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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOBBIE ALLEN WOODS,
Plaintiff,
v.
CITY OF HAYWARD, et al.,
Defendants.

Case No. [19-cv-01350-JCS](#)
**ORDER REGARDING MOTION FOR
SUMMARY JUDGMENT, MOTION TO
EXCLUDE EXPERT TESTIMONY,
AND ADMINISTRATIVE MOTIONS
TO FILE UNDER SEAL**
Re: Dkt. Nos. 96, 100, 101, 104

United States District Court
Northern District of California

I. INTRODUCTION

Plaintiff Bobbie Allen Woods brings various claims against Defendants the City of Hayward, the Hayward Police Department, Hayward Police Officer Brandon Tong, and Hayward Police Sergeant Ruben Pola¹ based on a police search of Woods’s home pursuant to a warrant. Defendants now move for summary judgment, and Woods moves to exclude certain expert opinion evidence. The Court held a hearing on September 3, 2021. For the reasons discussed below, Defendants’ motion is GRANTED as to Woods’s § 1983 and negligence claims against Tong and Pola, but DENIED as to his Americans with Disabilities Act (“ADA”) and negligence claims against the City of Hayward and the Hayward Police Department. Woods’s motion to exclude is GRANTED in large part. His administrative motions to file under seal are GRANTED in part and DENIED in part, as discussed below.²

II. BACKGROUND

A. Summary of Evidence

This section, intended for context and the convenience of the reader, summarizes relevant

¹ Pola is erroneously named in Woods’s first amended complaint, which Woods filed pro se, as “Sergeant Polar.”

² The parties have consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c).

1 evidence generally in a light favorable to Woods, as is required in resolving Defendants' motion
 2 for summary judgment. It is not intended as a complete recitation of the evidentiary record and
 3 should not be construed as resolving any disputed issue of fact.

4 **1. Overview of Search and Woods's Experience**

5 Woods is in his seventies and requires a wheelchair due to Miyoshi myopathy, a form of
 6 muscular dystrophy that causes weakness, atrophy, and muscle pain. Acott Opp'n Decl. Ex. 9
 7 (Label Report) ¶¶ 15, 21. His condition renders him particularly susceptible to muscle pain and
 8 cramping from exposure to cold. *Id.* ¶¶ 23–26. Woods also has post-traumatic stress disorder
 9 (“PTSD”) as a result of his service with the U.S. Air Force during the Vietnam War, which caused
 10 flashbacks and other symptoms after his return from the war, although his PTSD had become
 11 dormant before the events at issue in this case and did not affect his daily life. Acott Opp'n Decl.
 12 Ex. 8 (Grusd Report) ¶¶ 17, 21–23. In Vietnam, Woods was responsible for refueling airplanes,
 13 and was required to stop refueling when body bags containing dead soldiers were loaded or
 14 unloaded from the planes. *Id.* ¶ 33.

15 At the time of the events at issue, Woods lived in Hayward with three other people: his
 16 caregiver and tenant Nashi Alexander,³ and Alexander's two minor sons. *See* Acott Opp'n Decl.
 17 Ex. 8 (Grusd Report) ¶¶ 25–26. Alexander's older son, along with other minors, was suspected of
 18 armed robbery and other crimes. Defendants obtained a search warrant for the house and an arrest
 19 warrant for the older son. Acott Opp'n Decl. Exs. 13, 14.

20 On March 15, 2018, Woods heard officers outside on a loudspeaker calling for the
 21 residents of his house to come outside, and he notified the other residents of his home. Acott
 22 Opp'n Decl. Ex. 1 (Woods Dep.) at 37:1–20. He also heard a sound like an explosion, which
 23 reminded him of his military service:

24 I know it was like combat, like I'm back in Vietnam or something;
 25 same kind of tactics, you know, we used, you know, with the
 loudspeakers and things like that, you know, the noise.

26 *Id.* at 38:19–22. Woods “tried to scurry out of the bed,” but jammed his arms while catching his

27 _____
 28 ³ The record is inconsistent as to whether Woods's caregiver's surname is “Alexander” or “Mixon-Alexander.”

1 balance. *Id.* at 39:15–17. He was not able to put on clothes besides the light nightshirt and pants
2 he wore to bed. *Id.* at 39:25–40:10.⁴

3 A number of Hayward police officers, including officers with rifles and other tactical gear,
4 were positioned outside of Woods’s home. Alexander came out of the house first, and her older
5 son exited next and was placed in handcuffs. *See* Acott Opp’n Decl. Ex. 21 (body camera
6 footage). Alexander identified the occupants of the house to the officers, who had incorrectly
7 believed that her older son was her brother, and who did not appear to have been aware of
8 Woods’s existence, despite the fact that he owned the home, or that there was a five-year-old child
9 in the home. Acott Opp’n Decl. Ex. 22 (body camera footage) at 7:30–8:35.⁵ Woods was not
10 included on a list of possible residents of the house in an operations plan that Defendants prepared
11 for the search. Acott Opp’n Decl. Ex. 2 (Tong Dep.) at 145:12–146:4. At least by the time that
12 Alexander’s son had been placed in handcuffs, the officers were discussing with Alexander and
13 her son that Woods was in the house in a wheelchair, and that Alexander’s younger son, who was
14 five years old, was asleep in the house. *See* Acott Opp’n Decl. Ex. 21 at 10:40–11:10.

15 When officers ordered Woods to come out of the house with his hands raised, he
16 responded that he had a disability that kept him from raising his arms, and they allowed him to
17 come out of the house with his hands down. Acott Opp’n Decl. Ex. 1 (Woods Dep.) at 60:11–
18 61:15. Woods exited the house while officers aimed their firearms at him. *Id.* at 42:4–11; *see also*
19 Acott Opp’n Decl. Ex. 21 at 12:45–50 (footage of one officer stating “I got lethal” and aiming a
20 rifle). A timestamp on the body camera recoding indicates Woods left the house around 5:56 AM.
21 Acott Opp’n Decl. Ex. 21 at 13:14–40 (timestamp in “Zulu” time, indicating Greenwich Mean
22 Time). Woods objected to the manner in which the officers conducted the search, and officers
23

24 _____
25 ⁴ There is some evidence, including video footage and officers’ deposition testimony, indicating
26 that Woods had a pink covering over his legs when he left his house. The parties have not raised
27 that as an issue relevant to the present motions. Woods apparently told Defendants’ psychological
28 expert witness Dr. Greene that he “had a lap towel on.” Acott Decl. Ex. 1 (Greene Report) at 7.
At the very least, regardless of whether Woods had some sort of covering over his legs, there is
evidence from which a jury could conclude that he was not able to dress sufficiently for the cold
before leaving the house.

⁵ All citations herein to portions of recordings refer to the time in minutes and seconds from the
beginning of the recording, not any other timestamp that might appear on the recording.

1 directed him to continue up the street. *See id.* at 13:50–14:25.

2 Woods told the officers who escorted him up the street that he had a disability, and “that
3 being dressed in the manner that [he] was dressed and [his] condition that [he] needed to return to
4 [his] house or get some kind of blanket or something to cover [himself],” because he noticed that
5 the officers were dressed warmly in gloves and jackets. *Id.* at 61:17–62:16. He made a similar
6 request “several times,” trying to space out his requests so as not to “appear to be too persistent,”
7 and to give the officers “ample time to respond.” *Id.* at 62:17–64:3. Woods did not recall the
8 exact sequence of events or words that he used, but he testified at his deposition that he was
9 “pretty sure” he told the officers he had a disability that made him particularly sensitive to cold.
10 *id.* at 56:10–16.

11 Woods testified that the officers guarding him “told [him] to stay right here, not to move,”
12 although he could not recall with certainty which officer told him that or the exact words the
13 officer used. Acott Opp’n Decl. Ex. 1 (Woods Dep.) at 208:9–209:3, 209:24–210:7. When
14 Woods asked on multiple occasions whether he could return to his home, he was told he could not,
15 but that his “request ha[d] been relayed.” *Id.* at 209:9–14. Woods did not ask if he could leave to
16 go anywhere else, because he did not believe there was anywhere else he could go even if granted
17 permission, but he did not feel that he “had the ability to just kind of wheel around while they
18 were doing their work.” *Id.* at 210:24–211:14. One of the officers who stood by Woods testified
19 that he told Woods where to park his wheelchair, never told him he was free to leave, “would have
20 asked him . . . to not leave” if Woods had attempted to leave that location, and only left Woods’s
21 side when another officer took over standing next to him. Acott Opp’n Decl. Ex. 5 (Uribe Dep.) at
22 69:10–70:17.

23 Talking amongst themselves after Woods left the house, police officers appeared to agree
24 that it was too cold outside for the clothing that Woods and the other occupants of the house were
25 wearing:

26 [Unidentified officer:] If you guys ever served a search warrant at my
27 house, I’ll just tell you what I’m gonna get dressed first. I ain’t coming
out in my chonies, ain’t freezing my own balls off.

28 [Second unidentified officer:] Hell no. I’d even go to my front door

1 and be like, “I’m coming, but I’m gonna get dressed.” “Don’t go back
2 inside your house.” “Fuck you. I’m going back inside. I’m gonna go
3 get dressed. Listen, if I wanted to shoot you I wouldn’t have even
4 came to the door.”

