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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 BRUCE TERRELL,
8 Plaintiff,

9 v.

10 CITY OF PETALUMA, et al.,
11 Defendants.

Case No. 22-cv-05411-AMO

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
JUDGMENT ON THE PLEADINGS
WITH LEAVE TO AMEND**

Re: Dkt. No. 38

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13 Before the Court is Defendants' motion for judgment on the pleadings. The motion is fully
14 briefed and suitable for disposition without hearing pursuant to Civil Local Rule 7-1(b).
15 Accordingly, the Court VACATES the hearing currently set for September 8, 2023. Having
16 considered the parties' papers, the relevant legal authority, and good cause appearing, the Court
17 GRANTS the motion IN PART and DENIES the motion IN PART WITH LEAVE TO AMEND.

18 **I. BACKGROUND**

19 **A. Factual background¹**

20 Mr. Terrell was organizing the contents of his storage unit the night of September 2, 2021.
21 ECF 1 at 10. At approximately 10:52 p.m., City of Petaluma Sergeant Rick Cox and Officers
22 Adam Wirtz, Brandon Haug, Steven Clustka, Jacob Smith were on site looking for suspected "car
23 thieves and drug addicts." *Id.* When the officers encountered Mr. Terrell, they "screamed at him
24 to show his hands and exit his storage unit[.]" *Id.* Mr. Terrell, who is elderly and suffers from
25 medical conditions including a knee injury that "affects his balance, tried to steady himself among
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28 ¹ The factual background is taken from the allegations in Mr. Terrell's complaint, which are taken
as true for the purposes of the instant motion. *See United States ex rel. Cafasso v. Gen. Dynamics
C4 Sys., Inc.*, 637 F.3d 1047, 1053 (9th Cir. 2011).

1 numerous opened boxes and scattered possessions, and attempted to clamber over all the clutter to
2 make his way out of the storage unit” to comply with the officers’ commands. *Id.* As Mr. Terrell
3 exited the storage unit, Officers Wirtz and Haug “grabbed [him], spun him around, smashed his
4 head against the metal rollup door of his storage unit and violently flung him face first to the
5 concrete, causing serious scalp and eye wounds and numerous other injuries.” *Id.* The officers
6 “then roughly handcuffed [Mr. Terrell], opening up a large gash on his right forehead, exposing
7 flesh and bone beneath.” *Id.* at 11. Officer Haug put Mr. Terrell in the back of a patrol car, where
8 Mr. Terrell was left “unattended for about an hour, during which time [his] scalp and face wounds
9 bled profusely.” *Id.* Paramedics were called to the scene, but Mr. Terrell “refused treatment, not
10 because he was not injured - he most certainly was - but because he does not have medical
11 insurance and was worried about the attendant cost of treatment.” *Id.*

12 After the officers arrested the suspects that led them to the storage facility, Officer Haug
13 drove Mr. Terrell to the hospital. *Id.* Mr. Terrell again refused treatment out of concern for the
14 cost of medical care. *Id.* When Mr. Terrell eventually returned to the hospital, “he was diagnosed
15 and treated for his injuries, including a traumatic brain injury, prescribed pain medication, placed
16 on medical restrictions, and ordered to follow up within a couple days at Petaluma Health Center.”
17 *Id.*

18 **B. Procedural background**

19 Following the incident, Mr. Terrell commenced this action in Sonoma County Superior
20 Court on July 25, 2022. ECF 1 at 5. He asserts claims for (1) excessive force under 42 U.S.C.
21 § 1983, (2) violation of due process under Section 1983, (3) false arrest under Section 1983,
22 (4) false imprisonment, (5) unlawful seizure and/or detention under Section 1983,² (6) failure to
23 properly train, supervise, and discipline under Section 1983 and *Monell v. Dep’t of Soc. Servs. of*

24 _____
25 ² Defendants note that the claim for unlawful seizure and/or detention appears on the caption of
26 the complaint but not in the body. ECF 38 at 9 n.2. They argue that as a result, “no such cause of
27 action is asserted against the [Petaluma Police Department] or any other Defendant.” *Id.* at 12 n.3.
28 Mr. