-03149-MCE-EFB, 2017 WL  
5 2633412, at \*3 n.2 (E.D. Cal. June 19, 2017) (concluding that, "[a]bsent any other relevant  
6 evidence and given [the decedent's] continuous resistance to the officers," it would "not be a  
7 reasonable inference" that the decedent's lifting of his head "would alert a reasonable officer that  
8 [the decedent] was unable to breathe"). This material disputed fact prevents a conclusion at  
9 summary judgment that Defendants' use of force was reasonable.

10 Defendants also argue that even if the force used by Defendants was unreasonable, there is  
11 no dispute that the officers' actions did not cause Rucks's death. The Court disagrees. Plaintiffs  
12 present expert testimony from Dr. Daniel Spitz that "restraint asphyxiation" was a contributory  
13 cause to Rucks's death. Ex. 61-2 at 6-7.<sup>3</sup> Spitz further opined "that had the police officers not  
14 engaged Rakeem Rucks in this type of restraint, there is no evidence to support the conclusion that  
15 Mr. Rucks would have died when he did." Id. at 7. At his deposition, Spitz explained that "we do  
16 have multiple factors going on here," including methamphetamine usage and an enlarged heart,  
17 but that the officers' use of "an active prone restraint . . . impaired [Rucks's] ability to effectively  
18 breathe." ECF No. 66-1 at 52. He further opined that the officers' actions "caused compromised  
19 breathing which at some point, probably within a couple of minutes prior to him being found  
20 unresponsive, actually caused, yes, impaired his ability to breathe to the point where he did  
21 become hypoxic. That level of hypoxia combined with the other situations, the other conditions,  
22 caused his death." Id. at 52-53. Defendants repeatedly contend that Plaintiffs' expert's opinion is

23 \_\_\_\_\_  
24 <sup>3</sup> Defendants object to the consideration of Spitz's report on grounds that his "opinions are based  
25 on manufactured facts by Plaintiffs, not supported by evidence and are completely speculative."  
26 ECF No. 66 at 19. The Court addresses this objection in the body of the order below. Defendants  
27 further object to the report because "Plaintiffs' failed to file any timely [declaration] by Spitz  
28 swearing to his report under penalty of perjury." Id. Plaintiffs filed such a declaration, ECF No.  
65, but did not do so until one day after the deadline for filing their amended opposition.  
Although Plaintiffs should have filed the declaration with their original opposition, Defendants  
responded to the merits of Spitz's report in their reply, and the Court finds no prejudice to  
accepting the late declaration.

1 based on “manufactured facts,” e.g., ECF No. 66 at 13-14, but those facts – including how much  
2 pressure Defendants applied to Rucks and whether they were able to do so for sustained periods of  
3 time – are disputed questions for the jury to decide. Defendants’ objections to Spitz’s conclusions  
4 go to the weight rather than the admissibility of his testimony. Defendants will be free at trial to  
5 argue to the jury that they should disbelieve Spitz’s opinions, but the Court cannot make such  
6 credibility determinations at summary judgment. Anderson, 477 U.S. at 255.

7 Finally, Defendants argue that they are entitled to qualified immunity because, even if their  
8 use of force was excessive, their conduct did not “violate clearly established statutory or  
9 constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457  
10 U.S. 800, 818 (1982). Again, the Court disagrees. The qualified immunity doctrine  
11 “acknowledge[s] that reasonable mistakes can be made as to the legal constraints on particular  
12 police conduct. . . . An officer might correctly perceive all of the relevant facts but have a  
13 mistaken understanding as to whether a particular amount of force is legal in those  
14 circumstances.” Saucier v. Katz, 533 U.S. 194, 205 (2001). An officer is entitled to qualified  
15 immunity “[i]f the officer’s mistake as to what the law requires is reasonable.” Id. In this case, if  
16 a jury were to believe the officers’ version of events and find that they did not hear Rucks  
17 complain of breathing difficulties, that they never pressed their full body weight into Rucks, and  
18 that they were applying only whatever pressure they felt was necessary to restrain a person who  
19 was resisting arrest and posed a safety risk, then Defendants would be entitled to qualified  
20 immunity. However, as discussed above, a jury might reach contrary conclusions under which  
21 Defendants’ use of force would have been unreasonable. These “unresolved issues of fact are also  
22 material to a proper determination of the reasonableness of the officers’ belief in the legality of  
23 their actions.” Espinosa v. City & Cty. of San Francisco, 598 F.3d 528, 532 (9th Cir. 2010). If a  
24 reasonable officer would have known that Rucks was having difficulty breathing, or would have  
25 concluded that Rucks did not pose a significant safety threat while he was handcuffed in a prone  
26 position and was not actively resisting the officers or attempting to free himself, then concluding  
27 that the law allowed the continued application of significant pressure to hold Rucks down would  
28 have been unreasonable. See Drummond, 343 F.3d at 1058-62; Gregory, 523 F.3d at 1108-09.