5 Acott Opp’n Decl. Ex. 21 at 16:45–17:15.

6 At some point after Woods left the house—according to Woods, around half an hour
7 afterwards, although video evidence suggests this occurred around six minutes after he left the
8 house—an officer went across the street to get what Woods described as a “yellow body tarp bag”
9 and offered it to Woods. Acott Opp’n Decl. Ex. 1 (Woods Dep.) at 52:17–53:9, 65:14–18. Woods
10 testified that he knew it was a body bag because he “associated with them while in Vietnam,
11 seeing service members being put into them, brought back, only they were black.” *Id.* at 53:4–6.
12 According to Woods, he told the officer he “couldn’t wear it because it . . . would reset [his]
13 PTSD, seeing body bags and stuff like that, being out in the cold.” *Id.* at 53:11–13. Later in his
14 deposition, Woods described the item as a “tarp” and a “body covering.” *Id.* at 153:7–22. In the
15 background of one officer’s body camera recording, another officer can be seen unfolding a
16 yellow sheet-like item—it is not possible from the video to tell whether it is a blanket, tarp, or
17 body bag—while standing by Woods approximately six minutes after Woods left the house. Acott
18 Opp’n Decl. Ex. 21 at 19:20–49. Near the end of that recording, the officer appears to be putting
19 the item back in its bag, but the video ends before it is clear whether the officer put the item away
20 or what happened to it. *See id.*

21 The officers who stood by Woods during the incident did not activate their body cameras.
22 One of those officers, Jesus Uribe, did not remember whether Woods asked for anything to keep
23 him warm, but said that hypothetically if Woods had made such a request: “it’s not uncommon for
24 us to carry blankets in your patrol cars. We carry a yellow packaged blanket. I would have either
25 asked someone . . . to go grab one or if someone was standing with him, I would try to go grab
26 him one.” Acott Opp’n Decl. Ex. 5 (Uribe Dep.) at 57:16–58:5; *see also* Acott Opp’n Decl. Ex. 4
27 (Wright Dep.) at 73:2–74:19 (testifying similarly).

28 A timestamp on another video indicates that Woods was still waiting outside his house
with an officer standing by him at around 6:35 AM, around forty minutes after he left the house.
Acott Opp’n Decl. Ex. 26 at 0:05. Woods testified that he held outside for forty to forty-five

1 minutes before he was allowed to return to his home. Acott Opp'n Decl. Ex. 1 (Woods Dep.) at
 2 89:11–16. After he entered the house, he had a conversation with Pola in which Woods stated that
 3 the officers' conduct was excessive and Pola disagreed. *Id.* at 167:16–21.

4 The cold outside caused painful cramps in Woods's hands, and he continued to experience
 5 difficulty with his hands after the incident. Acott Opp'n Decl. Ex. 1 (Woods Dep.) at 198:3–16.
 6 The experience also aggravated his PTSD symptoms. *Id.* at 199:7–10. Throughout the body
 7 camera footage in the record, multiple officers can be heard complaining about the cold. An
 8 officer at one point before Woods left the house told someone—presumably Alexander—that they
 9 would put her in a car so she could stay warm. Alcott Opp'n Decl. Ex. 22 at 9:18–21. Farmer's
 10 Almanac data indicates that the temperature in Hayward on March 15, 2018 ranged from a low of
 11 41.0 degrees Fahrenheit to a high of 57.0 degrees. Acott Opp'n Decl. Ex. 28.⁶

12 2. Pola's Experience

13 Pola, a sergeant, was assigned to supervise the search to “ensure that things were taken
 14 care of in a legal manner and hopefully using best practices in terms of police procedure.”
 15 Agarwal Decl. (dkt. 98) Ex. 1 (Pola Dep.) at 35:18–36:7. He did not recall any other officers on
 16 the scene who held an equivalent rank or outranked him. *Id.* at 35:1–14. While Woods was
 17 outside, a SWAT team cleared the house before Pola and other officers and detectives entered to
 18 execute the search warrant. *Id.* at 44:6–21.

19 At some point that morning, Pola heard Woods arguing with officers outside, which he
 20 considered to be a “disturbance” that “obstructed” the investigation, as compared to “most people
 21 at search warrants who usually just obey what the officer is trying to direct them to.” Acott Opp'n
 22 Decl. Ex. 3 (Pola Dep.) at 168:21–170:8. Pola knew that it was cold outside and told another
 23 officer that “if he's cold or he needs a blanket, get him a blanket.” *Id.* at 38:15–23. Asked about
 24 “any specific instructions or orders” he gave on the day in question, Pola testified:

25 I remember seeing him in a wheelchair in the morning and I remember
 26 a directive where I thought we need to get him back in the house as
 27 soon as possible and that he needed a blanket. And I remember saying,

28 ⁶ Woods's unopposed request for judicial notice of this weather information is GRANTED. *See* dkt. 106.

1 you know, let's get this guy a blanket or get him in here, you know,
2 what's the best way we can do that?

3 *Id.* at 37:11–17; *see also id.* at 40:16–41:20. After giving that instruction to some other officer,
4 Pola “refocused back on what [he] was doing,” and did not pay attention to whether Woods
5 actually received a blanket. *See id.* at 42:10–43:10.

6 Pola testified that he had multiple discussions with Woods, including one in which Woods
7 “talked a little bit about his medical condition” and “what condition he actually had,” *id.* at
8 161:16–162:16, but his first conversation with Woods was only after Woods was allowed to
9 reenter the house. *Id.* at 75:22–24. Pola did not recall Woods discussing his military service. *Id.*
10 at 162:17–18.

11 **3. Tong's Experience**

12 Tong, a detective, was a member of both the team that initially swept the house to be sure
13 it was secure and no one was hiding inside, and also the team that then searched the house for
14 evidence pursuant to the search warrant. Acott Opp'n Decl. Ex. 2 (Tong Dep.) at 136:22–137:23.
15 Tong was not in charge of the initial effort to ensure the home was safe, but had some degree of
16 supervisory role with respect to the subsequent search for evidence. *Id.* at 158:6–24 (noting that
17 Tong was not “the supervisor on scene for the actual service of the warrant; that was Sergeant
18 Pola,” but by virtue of Tong's role as a case agent, “if people had questions in regards to the actual
19 search [such as what items to search for], they would probably talk to [him]”).

20 After Defendants secured the house, but before they searched it for evidence, Tong left the
21 house and came back in with Alexander to retrieve her younger son. *Id.* at 225:10–226:2. He
22 allowed Alexander to put on a pair of sweatpants and to retrieve a blanket. *Id.* at 226:3–8. Tong
23 did not recall at his deposition whom the blanket was intended for, but believed it was for
24 Alexander's younger son. *Id.* at 226:18–227:3. Asked at his deposition whether it would have
25 been possible to also retrieve a blanket for Woods, Tong testified as follows:

26 I think if I would have known that Mr. Woods wanted a blanket, I
27 probably would have told [Alexander] to grab a blanket for him, as
28 well.

 I think I've told you this before, that I'm not going to just leave
 someone out, you know, in the cold.

1 That’s inhumane.

2 *Id.* at 227:12–24. While inside the house with Tong, more than ten minutes after Woods left the
3 house, Alexander inquired about Woods’s welfare, and Tong stated, “I believe they’re gonna
4 probably either let you guys go to another location or at some point in time I think they’re actually
5 gonna let you guys leave if you guys would like to do that while we search the residence.” Acott
6 Opp’n Decl. Ex. 27 (audio recording) at 27:55–28:12; *see* Acott Opp’n Decl. Ex. 2 (Tong Dep.) at
7 228:1–229:21.

8 Tong spoke to Woods at some point outside the home, but at his deposition he did not
9 remember when that occurred, including whether it was before or after Defendants had secured the
10 premises. Acott Opp’n Decl. Ex. 2 (Tong Dep.) at 183:8–18. Uribe testified that Tong came to
11 speak with Woods about “why his house was being searched and that they were going to try to
12 accommodate whatever his needs were” while Uribe was standing with him, but he did not recall
13 whether Tong took over for him or stayed with Woods, or whether Tong was there to take Woods
14 back into the house. Acott Opp’n Decl. Ex. 5 (Uribe Dep.) at 58:10–59:7. Tong did not recall
15 Woods asking him for a jacket or blanket or to be allowed to return to the home, or anyone
16 relaying such a request to him. Acott Opp’n Decl. Ex. 2 (Tong Dep.) at 188:5–189:21. No
17 conversation between Tong and Woods is included on Tong’s audio recording from the day of the
18 search, which runs to around fifteen minutes after Woods left the house. *See generally* Acott
19 Opp’n Decl. Ex. 27.

20 Tong testified that if another officer had relayed a request for someone to be given a jacket
21 or blanket, he would have either told the officer to fulfill the request or tried to help himself,
22 depending on his other duties at the time, and that he would generally expect other officers to
23 “think on their feet and . . . if someone needs a request, depending on the request, that they do
24 what they can to make it happen.” Acott Opp’n Decl. Ex. 2 (Tong Dep.) at 189:22–191:19.

25 Tong’s report from the search indicates that Defendants secured the house “at
26 approximately 0600 hours,” and that at “approximately 0630 hours,” he “asked Detective Carrasco
27 to search the front/living room for weapons so that Woods [and the other occupants not suspected
28 of a crime] could stay inside the residence while HPD Personnel search the residence because it

1 was cold outside and Woods couldn't go anywhere else." Acott Opp'n Decl. Ex. 17. Tong noted
 2 in the report that he spoke with Woods, who "was upset that the Special Response Unit secured
 3 the residence and the manner in which the residence was secured (occupants called out by officers
 4 with rifles)" because Woods "believed that whatever crime HPD was investigating didn't warrant
 5 the Special Response Unit." *Id.*

6 **B. Procedural History**

7 Woods's original complaint included the following claims: (1) unreasonable seizure of
 8 Woods's person in violation of the Fourth Amendment and 42 U.S.C. § 1983; (2) unreasonable
 9 search in violation of the Fourth Amendment and 42 U.S.C. § 1983; (3) racial discrimination in
 10 violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983;
 11 (4) failure to provide a reasonable accommodation in violation of the ADA; (5) negligence;
 12 (6) intentional infliction of emotional distress; and (7) invasion of privacy.

13 The Court granted Defendants' motion to dismiss Woods's unreasonable seizure claim
 14 because Woods did not allege that, once he was removed from his home, Defendants intentionally
 15 acquired "physical control" such that a reasonable person in Woods's position would not feel free
 16 to leave. Order Re Mot. to Dismiss (dkt. 35)⁷ at 5–6 (citation omitted). The Court dismissed
 17 Woods's unreasonable search claim because he relied primarily on a case addressing unreasonable
 18 seizures, and because even "[a]ssuming for the sake of argument that an excessive show of force
 19 during a search pursuant to a valid warrant might in some circumstances establish a
 20 constitutionally unreasonable search without constituting a seizure," Woods failed to allege facts
 21 supporting a conclusion that this particular search was unreasonable. *Id.* at 6–7. The Court
 22 dismissed Woods's equal protection claim because he failed to allege facts (as opposed to mere
 23 conclusory assertions) supporting a conclusion that he was treated differently based on his race.
 24 *Id.* at 7–8. The Court allowed Woods's ADA claim to proceed against the City of Hayward and
 25 the Hayward Police Department, but dismissed that claim against the individual defendants with
 26

27 ⁷ *Woods v. City of Hayward*, No. 19-cv-01350-JCS, 2019 WL 5789256 (N.D. Cal. Nov. 6, 2019).
 28 Citations herein to the Court's previous orders refer to page numbers of the versions filed in the
 Court's ECF docket.

1 prejudice, because “[t]he ADA does not . . . provide a cause of action against individual
2 defendants in their individual capacities.” *Id.* at 9–11. Finally, the Court dismissed Woods’s state
3 law claims for failure to allege compliance with California’s government claims procedure. *Id.* at
4 11–12.

5 The Court granted Woods leave to amend all of his dismissed claims except for the ADA
6 claims against individual defendants. In considering whether leave to amend was appropriate, the
7 Court rejected an argument that local police departments cannot be sued under § 1983, noting that
8 the Ninth Circuit has held to the contrary. *Id.* at 8–9 (citing, *e.g.*, *Shaw v. State of Cal. Dep’t of*
9 *Alcoholic Beverage Control*, 788 F.2d 600, 605 (9th Cir. 1986)).

10 Woods’s first amended complaint asserted the following claims: (1) unreasonable seizure
11 of Woods’s person in violation of the Fourth Amendment and 42 U.S.C. § 1983, 1st Am. Compl.
12 (“FAC,” dkt. 47) ¶¶ 32–37; (2) unreasonable search in violation of the Fourth Amendment and 42
13 U.S.C. § 1983, FAC ¶¶ 38–44; (3) failure to provide a reasonable accommodation in violation of
14 the ADA, against only the City of Hayward and the Hayward Police Department, *id.* ¶¶ 45–50;
15 (5) negligence, *id.* ¶¶ 51–55; (6) intentional infliction of emotional distress, *id.* ¶¶ 56–61; and
16 (7) invasion of privacy, *id.* ¶¶ 62–68. Woods no longer brings an ADA claim against the
17 individual defendants, and also omits the equal protection claim that appeared in his original
18 complaint.

19 On Defendants’ second motion to dismiss, the Court dismissed Woods’s claims for
20 unreasonable search, invasion of privacy, intentional infliction of emotional distress, and—as to
21 the City of Hayward and the Hayward Police Department only—unreasonable seizure. Order re
22 Mot. to Dismiss FAC (dkt. 61)⁸ at 9–12, 18–20. Although the Court granted Woods leave to
23 amend some of those claims, he chose not to do so. *See id.* at 20. The remaining claims in the
24 case are thus for: (1) unreasonable seizure against Tong and Pola; (2) violation of the ADA against
25 the City of Hayward and the Hayward Police Department; and (3) negligence against all
26 Defendants. Pro bono counsel was appointed for Woods after the Court resolved the second
27

28 ⁸ *Woods v. City of Hayward*, No. 19-cv-01350-JCS, 2020 WL 1233841 (N.D. Cal. Mar. 13, 2020).

1 motion to dismiss. Order Appointing Counsel (dkt. 67).

2 **C. Arguments Regarding Defendants’ Motion for Summary Judgment**

3 Defendants argue that Tong and Pola are entitled to summary judgment on Woods’s
 4 unreasonable seizure claim because neither of them personally placed him in a position where he
 5 did not feel free to leave. Defs.’ Mot. (dkt. 96, 97)⁹ at 3. They contend there is no evidence
 6 Woods requested to leave the location, other than to go back into the house where the search was
 7 being conducted, and regardless, Tong and Pola were not the two officers who Woods asserts were
 8 “guarding” him outside the house. *Id.* at 3–4. In the alternative, Defendants argue that seizing
 9 Woods incident to the search warrant for the home would have been reasonable and permissible
 10 under the Fourth Amendment. *Id.* at 4–5. Defendants also argue that this case does not resemble
 11 *Franklin v. Foxworth*, 31 F.3d 873 (9th Cir. 1994), which involved an unnecessarily painful and
 12 degrading detention and raised concerns about detention of elderly and disabled individuals,
 13 because Defendants did not unnecessarily prolong Woods’s time outside the home, were not aware
 14 of his particular susceptibility to cold or his PTSD, and offered him a blanket. *Id.* at 5–6.
 15 Defendants contend that at the very least, Tong and Pola are entitled to qualified immunity. *Id.* at
 16 7.

17 Woods asserts that an officer blocked his path and searched his wheelchair when he left the
 18 house, officers directed him where to go and stood by him the whole time he was outside, and his
 19 requests to return to the house were refused, all supporting his belief that he was not free to leave.
 20 Pl.’s Opp’n (dkt. 102) at 11–12. He also notes that Tong told Alexander that “at some point” they
 21 would be allowed to leave—indicating that at least for some portion of the search, they were not
 22 free to do so—and that Tong testified at his deposition that Woods would not have been allowed
 23 to simply leave the area immediately after exiting the house. *Id.* Woods contends that Tong and
 24 Pola, both of whom had decisionmaking authority during the search, can be liable on a theory of
 25 failure to intercede even though they were not the specific officers who stood by Woods outside
 26

27 ⁹ Defendants filed their memorandum of points and authorities as a separate docket entry from
 28 their notice of motion. Citations to this motion refer to page numbers of the memorandum of
 points and authorities.

1 the house. *Id.* at 12–14. He clarifies that he does not dispute Defendants’ authority to question
2 him, ask for identification, “or to detain him in some fashion” during the search, but instead argues
3 “that the *conditions* and *nature* of his detention were unreasonable” because he posed no threat,
4 was not suspected of a crime, and was detained outside in the cold in a manner unreasonable in
5 light of his age and disability. *Id.* at 14–15. Woods asserts that *Franklin* is sufficiently clear
6 precedent to deny qualified immunity. *Id.* at 16–19.

7 With respect to Woods’s ADA claim, Defendants argue that “[n]o legal authority provides
8 that [Woods’s] request [to be allowed to stay in his home] constitutes a ‘reasonable
9 accommodation’ and that a denial of such a request is actionable under the ADA,” nor that
10 detention during a search is a “program, service or activity” governed by the ADA. Mot. at 8.
11 Defendants contend that even if the ADA applies, there is no evidence of intentional
12 discrimination or deliberate indifference because the officers allowed Woods to leave his home
13 without raising his hands once they learned he was unable to do so, they offered him a blanket
14 (which Woods asserts was a body bag) that he refused, and “there is no evidence in this record that
15 any of the HPD officers on scene recalled being informed of [Woods’s] special sensitivity to cold
16 due to his muscular dystrophy or that offering [Woods] the blanket would trigger his PTSD.”
17 Defs.’ Mot. at 9–10. Defendants also cite deposition testimony from multiple officers that it
18 would not have been safe, and might have compromised the effectiveness of the search, for Woods
19 to remain in the house while the search was conducted. *Id.* at 10.

20 Woods disputes Defendants’ view that the ADA does not apply, arguing instead that the
21 Ninth Circuit has construed that law as “encompass[ing] ‘anything a public entity does.’” Pl.’s
22 Opp’n at 19 (quoting *Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1232 (9th Cir.
23 2014), *rev’d in part on other grounds*, 135 S. Ct. 1765 (2015)). Woods argues that Defendants
24 knew of his disabilities because he told the officers who were guarding him about both his
25 sensitivity to cold and the fact that the purported body bag they offered him triggered his PTSD,
26 and more generally that they knew he was disabled because he was in a wheelchair and could not
27 raise his arms. *Id.* at 20–21. Woods contends that Defendants denied him an accommodation of
28 allowing him to return to the house or getting him a jacket or blanket—all of which would have

1 been reasonable in light of the fact that Defendants allowed Alexander back into the house to get a
 2 blanket and warmer clothes for herself—and that Defendants’ failure to do so caused Woods
 3 cramping and pain. *Id.* at 21–22.

4 Defendants briefly argue that they are entitled to summary judgment on Woods’s
 5 negligence claim, with their entire substantive argument as follows:

6 It is clear from the record in this case that did not breach any duty of
 7 care they had towards Plaintiff. Again, there is no evidence in the
 8 record of any HPD officer knowing that Plaintiff had a physical
 9 disability that would be exacerbated by the cold or that Plaintiff
 10 suffered from a mental illness that would be exacerbated by the
 11 offering of a blanket. Rather, the evidence shows that HPD acted
 reasonably given the valid search warrant, the high-risk search of the
 residence, the need to ensure that Plaintiff did not return inside until
 it was secured (for his and officer safety), the offering of the yellow
 blanket within six minutes of Plaintiff exiting the house and then
 Plaintiff being allowed to return within minutes afterwards.

12 Defs.’ Mot. at 11.

13 Woods addresses the negligence claim in more detail, arguing that despite Defendants
 14 having ordered Woods outside and their purported recognition “that Woods should not be waiting
 15 outside in the cold during the search,” they failed to avoid or remedy that situation by “pre-staging
 16 a vehicle equipped for wheelchair users, offering Woods a blanket or jacket from his house, or
 17 moving him inside.” Pl.’s Opp’n at 24. Woods contends that Defendants’ had a generally-
 18 applicable duty of care under California Civil Code section 1714 and that their breach of that duty
 19 proximately caused Woods harm, including muscular pain and PTSD symptoms. *Id.* at 23–25.