1 Disputed facts therefore prevent the grant of qualified immunity at summary judgment.

2 The three cases cited by Defendants on reply do not change the result of this analysis.  
3 Two cases, one of which is unpublished, are from the Sixth Circuit. In one case, the subject of  
4 force “had engaged in significant destruction of private property and assaulted” a third party, and  
5 he was deemed to “pose[] an immediate threat to himself, the officers, the staff members, and the  
6 other residents” of a group home. Cook v. Bastin, 590 F. App’x 523, 530 (6th Cir. 2014). He was  
7 also “attempting to free himself” from handcuffs. Id. Similarly, in the second case, the subject  
8 had “caused significant property damage, was a threat to the officers and to others, and resisted  
9 arrest during an episode of excited delirium.” Roell v. Hamilton Cty., 870 F.3d 471, 485 (6th Cir.  
10 2017), reh’g denied (Sept. 21, 2017). The officers also observed that he “was holding objects that  
11 could be used as weapons.” Id. These facts are materially distinguishable from those that a jury  
12 might find in this case. In neither of the Sixth Circuit cases did the individual complain of  
13 breathing problems. A jury might also conclude that Rucks had no weapons, did not pose an  
14 immediate threat after being handcuffed, and was not trying to free himself.

15 The third case relied on by Defendants is also distinguishable. In James v. Oakland Police  
16 Department, the district court granted qualified immunity on an excessive force claim because “the  
17 evidence in the record does not establish a violation of [the plaintiff’s] Fourth Amendment rights.”  
18 No. 13-CV-00011-SI, 2016 WL 3230704, at \*9 (N.D. Cal. June 13, 2016). The Court has already  
19 determined that a jury might conclude otherwise in this case. In addition, there was no indication  
20 that the plaintiff in James complained of breathing difficulties, and the court’s description of the  
21 plaintiff’s injuries focused on potential injuries from the officers’ use of a Taser prior to  
22 handcuffing, not from the “minor uses of force” used to “take the struggling James to the ground  
23 and hold him while handcuffing him, and holding him on the ground until the ambulance arrived.”  
24 Id. at \*7.

25 **B. Other Claims Against Individual Defendants**

26 Defendants’ motion for summary judgment on Plaintiffs’ other claims against the  
27 individual Defendants rests on their argument that Defendants did not use unreasonable force.  
28 The Court has already determined that whether Defendants’ use force was reasonable cannot be

1 resolved at summary judgment. The Court therefore also denies summary judgment on Plaintiffs’  
2 Fourteenth Amendment claim and state law claims against the individual Defendants.

3 **C. Monell Claim**

4 Finally, under Monell v. Department of Social Services, “a local government may not be  
5 sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when  
6 execution of a government’s policy or custom, whether made by its lawmakers or by those whose  
7 edicts or acts may fairly be said to represent official policy, inflicts the injury that the government  
8 as an entity is responsible under § 1983.” 436 U.S. 658, 694 (1978). Plaintiffs assert that  
9 Defendant City of Antioch is liable under a failure to train or ratification theory, but the only  
10 evidence they cite regarding their Monell claim is sixteen lines from the deposition transcript of  
11 Defendant Brogdon at pages 108 and 109. ECF No. 61 at 26-28. The Court cannot consider this  
12 evidence because Plaintiffs failed to present those pages of Brogdon’s deposition to the Court.

13 See ECF No. 61-2 at 9-48 (excerpts from Brogdon deposition, not including pages 108 or 109).  
14 Moreover, while a municipality may be held liable for an officer’s actions based on a ratification  
15 theory, “[t]o show ratification, a plaintiff must prove that the ‘authorized policymakers approve a  
16 subordinate’s decision and the basis for it.’ . . . [I]t is well-settled that a policymaker’s mere  
17 refusal to overrule a subordinate’s completed act does not constitute approval.” Christie v. Iopa,  
18 176 F.3d 1231, 1239 (9th Cir. 1999) (quoting City of St. Louis v. Praprotnik, 485 U.S. 112, 127

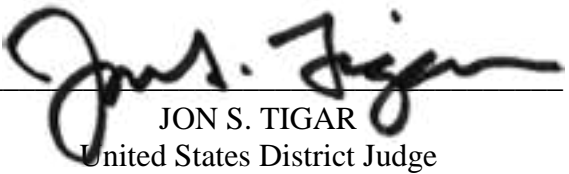
19 (1988)). The cited deposition testimony does not even purport to demonstrate who the authorized  
20 policymakers were or that they approved the actions by the individual Defendants in this case.  
21 Likewise, although Plaintiffs contend that the individual Defendants received inadequate training,  
22 they present no evidence on what training the officers did or did not receive, nor do they present  
23 any evidence as to how Defendants’ training was inadequate or why the City’s use of force policy  
24 is inadequate. See ECF No. 50-3 at 67-72 (City of Antioch Police Department Policy No. 16: Use  
25 of Force). Plaintiffs also fail to present any evidence of a pattern or practice of similar uses of  
26 force by City of Antioch police officers. Because Plaintiffs have presented no evidence of an  
27 official policy or custom, they have failed to meet their burden of demonstrating a genuine issue of  
28 material fact on their Monell claim. Defendants are therefore entitled to summary judgment.

1 **CONCLUSION**

2 Defendants' motion for summary judgment is granted in part and denied in part. The  
3 motion is granted as to Plaintiffs' Monell claim and denied in all other respects. Evidentiary  
4 objections not addressed in this order are denied as moot because the Court did not consider the  
5 disputed evidence.

6 **IT IS SO ORDERED.**

7 Dated: June 25, 2018

8   
9 JON S. TIGAR  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
United States District Court  
Northern District of California