20 **III. ANALYSIS OF MOTION FOR SUMMARY JUDGMENT**

21 **A. Legal Standard**

22 Summary judgment on a claim or defense is appropriate “if the movant shows that there is
 23 no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
 24 law.” Fed. R. Civ. P. 56(a). In order to prevail, a party moving for summary judgment must show
 25 the absence of a genuine issue of material fact with respect to an essential element of the non-
 26 moving party’s claim, or to a defense on which the non-moving party will bear the burden of
 27 persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

28 Once the movant has made this showing, the burden then shifts to the party opposing

1 summary judgment to designate ““specific facts showing there is a genuine issue for trial.”” *Id.*
 2 (citation omitted); *see also* Fed. R. Civ. P. 56(c)(1) (“A party asserting that a fact . . . is genuinely
 3 disputed must support the assertion by . . . citing to particular parts of materials in the record
 4 . . .”). “[T]he inquiry involved in a ruling on a motion for summary judgment . . . implicates the
 5 substantive evidentiary standard of proof that would apply at the trial on the merits.” *Anderson v.*
 6 *Liberty Lobby Inc.*, 477 U.S. 242, 252 (1986). The non-moving party has the burden of
 7 identifying, with reasonable particularity, the evidence that precludes summary judgment. *Keenan*
 8 *v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). Thus, it is not the task of the court ““to scour the
 9 record in search of a genuine issue of triable fact.”” *Id.* (citation omitted); *see Carmen v. S.F.*
 10 *Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001); Fed. R. Civ. P. 56(c)(3).

11 A party need not present evidence to support or oppose a motion for summary judgment in
 12 a *form* that would be admissible at trial, but the *contents* of the parties’ evidence must be amenable
 13 to presentation in an admissible form. *See Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir.
 14 2003). Neither conclusory, speculative testimony in affidavits nor arguments in moving papers
 15 are sufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ’g Co.,*
 16 *Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). On summary judgment, the court draws all
 17 reasonable factual inferences in favor of the non-movant, *Scott v. Harris*, 550 U.S. 372, 378
 18 (2007), but where a rational trier of fact could not find for the non-moving party based on the
 19 record as a whole, there is no “genuine issue for trial” and summary judgment is appropriate.
 20 *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

21 **B. Fourth Amendment Claim**

22 Woods’s first remaining claim is against Tong and Pola under 28 U.S.C. § 1983, for
 23 violation of the Fourth Amendment’s prohibition of unreasonable seizures. A seizure “in the
 24 constitutional sense . . . occurs when there is a restraint on liberty to the degree that a reasonable
 25 person would not feel free to leave.” *Doe ex rel. Doe v. Haw. Dep’t of Educ.*, 334 F.3d 906, 909
 26 (9th Cir. 2003). “Violation of the Fourth Amendment requires an intentional acquisition of
 27 physical control.” *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989). The Fourth Amendment
 28 right to be free of unreasonable seizures requires as a “general rule” that “seizures are ‘reasonable’

1 only if based on probable cause to believe that the individual has committed a crime.” *Bailey v.*
2 *United States*, 568 U.S. 186, 193 (2013) (citation and internal quotation marks omitted).

3 “An officer’s liability under section 1983 is predicated on his ‘integral participation’ in the
4 alleged violation.” *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th Cir. 2007) (citing
5 *Chuman v. Wright*, 76 F.3d 292, 294–95 (9th Cir. 1996)). “Integral participation does not require
6 that each officer’s actions themselves rise to the level of a constitutional violation . . . [b]ut it does
7 require some fundamental involvement in the conduct that allegedly caused the violation.” *Id.*
8 (citations and quotation marks omitted). Thus, “[o]fficers are fundamentally involved in the
9 alleged violation when they provide affirmative physical support at the scene of the alleged
10 violation and when they are aware of the plan to commit the alleged violation or have reason to
11 know of such a plan, but do not object.” *Monteilh v. County of Los Angeles*, 820 F. Supp. 2d
12 1081, 1089–90 (C.D. Cal. 2011). “Additionally, officers may be integral participants even if they
13 have no knowledge of a plan to commit the alleged violation if their physical participation in the
14 alleged violation was part of a closely related series of physical acts leading to the violation.” *Id.*
15 (citing *Blankenhorn*, 485 F.3d at 481 n.12). “[P]olice officers have a duty to intercede when their
16 fellow officers violate the constitutional rights of a suspect or other citizen.” *Cunningham v.*
17 *Gates*, 229 F.3d 1271, 1289 (9th Cir. 2000) (citation and internal quotation marks omitted).
18 “Importantly, however, officers can be held liable for failing to intercede only if they had an
19 opportunity to intercede.” *Id.*

20 A jury could find that a reasonable person in Woods’s position while he waited outside
21 would not have felt free to leave, and that Woods was therefore subject to a seizure. The record
22 indicates that officers directed Woods where to go, stood by him for the duration of the search,
23 and refused his requests to go back into the house. There is no evidence that, after officers
24 directed him where to wait, anyone indicated to him that he was free to leave. There is also some
25 evidence that Woods was in fact not free to leave, in that Tong told Woods’s caregiver more than
26 ten minutes after Woods left the house that they would only be free to go at some point in the
27 future. Acott Opp’n Decl. Ex. 27 at 27:55–28:12. Defendants are not entitled to summary
28 judgment on the question of whether Woods was seized.

1 The Supreme Court has held that Fourth Amendment allows “officers executing a search
2 warrant ‘to detain the occupants of the premises while a proper search is conducted,’” without
3 need for “particular suspicion that an individual is involved in criminal activity or poses a specific
4 danger to the officers.” *Bailey v. United States*, 568 U.S. 186, 193 (2013) (quoting *Michigan v.*
5 *Summers*, 452 U.S. 692, 705 (1981)).

6 The Supreme Court recognized in *Summers* that “special circumstances, or possibly a
7 prolonged detention, might” render detention during a valid search pursuant to a warrant
8 unconstitutional “in an unusual case,” 452 U.S. at 705 n.21, and the Ninth Circuit has applied that
9 exception to reverse the results of a bench trial and hold unconstitutional officers’ conduct in
10 “removing a gravely ill and semi-naked man from his sickbed without providing any clothing or
11 covering, and then . . . forcing him to remain sitting handcuffed in his living room for two hours
12 rather than returning him to his bed within a reasonable time after the search of his room was
13 completed,” *Franklin v. Foxworth*, 31 F.3d 873, 876–77 (9th Cir. 1994). In that case, the officers
14 “cuffed [the plaintiff’s] hands behind his back, carried him into the living room, and placed him on
15 a couch, with his genitals exposed,” and “[n]o effort was made to obtain clothing or any covering
16 for him.” *Id.* at 875. The Ninth Circuit explained its reasoning, in part, as follows:

17 A detention conducted in connection with a search may be
18 unreasonable if it is unnecessarily painful, degrading, or prolonged,
19 or if it involves an undue invasion of privacy. Detentions, particularly
20 lengthy detentions, of the elderly, or of children, or of individuals
21 suffering from a serious illness or disability raise additional concerns.
22 Of course, the presence of any of these factors in an individual case
23 does not establish that the detention is unreasonable *per se*. Rather,
24 these factors, along with the *Graham* elements and any other
25 circumstances relevant to an individual case, must be assessed in their
26 totality.

27 [. . .]

28 None of the officers had any reason to believe, on the basis of the
information they had prior to the search or their observations once in
the house, that Curry had committed a crime, or that he was armed.
In fact, the officers were not even aware that Curry lived in the house
prior to executing the warrant. It should also have been clear to them
that Curry was not a gang member. Finally, it should have been
obvious to the officers that Curry presented little risk of danger to
them, that he presented absolutely no risk of flight, and that it was
highly unlikely that he could interfere with their search in any way.

[. . .]

We emphasize that it is not the fact that there was a more reasonable alternative available that leads us to our conclusion. It is the fact that the officers conducted the detention of Curry in a wholly unreasonable manner—a manner that wantonly and callously subjected an obviously ill and incapacitated person to entirely unnecessary and unjustifiable degradation and suffering. Even had Curry been thought to have been guilty of criminal behavior, we would be required to reject such conduct on the part of individuals sworn to uphold the law. Given the circumstances of this case, the violation was egregious and the injuries substantial.

Id. at 876–78. In a later case where an elderly plaintiff suspected of possessing stolen lunar rocks was detained in a restaurant parking lot for multiple hours of interrogation in urine-soaked pants, the Ninth Circuit held that the plaintiff raised genuine issues of material fact both as to the reasonableness of the manner of detention and as to qualified immunity, noting that while the circumstances were arguably less severe than in *Franklin*, that precedent “does not require that a detention be so egregious to be found unreasonable.” *Davis v. United States*, 854 F.3d 594, 600 (9th Cir. 2017).

Qualified immunity protects government officials performing discretionary functions “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “The salient question is whether the state of the law at the time of an incident provided fair warning to the defendants that their alleged conduct was unconstitutional.” *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (cleaned up). The qualified immunity inquiry does not alter the general rule on summary judgment that factual disputes and reasonable inferences must be resolved in favor of the non-moving party. *See id.* at 657–60.

This case overlaps in some ways with *Franklin*. Woods was obviously disabled in that he was in a wheelchair, and he obviously did not meet the description of the juvenile suspects accused of committing the crimes under investigation. There is no indication that, once Woods left the house and the officers searched his wheelchair, any officer believed him to be a threat. A jury could also conclude that Woods was held outside with inadequate clothing during the search.

That said, there is no evidence that either Tong or Pola—the only remaining defendants named in Woods’s Fourth Amendment claim—knew of Woods’s specific disability with respect

1 to cold, or of his PTSD and its association with the yellow covering that he was offered and
 2 refused. The only officers Woods specifically recalled telling about the effects of his disability
 3 were the officers who escorted and stood by him while he was outside, who by all accounts were
 4 not Tong or Pola. The Court need not decide whether an officer who knew of Woods’s specific
 5 sensitivity to cold, and of his PTSD-triggering reaction to the covering he was offered, could be
 6 held liable for an unreasonable seizure under *Franklin*, because the individual defendants here had
 7 no such knowledge.

8 As the officer in charge of executing the warrant, Pola likely had an opportunity to
 9 intercede to ensure Woods was kept warm. Pola testified that he took at least one step to do so: he
 10 instructed another officer to get Woods a blanket. Acott Opp’n Decl. Ex. 3 (Pola Dep.) at 37:11–
 11 17. Offering Woods a blanket likely would have been sufficient to avoid any constitutional
 12 unreasonableness in detaining him outside in the forty-something-degree cold, particularly given
 13 that it was one of the accommodations Woods specifically requested, Acott Opp’n Decl. Ex. 1
 14 (Woods Dep.) at 153:11–13. Woods was in fact offered some kind of covering, which he
 15 perceived as a body bag. *Id.* at 52:17–53:9. While Woods testified that the offer was made
 16 around thirty minutes after he left the house, *id.* at 52:17–20, a jury could not reasonably credit his
 17 testimony as to that timing when video evidence shows an officer unfolding a yellow item,
 18 generally meeting Woods’s description of the covering he was offered, next to Woods around six
 19 minutes after he left the house. *See* Acott Opp’n Decl. Ex. 21.¹⁰

20 Turning to Tong, he testified that he saw Woods coming out of the home in his wheelchair.
 21 Acott Opp’n Decl. Ex. 2 (Tong Dep.) at 181:15–182:2. Tong was at the time preparing to take
 22 part in the SWAT (or “SRU”) team’s effort to secure the house. There is no evidence that he was
 23 responsible for managing the treatment of people outside the house, or that he had reason to
 24 believe that Woods would be held outside for an extended period without being offered some way
 25

26 ¹⁰ Woods’s testimony that he waited around half an hour before he was offered the yellow
 27 covering, and that after refusing that covering he was outside for a further “at least half an hour,”
 28 is also inconsistent with his testimony that he was detained on the sidewalk for a total of around
 forty to forty-five minute. *See* Acott Opp’n Decl. Ex. 1 (Woods Dep.) at 52:17–20, 89:11–16,
 154:5–12

1 to stay warm. Tong also spoke to Woods outside at some point later, *see, e.g., id.* at 183:8–15,
2 although there is little evidence of when that conversation occurred other than the fact that it is not
3 included on Tong’s personal audio recording, which ended around fifteen minutes after Woods left
4 the house. There is no evidence that Woods told Tong that he was cold or requested any
5 accommodation from him, or that Tong knew of Woods’s relevant disabilities besides the fact that
6 he was in a wheelchair.

7 In sum, both individual defendants knew that Woods had been ordered out of the house.
8 They had opportunities to observe him, and therefore reason to know that he was an older man in a
9 wheelchair and only lightly dressed. But even viewing the record in the light most favorable to
10 Woods, there is no evidence that these defendants knew of his susceptibility to cold, his PTSD,
11 that he had requested a blanket and to wait inside, or that he refused the covering another officer
12 offered him because it triggered his PTSD. Pola instructed another officer to give Woods a
13 blanket, while Tong believed that if someone in Woods’s position had requested a blanket, the
14 officer to whom that request was directed would have tried to fulfill it. Even taking into account
15 Woods’s age and mobility impairment, it is difficult to see how a jury could conclude that either
16 of these defendants was aware that Woods had been subjected to a “wholly unreasonable”
17 detention amounting to a Fourth Amendment violation as described in *Franklin*, 31 F.3d at 876–
18 78, such that they were required to intercede. At the very least, Woods has identified no authority
19 sufficient to show that Tong and Pola’s failure to take further steps to intercede “violate[d] clearly
20 established statutory or constitutional rights of which a reasonable person would have known.”
21 *Harlow*, 457 U.S. at 818. While a plaintiff need not identify precedent with an *identical* fact
22 pattern to defeat qualified immunity, no case that Woods has cited indicates that, under the
23 circumstances known to Tong and Pola, keeping Woods outside under the supervision of another
24 officer while the house was secured and for part of the time it was being searched was “wholly
25 unreasonable.”

26 This case is somewhat troubling because Woods’s testimony indicates that other officers
27 *were* aware of Woods’s particular disabilities, including the PTSD that caused him to reject the
28 yellowing covering offered to him, and yet no apparent effort was made to find him a more

1 suitable blanket or clothing—even though Alexander was permitted to gather clothes and blankets
 2 from the house under Tong’s supervision before the search was completed and well before Woods
 3 was allowed back into the house. It is not obvious that an officer who knew of Woods’s particular
 4 susceptibility to cold, and his reason for refusing the covering initially offered to him, would be
 5 entitled to summary judgment on this record. In the absence of any indication that Tong or Pola
 6 had such knowledge, however, Defendants’ motion for summary judgment on Woods’s § 1983
 7 claim against those officers is GRANTED.

8 **C. ADA Claim**

9 Pursuant to Title II of the ADA, “no qualified individual with a disability shall, by reason
 10 of such disability, be excluded from participation in or be denied the benefits of such services,
 11 programs or activities of a public entity, or be subjected to discrimination by any such entity.” 42
 12 U.S.C. § 12132. That provision can encompass “anything a public entity does.” *Lee v. City of Los*
 13 *Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (citation and internal quotation marks omitted). A
 14 plaintiff’s participation in the state activity at issue need not have been “voluntary” to bring it
 15 within the ambit of the ADA. *See Penn. Dep’t of Corr. v. Yaskey*, 524 U.S. 206, 211 (1998).

16 In order to state a claim under Title II of the ADA, a plaintiff must allege:

17 (1) he is an individual with a disability; (2) he is otherwise qualified
 18 to participate in or receive the benefit of some public entity’s services,
 19 programs, or activities; (3) he was either excluded from participation
 20 in or denied the benefits of the public entity’s services, programs, or
 activities, or was otherwise discriminated against by the public entity;
 and (4) such exclusion, denial of benefits, or discrimination was by
 reason of [his] disability.

21 *O’Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007) (citation and internal
 22 quotation marks omitted; alteration in original). Title II may be violated in at least two distinct
 23 ways: (1) by singling out a disabled person for adverse treatment *because of* that person’s
 24 disability; or (2) by failing to provide a reasonable accommodation to a person with a disability.
 25 *See, e.g., Waller ex rel. Estate of Hunt v. Danville*, 556 F.3d 171, 174 (4th Cir. 2009). Under the
 26 latter theory, “a public entity [must] ‘make reasonable modifications in policies, practices, or
 27 procedures when the modifications are necessary to avoid discrimination on the basis of disability,
 28 unless the public entity can demonstrate that making the modifications would fundamentally alter

1 the nature of the services, program, or activity.” *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d
 2 1041, 1046 (9th Cir. 1999) (quoting 28 C.F.R. § 35.130(b)(7)). Monetary damages under the
 3 ADA require a showing of “intentional discrimination,” which can be satisfied by showing
 4 deliberate indifference. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001).

5 The Ninth Circuit has held that a plaintiff may bring a claim under Title II of the ADA
 6 “where, although police properly investigate and arrest a person with a disability for a crime
 7 unrelated to that disability, they fail to reasonably accommodate the person’s disability in the
 8 course of investigation or arrest, causing the person to suffer greater injury or indignity in that
 9 process than other arrestees.” *Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1232 (9th
 10 Cir. 2014), *rev’d in part on other grounds*, 135 S. Ct. 1765 (2015).¹¹ Accordingly, even a facially
 11 neutral policy can “discriminate[] on the basis of disability,” *see Weinreich*, 114 F.3d at 978, if it
 12 subjects a person with a disability to “greater injury or indignity” than someone who is not
 13 disabled, *Sheehan*, 743 F.3d at 1232.

14 Defendants argue in both their motion and reply that no authority exists for applying Title
 15 II of the ADA to the execution of a search warrant, and particularly to a plaintiff having to wait
 16 outside while the search is conducted, noting that nothing in *Sheehan* “state[s] that the ADA
 17 applies to all police investigations, even if there are no arrests.” Defs.’ Reply (dkt. 110) at 7–8
 18 (emphasis omitted); *see* Defs.’ Mot. at 9. This argument, at least as presented, is frivolous.
 19 Longstanding Ninth Circuit precedent, quoted in *Sheehan* but dating back more than twenty years,
 20 recognizes that Title II applies to “anything a public entity does.” *Sheehan*, 743 F.3d at 1232
 21 (quoting *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) (quoting *Lee*, 250
 22 F.3d at 691)). Defendants have offered no explanation for why police treatment of occupants of a
 23 home subject to search is or should be an exception that broad rule, particularly when the Ninth
 24

25
 26 ¹¹ In *Sheehan*, the City and County of San Francisco initially sought certiorari on the question of
 27 whether the ADA applies to the conduct of police officers confronted with violence, but after
 28 certiorari was granted, presented no such argument in its briefs to the Supreme Court. *Sheehan*,
 135 S. Ct. at 1772–73. The Supreme Court dismissed certiorari as improvidently granted as to the
 ADA claim, but reversed the Ninth Circuit on unrelated issues pertaining to the plaintiff’s separate
 claim under 42 U.S.C. § 1983. *Id.* at 1774, 1778.

1 Circuit has already held that it applies to arrests.¹²

2 The question then, is whether the City of Hayward and the Hayward Police Department
3 “fail[ed] to reasonably accommodate [Woods’s] disability in the course of investigation . . . ,
4 causing [him] to suffer greater injury or indignity in that process” that other similarly situated
5 residents of a house subject to search. *See Sheehan*, 743 F.3d at 1232. Defendants argue that they
6 offered Woods reasonable accommodations in allowing him to exit the house without raising his
7 hands, and in offering a yellow (purported) blanket around six minutes after Woods left the house.
8 Defs.’ Mot. at 10. They also argue that Woods cannot show deliberate indifference when no
9 officer recalls Woods having communicated his particular sensitivity to cold or that the yellow
10 covering exacerbated his PTSD. *Id.* These arguments disregard Woods’s testimony that he told
11 the officer who offered him the covering that he would not use it because it triggered his PTSD,
12 and that he told the officers guarding him about his susceptibility to cold. Acott Opp’n Decl. Ex. 1
13 (Woods Dep.) at 53:11–13, 56:10–16. On Defendants’ motion for summary judgment, the Court
14 must resolving this conflicting evidence—assuming for the sake of argument that the officers’
15 failure to recall such statements from Woods even creates a conflict—in Woods’s favor.

16 A jury could find that offering the yellow covering was not a reasonable accommodation
17 once the officer who did so was told it triggered Woods’s PTSD due to its resemblance to a body
18 bag. A jury could also find that other reasonable accommodations were available, including
19 allowing Woods to remain in the home under supervision, allowing him to briefly reenter under
20 supervision to retrieve blankets or warm clothes, or retrieving blankets or warm clothes from his
21 home for him. While Defendants dispute whether some of those accommodations would have
22 been reasonable, Woods offers a report by police conduct and disability expert Dr. John Peters

24 ¹² Defendants’ argument that they are entitled to judgment based on Woods’s failure to cite a case
25 directly on point resembles in some ways an appeal to qualified immunity, although Defendants
26 have not argued explicitly that that doctrine applies here. Woods no longer asserts an ADA claim
27 against any individual defendant. Where, as here, “no individual-capacity suits exist under the
28 ADA, qualified immunity is not available.” *Trujillo v. Rio Arriba Cty.*, No. CIV 15-0901
JB/WPL, 2016 WL 4035340, at *12 (D.N.M. June 15, 2016) (citing *Mason v. Stallings*, 82 F.3d
1007, 1009–10 (11th Cir. 1996)). Regardless, even if that doctrine were at issue, clear precedent
holding that Title II encompasses “anything a public entity does” would be sufficient to put a
reasonable defendant on notice that it applies to police searches.

1 endorsing those options as appropriate, which Defendants have not moved to exclude. Acott
 2 Opp'n Decl. Ex. 7 (Peters Report) at 7–11. Again, resolving conflicts in Woods's favor, a jury
 3 could credit Peters's conclusions, particularly when Defendants allowed Alexander to retrieve
 4 items from the house under Tong's supervision well before Woods was allowed to return.¹³

5 A jury could find that Hayward Police Department officers were aware of Woods's
 6 particular relevant disabilities, that they were deliberately indifferent to those disabilities in
 7 refusing his requests for reasonable accommodation, and that Woods suffered physical injury and
 8 indignity beyond what similarly situated non-disabled individuals experienced as a result.
 9 Defendants' motion for summary judgment on Woods's ADA claim is DENIED.

10 **D. Negligence Claim**

11 "A plaintiff in any negligence suit must demonstrate 'a legal duty to use due care, a breach
 12 of such legal duty, and [that] the breach [is] the proximate or legal cause of the resulting injury.'" *Kesner v. Superior Court*, 1 Cal. 5th 1132, 1142 (2016) (quoting *Beacon Residential Community*
 13 *Assn. v. Skidmore, Owings & Merrill LLP*, 59 Cal. 4th 568, 573 (2014)). "Everyone is
 14 responsible, not only for the result of his or her willful acts, but also for an injury occasioned to
 15 another by his or her want of ordinary care or skill in the management of his or her property or
 16 person." Cal. Civ. Code § 1714; *see also Kesner*, 1 Cal. 5th at 1142 ("California law establishes
 17 the general duty of each person to exercise, in his or her activities, reasonable care for the safety of
 18 others." (citation omitted)). "[I]n the absence of a statutory provision establishing an exception to
 19 the general rule of Civil Code section 1714, courts should create one only where clearly supported
 20 by public policy." *Kesner*, 1 Cal. 5th at 1143 (citations and internal quotation marks omitted).

21 Defendants' argument as to Woods's negligence claim consist almost entirely of
 22 conclusory assertions that they acted reasonably and incorporation of their arguments on the
 23 claims discussed above. Defs.' Mot. at 11; Defs.' Reply at 9–10. For essentially the same reasons
 24 discussed above in the context of the ADA claim, a jury could find that employees of the City of
 25

26 _____
 27 ¹³ Tong's testimony and audio recording suggest that he brought Alexander into the house
 28 primarily so she could wake and remove her younger son, rather than specifically for the purpose
 of retrieving clothes and blankets. Her entry to the house is therefore not a perfect comparison to
 allowing Woods to enter, but it remains relevant.

1 Hayward and the Hayward Police Department negligently failed to respond appropriately once
 2 notified of Woods’s disability, and that those defendants are vicariously liable for their employees’
 3 negligence. *See* Cal. Gov’t Code § 815.2(a) (establishing respondeat superior liability for public
 4 entities). Woods’s expert Dr. Peters also concluded that the officers responded for planning the
 5 operation acted unreasonably, and below the standard of “general police practices,” in failing to
 6 identify the occupants of the home to be searched and make arrangements to deal with Woods’s
 7 disability in the eight days between issuance and execution of the search warrant. Acott Opp’n
 8 Decl. Ex. 7 (Peters Report) at 11–13. That expert opinion—which again, Defendants have not
 9 moved to exclude—is un rebutted, and could support a finding that employees of the City of
 10 Hayward and Hayward Police Department were negligent in failing to conduct due diligence and,
 11 upon learning at least of Woods’s mobility impairment, bring a wheelchair capable van or some
 12 other accommodation to allow Woods to stay warm during the pre-dawn search.

13 That analysis does not encompass Pola and Tong, however. As discussed above in the
 14 context of the § 1983 claim, Woods has identified no evidence that Pola or Tong was aware of his
 15 susceptibility to cold or his PTSD during the time he was detained outside, or that they knew his
 16 request for a blanket that did not trigger his PTSD was refused. Woods has also identified no
 17 evidence that Pola or Tong was involved with investigating or planning the operation ahead of
 18 time.¹⁴ Nothing in the portion of Woods’s brief addressing his negligence claim, or in Dr. Peters’s
 19 report, addresses Pola or Tong’s culpability specifically. *See* Pl.’s Opp’n at 22–25; *see generally*
 20 Acott Opp’n Decl. Ex. 7 (Peters Report).

21 Defendants’ motion for summary judgment is GRANTED as to Woods’s negligence claim
 22

23 ¹⁴ At Pola’s deposition, he testified as follows:

24 Q. Do you recall who was involved in the -- the people that were
 involved in the planning of the operation?

25 A. In the planning, no. I don’t know who was involved other than the
 case agent. And I just don’t know what his involvement was other than
 26 I’ve read his name that was on the operational plan as the author.

Q. Was that Detective McMahon?

A. Yes.

27 Acott Opp’n Decl. Ex. 3 (Pola Dep.) at 5:15–24. Tong testified that he was “not familiar with the
 28 personnel involved in regards to the planning, what type of intelligence gathering they did.” Acott
 Opp’n Decl. Ex. 2 (Tong Dep.) at 144:12–15.

1 against Tong and Pola, but DENIED as to his negligence claim against the Hayward Police
2 Department and the City of Hayward.

3 **IV. MOTION TO EXCLUDE EXPERT OPINION**

4 **A. Background**

5 **1. Dr. Greene's Report**

6 Dr. John Greene, M.D., a psychiatrist, was retained by Defendants to conduct an
7 independent medical evaluation of Woods addressing mental illness. Acott Decl. (dkt. 101-1) Ex.
8 1 (Greene Report) at 1. He has extensive practice experience and has testified as an expert in
9 many cases. See Agarwal Opp'n Decl. (dkt. 103) Exs. A, B. He relied on his own examination of
10 Woods; testing that he submitted to another doctor, James Bramson, Psy.D., for scoring and
11 interpretation; Woods's historical medical records; deposition transcripts; and certain documentary
12 and audiovisual evidence regarding the events at issue. Acott Decl. Ex. 1 (Greene Report) at 1–2.
13 Dr. Greene diagnosed Woods with PTSD. *Id.* at 32–33.

14 Dr. Greene offers two opinions. First, he opines “that on 3/15/18, the Hayward Police
15 Department could not have been aware that their actions could potentially exacerbate Mr. Woods’
16 PTSD symptoms,” based on Dr. Greene’s views that: (1) Woods’s report of PTSD symptoms “was
17 predominantly caused by his misperception of what he was given for warmth”; (2) “Woods did not
18 report that he was suffering from PTSD symptoms after he was provided the blanket, during the
19 3/15/18 incident”; and (3) “Woods did not express symptoms of PTSD observable by others on
20 3/15/18.” *Id.* at 33–38.

21 Dr. Greene’s second opinion is that “Woods did not suffer from severe emotional distress
22 as a result of the 3/15/18 incident.” *Id.* at 38. He reports that Woods “indicated he experienced
23 some symptoms of PTSD after the 3/15/18 incident, [but] did not present with substantial
24 symptoms of PTSD after the incident occurred.” *Id.* Dr. Greene states that Woods “did not
25 present that he subsequently experienced all of the” defined symptoms of PTSD, and while he
26 “presented that some of his function ability was impaired as a result of the symptoms he
27 experienced, he presented that his overall functioning has not been impaired due to PTSD.” *Id.* at
28 39. Dr. Greene also states that Woods has not received or been recommended for intensive

1 treatment, and that he has avoided group counseling and psychiatric medication. *Id.* at 39–40. Dr.
2 Greene asserts that the test results analyzed by Dr. Bramson “indicate[] that his current
3 psychological presentation is not predominantly related to PTSD.” *Id.* at 40.

4 The parties do not rely on Dr. Greene’s opinions in their briefing on Defendants’ motion
5 for summary judgment. For the purpose of this order, Dr. Greene’s opinions are relevant only to
6 Woods’s motion to exclude them at trial.

7 2. Arguments Regarding Motion to Exclude

8 Woods moves to exclude Dr. Greene’s opinions under *Daubert v. Merrell Dow*
9 *Pharmaceuticals*, 509 U.S. 579 (1993). Pl.’s Mot. (dkt. 101). He contends that Dr. Greene’s
10 opinion on whether Defendants would have been aware of Woods’s PTSD is not based on
11 specialized knowledge and usurps the jury’s role as finder of fact. *Id.* at 2–4. He argues that Dr.
12 Greene’s opinion on a lack of “severe emotional distress” is “neither relevant nor helpful,”
13 because Dr. Greene identified that term at his deposition as referring to legal rather than medical
14 standard, and the legal standard would be relevant only to Woods’s now-dismissed claim for
15 intentional infliction of emotional distress. *Id.* at 4–5. Woods also argue that to the extent Dr.
16 Greene’s opinions are based on Dr. Bramson’s analysis of psychological tests, Dr. Greene may not
17 testify to another experts conclusions that he does not himself understand, *id.* at 6–7; to the extent
18 they are based on Woods’s purportedly limited treatment, he has not identified any basis to infer
19 severity of mental illness from treatment utilization, *id.* at 7–8; and to the extent they are based on
20 Woods’s failure to present “substantial symptoms,” that is not supported by the record and Dr.
21 Greene has not identified any valid reason to infer severity based on the number of symptoms
22 presented, *id.* at 8–9.

23 Defendants argue that Dr. Greene’s opinion on the Hayward Police Department’s lack of
24 awareness of Woods’s PTSD “is based on his expertise in evaluating the signs and symptoms that
25 someone with PTSD should have had in [Woods’s] position during the subject incident on March
26 15, 2018,” and should be allowed based on Dr. Greene’s qualification as a board-certified clinical
27 and forensic psychiatrist. Defs.’ Opp’n (dkt. 102) at 1–2. Defendants contend that Woods cannot
28 rely on Greene’s deposition testimony to discredit his opinions, because the deposition—which

1 defense counsel insisted on ending, with a possibility of resuming later—was never completed.
 2 *See id.* at 2. As for Dr. Greene’s opinion on a lack of “severe emotional distress,” Defendants
 3 argue that emotional distress remains relevant to Woods’s damages even though his intentional
 4 infliction claim has been dismissed, and that it requires expert analysis. *Id.* at 2–3. They assert
 5 that Woods has misinterpreted the test results on which Dr. Greene relies, and that “there is no
 6 legal authority that disallows Dr. Greene from relying on the psychological testing by Dr.
 7 Bramson as one basis to form his opinion on emotional distress.” *Id.* at 4. To the extent Woods
 8 characterizes Dr. Greene’s opinions as “conjecture,” Defendants argue that is a matter for cross-
 9 examination at trial, not exclusion. *Id.* at 5–6.

10 **B. Analysis**

11 **1. Legal Standard**

12 Rule 702 of the Federal Rules of Evidence permits a party to offer testimony by a “witness
 13 who is qualified as an expert by knowledge, skill, experience, training, or education.” Fed. R.
 14 Evid. 702. This rule embodies a “relaxation of the usual requirement of firsthand knowledge,”
 15 *Daubert*, 509 U.S. at 592, and requires that certain criteria be met before expert testimony is
 16 admissible. The rule sets forth four elements, allowing such testimony only if:

- 17 (a) the expert’s scientific, technical, or other specialized knowledge
 18 will help the trier of fact to understand the evidence or determine a
 fact in issue;
- 19 (b) the testimony is based on sufficient facts or data;
- 20 (c) the testimony is the product of reliable principles and methods;
 21 and
- 22 (d) the expert has reliably applied the principles and methods to the
 facts of the case.

23 Fed. R. Evid. 702. These criteria can be distilled to two overarching considerations: “reliability
 24 and relevance.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011). The inquiry
 25 does not, however, “require a court to admit or exclude evidence based on its persuasiveness.” *Id.*

26 The reliability prong requires the court to “act as a ‘gatekeeper’ to exclude junk science,”
 27 and grants the court “broad latitude not only in determining whether an expert’s testimony is
 28 reliable, but also in deciding how to determine the testimony’s reliability.” *Id.* (citing *Kumho Tire*

1 *Co. v. Carmichael*, 526 U.S. 137, 145, 147–49, 152 (1999)). Evidence should be excluded as
 2 unreliable if it “suffer[s] from serious methodological flaws.” *Obrey v. Johnson*, 400 F.3d 691,
 3 696 (9th Cir. 2005).

4 The relevance prong looks to whether the evidence “fits” the issues to be decided:
 5 “scientific validity for one purpose is not necessarily scientific validity for other, unrelated
 6 purposes,” and “[e]xpert testimony which does not relate to any issue in the case is not relevant.”
 7 *Daubert*, 509 U.S. at 591. “Where an ‘expert report’ amounts to written advocacy . . . akin to a
 8 supplemental brief, a motion to strike is appropriate because this evidence is not useful”
 9 *Williams v. Lockheed Martin Corp.*, No. 09CV1669 WQH, 2011 WL 2200631, at *15 (S.D. Cal.
 10 June 2, 2011) (citation omitted; first ellipsis in original). Moreover, “an expert witness cannot
 11 give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law[;]
 12 instructing the jury as to the applicable law is the distinct and exclusive province of the court.”
 13 *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) (citations and
 14 internal quotation marks omitted). An expert nevertheless may, in appropriate circumstances, rely
 15 on the expert’s understanding of the law and refer to the law in expressing an opinion regarding
 16 professional norms. *Id.* at 1016–17.

17 2. Dr. Greene’s Opinion on Defendants’ Knowledge Is Inadmissible

18 Dr. Greene’s opinion that “the Hayward Police Department could not have been aware that
 19 their actions could potentially exacerbate Mr. Woods’ PTSD symptoms” plainly usurps the role of
 20 the jury. “Courts routinely exclude as impermissible expert testimony as to intent, motive, or state
 21 of mind,” which often “offers no more than the drawing of an inference from the facts of the
 22 case.” *Siring v. Or. State Bd. of Higher Educ. ex rel. E. Or. Univ.*, 927 F. Supp. 2d 1069, 1077 (D.
 23 Or. 2013). Defendants cite no authority allowing this sort of testimony under comparable
 24 circumstances.

25 The overarching conclusion Dr. Greene presents as to Defendants’ lack of awareness is
 26 based largely on his non-specialized interpretation of factual questions based on deposition
 27 testimony—most notably, whether the covering offered to Woods was a blanket as opposed to a
 28 tarp that could be used as a body bag, and whether Woods told the officer who offered him that

1 covering that it triggered his PTSD. While Woods is correct that in doing so, Dr. Greene simply
 2 ignores Woods’s testimony that contradicts his conclusions, the bigger issue is not whether he
 3 evaluated this evidence correctly, but instead that it is not a matter that calls for or falls within his
 4 expertise. Defendants also have not explained why Dr. Greene’s expertise as a clinical and
 5 forensic psychiatrist qualifies him to offer opinions as to what conclusions non-psychiatric-expert
 6 police officers would draw from Woods’s statements or behavior. What actually occurred during
 7 the search, and what inferences Defendants drew or should have drawn, are questions for the jury
 8 that do not require Dr. Greene’s specialized knowledge. Woods’s motion is GRANTED as to
 9 these opinions.

10 3. Dr. Greene’s Opinion on “Severe Emotional Distress” Is Inadmissible

11 Dr. Greene’s report does not clearly explain what the term “severe emotional distress”
 12 means or why he has framed his opinion in that manner. At his deposition, Dr. Greene made clear
 13 that he understood this to be a legal term. Acott Decl. Ex. 2 (Greene Dep.) at 71:21–25 (“So in
 14 my experience, severe emotional distress is understood by the court of individuals who suffer from
 15 substantial symptoms of mental illness, a presence of symptoms of mental illness”); *id.* at
 16 72:5–7 (“Q. Severe emotional distress is a legal concept; is that right? A. That’s correct.”); *id.* at
 17 73:14–16 (“[S]o there is no medical definition; is that correct? A. That’s correct.”). He generally
 18 defined the term as meaning “somebody who suffers from symptoms and generally symptoms of a
 19 mental illness, and that as a result of those symptoms of mental illness, they have impairment in
 20 functioning.” *Id.* at 76:1–5.

21 Woods is correct that Dr. Greene’s opinion as to “severe emotional distress,” even if it
 22 might ever be admissible, is misplaced in this case. It is not clear from what source he draws his
 23 formalistic definition based on symptoms and impairments. Under California law, for the purpose
 24 of an intentional infliction claim—which is no longer at issue in this case—“[s]evere emotional
 25 distress means emotional distress of such substantial quality or enduring quality that no reasonable
 26 person in civilized society should be expected to endure it.” *Hughes v. Pair*, 46 Cal. 4th 1035,
 27 1051 (2009) (cleaned up). For the purpose of emotional distress damages, which *are* at issue in
 28 this case, “[t]here is no fixed standard” for assessing these “subjective” injuries, and “the

1 determination is committed to the discretion of the trier of fact.” *Phipps v. Copeland Corp. LLC*,
 2 64 Cal. App. 5th 319, 703–04 (2021) (cleaned up).

3 In offering what he believes to be a legal standard, Dr. Greene usurps the role of the Court
 4 in instructing the jury on the law, and would instruct the jury incorrectly for the purpose of this
 5 case. The question of what symptoms or impairments Woods experienced from his PTSD is not
 6 relevant to the only issue of emotional distress remaining in this case: the “subjective” inquiry of
 7 the degree to which he was distressed and the damages, if any, appropriate to compensate him for
 8 such distress—a question left entirely to the finder of fact. *See id.* Woods’s motion is GRANTED
 9 as to Dr. Greene’s opinions on “severe emotional distress.”

10 **4. Dr. Greene May Not Testify as to Woods’s Test Results**

11 Dr. Greene relies on a number of tests he administered but did not score, and instead sent
 12 to Dr. Bramson for evaluation. Dr. Bramson has not been designated as a testifying expert
 13 witness. Dr. Greene also made clear that he relied largely, if not entirely, on Dr. Bramson’s
 14 expertise in evaluating Woods’s test results.

15 Q. If we had a question about the scoring or interpretation of the
 16 psychological testing that was used on Mr. Woods in this case, is Dr.
 Bramson the person we would have to talk to?

17 A. If you wanted to talk about the specific interpretation of the T
 18 scores or the actual values, yes, you would.

19 [. . .]

20 Q. Did you consider the results from the testing to be accurate?

21 A. I’m not sure what you mean by “accurate.”

22 Q. Well, I’ll just rephrase it. Once you received this report from Dr.
 Bramson, did you do anything to audit the results to confirm that they
 23 accurately reflected the testing that was performed on Mr. Woods?

24 A. No.

25 Q. You didn’t rescore the test answers submitted by Mr. Woods; is
 that correct?

26 A. I did not.

27 Q. Did you even review Mr. Woods’ test answers, or did you just rely
 28 on this report?

1 A. I did not review his test answers.

2 Acott Decl. Ex. 2 (Greene Dep.) at 41:14–42:19. Dr. Greene does not know how to score the tests
3 at issue. *Id.* at 39:19–25.

4 Dr. Greene’s report largely repeats Dr. Bramson’s opinions, including drawing significant
5 conclusions from scores as to certain personality scales that fell below the threshold for “clinically
6 significant personality types,” barely within the threshold for “personality style,” and well below
7 Woods’s score for post-traumatic stress—a score Dr. Greene included in his factual summary but
8 omitted from the opinion section of his report with an ellipsis, while reporting scores in other
9 areas. *See* Acott Decl. Ex. 1 (Greene Report) at 33, 40; Acott Decl. Ex. 3 (Bramson Report) at 2.
10 Woods’s report includes no explanation for why those scores are significant or why they suggest
11 that other disorders or personality types explain his symptoms or behavior better than PTSD.
12 When Woods’s attorney questioned Dr. Greene about the basis for Dr. Bramson’s conclusion, Dr.
13 Greene responded: “unlike you I rely on Dr. Bramson to interpret the testing because I don’t like
14 to make claims based on numbers when I have no idea what they’re talking about.” Acott Decl.
15 Ex. 2 (Greene Dep.) at 130:4–7.

16 “A testifying expert may rely on the opinions of non-testifying experts as a foundation for
17 the opinions within the testifying expert’s field of expertise. Rule 703,^[15] however, is not a license
18 for an expert witness to simply parrot the opinions of non-testifying experts.” *Villagomes v. Lab’y*
19 *Corp. of Am.*, No. 2:08-cv-00387-RLH, 2010 WL 4628085, at *4 (D. Nev. Nov. 8, 2010); *see also*
20 *Aquino v. Cty. of Monterey Sheriff’s Dep’t*, No. 5:14-cv-03387-EJD, 2018 WL 3548867, at *4
21 (N.D. Cal. July 24, 2018) (“Accordingly, to the extent that Dr. Roberts’ report contains opinions
22 that require qualification as an expert, Defendants cannot introduce them by parroting them
23 through Dr. Levy.”). In their opposition brief, Defendants do not grapple with this test in any
24

25 _____
26 ¹⁵ Rule 703 of the Federal Rules of Evidence reads as follows: “An expert may base an opinion on
27 facts or data in the case that the expert has been made aware of or personally observed. If experts
28 in the particular field would reasonably rely on those kinds of facts or data in forming an opinion
on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data
would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only
if their probative value in helping the jury evaluate the opinion substantially outweighs their
prejudicial effect.”

1 way, instead asserting overbroadly that “there is no legal authority that disallows Dr. Greene from
 2 relying on the results of the psychological testing by Dr. Bramson,” while citing no authority
 3 themselves that would allow such opinions. Defs.’ Opp’n at 4. The Court concludes that to the
 4 extent Dr. Greene’s opinions rest on Dr. Bramson’s test analysis, he would impermissibly serve as
 5 a mouthpiece for a non-testifying expert. The motion to exclude opinions regarding Dr.
 6 Bramson’s analysis of Woods’s test results is GRANTED.

7 **5. Opinions as to Treatment Utilization and Substantial Symptoms**

8 After recounting Woods’s treatment history, Dr. Greene offers the following opinion
 9 regarding Woods’s recommended and actual treatment for PTSD:

10 Individuals who suffer from substantial symptoms of PTSD generally
 11 require individual therapy, consisting of hourly appointments on a
 12 weekly basis, group therapy, medication management, or
 13 hospitalization to address their symptoms. As Mr. Woods did not
 receive, and was not recommended, this higher level of treatment,
 then, his presentation supports my opinion that he did not suffer from
 severe emotional distress as a result of the 3/15/21 [sic] incident.

14 Acott Decl. Ex. 1 (Greene Report) at 40.

15 The parties dispute whether Dr. Greene has offered a sufficient basis to draw any
 16 conclusions from Woods’s decisions as to what treatment to accept. There is no real question that
 17 Dr. Greene, an experienced clinical and forensic psychiatrist, is qualified to testify as to treatment
 18 typically *recommended* for PTSD. But regardless, he offers these opinions only with respect to
 19 patients suffering from “substantial symptoms of PTSD,” and only to draw a conclusion as to
 20 “severe emotional distress.” *See id.* As discussed above, Dr. Greene’s definition of “severe
 21 emotional distress” is not useful to the jury’s evaluation of this case. His definition of “substantial
 22 symptoms” is similarly irrelevant. He acknowledges that “substantial symptoms” is not
 23 “necessarily [a] clinical term[],” and defines it as referring to “a substantial number of symptoms
 24 that are necessary to diagnose PTSD,” or perhaps as addressing whether PTSD-related symptoms
 25 “were themselves . . . severe enough to indicate [a need for] treatment.” *See* Acott Decl. Ex. 2
 26 (Greene Dep.) at 59:10–60:15.

27 Defendants assert that although “[t]he deposition on this issue was a mess . . . [w]hat Dr.
 28 Greene has explained, and what he will testify to at trial, is that because Plaintiff showed only a

1 few symptoms of PTSD in the DSM-V and did not receive therapy or any other medical or
 2 psychological intervention, Plaintiff did not have ‘substantial symptoms of PTSD.’” Defs.’ Opp’n
 3 at 5. That explanation does not address why the issue of “substantial symptoms” is relevant.
 4 Given that there is no dispute Woods has had PTSD at all times relevant, *see* Acott Decl. Ex. 2
 5 (Greene Dep.) at 55:3–5, it is not clear why the number of symptoms he experienced is relevant, or
 6 why any expertise is necessary to tell the jury the factual matter of whether or not he received
 7 treatment. The motion to exclude these opinions is GRANTED.¹⁶

8 **6. Dr. Greene May Testify That PTSD Does Not Inhibit Reporting**

9 Included within his broader opinions that the Court has excluded, Dr. Greene also states
 10 that “[w]hen individuals experience substantial symptoms of PTSD, such as when they feel they
 11 need medical intervention for their symptoms, they are able to report the presence of substantial
 12 feelings of anxiety, panic symptoms, dissociation symptoms, a desire for self-destructive behavior,
 13 problems with concentration, or memory impairment.” Acott Decl. Ex. 2 (Greene Report) at 36.
 14 While the discussion of “substantial symptoms” is excluded as discussed above, the underlying
 15 opinion that PTSD does not prevent an individual from reporting the symptoms they are
 16 experiencing falls within Dr. Greene’s expertise, and could perhaps be relevant to the case. Dr.
 17 Greene may present that narrow opinion at trial if Defendants believe it would be useful to the
 18 jury.

19 The Court has identified no other expert opinions in Dr. Greene’s report that are
 20 permissible under the *Daubert* standard.

21 **V. ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL**

22 Woods moves to file portions of his briefing and certain documents submitted therewith
 23 under seal. A party seeking to overcome the presumption of public access to documents filed in
 24 judicial proceedings generally must establish “compelling reasons” to file documents under seal.

26 ¹⁶ At his deposition, Dr. Greene testified that certain symptoms Woods reported are not “criteria
 27 for PTSD.” Acott Decl. Ex. 2 (Greene Dep.) at 69:15–25. To the extent this testimony might
 28 have been intended as saying that those symptoms would not be caused by PTSD, that question
 likely falls within Dr. Greene’s expertise, but since no such opinion appears in his report, he may
 not testify to that issue.

1 *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016).

2 To the extent Woods's proposed redactions are based on his own or others' medical
3 privacy, privacy interests related to juvenile correctional records, or the privacy protections of
4 Rule 5.2, Woods has shown compelling reasons to maintain that material under seal and his
5 requests are narrowly tailored, and his motions to seal are GRANTED.

6 As for material that Woods seeks to seal based solely on Defendants' designations of
7 confidentiality, however, Defendants have not provided a responsive declaration setting forth
8 compelling reasons to seal as required by Civil Local Rule 79-5(e)(1). Woods's motions to seal
9 are therefore DENIED as to the following material:

- 10 • Exhibit 1 (Dr. Greene's report) to the declaration of Francis Acott in support of
11 Woods's motion to exclude at page 10, lines 28–40; page 11, lines 1–4; and page
12 36, lines 23–40.
- 13 • All proposed redactions in Woods's brief in opposition to Defendants' motion for
14 summary judgment.

15 Woods is ORDERED to provide new public versions of those documents omitting those
16 redactions (except that Woods must redact any information governed by Rule 5.2 that might be
17 contained in those passages) no earlier than September 13, 2021 and no later than September 17,
18 2021. *See* Civ. L.R. 79-5(e)(2).

19 While Defendants also have not responded to Woods's request to seal Defendants' audio
20 and video recordings (Acott Opp'n Decl. Exs. 19–27) based on their confidentiality designations,
21 most if not all of those recordings contain information protected by Rule 5.2 or otherwise
22 implicate the privacy interests of minors who are not parties to this case, and redaction would be
23 impractical. Woods's motion to file the recordings under seal is GRANTED.

24 **VI. CONCLUSION**

25 For the reasons discussed above, Defendants' motion for summary judgment is
26 GRANTED as to all claims against Defendants Tong and Pola. That motion is DENIED as to
27 Woods's ADA and negligence claims against the City of Hayward and the Hayward Police
28 Department.

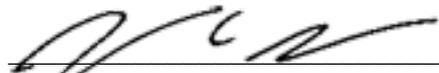
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Woods’s motion to exclude Dr. Greene’s expert testimony and report is GRANTED, except as to the narrow opinion that PTSD does not prevent an individual from reporting their symptoms.

Woods’s administrative motions to file under seal are GRANTED in part and DENIED in part as discussed above. Woods shall file new public versions of his opposition brief and Dr. Greene’s report no earlier than September 13, 2021 and no later than September 17, 2021.

IT IS SO ORDERED.

Dated: September 7, 2021



JOSEPH C. SPERO
Chief Magistrate Judge

United States District Court
Northern District of California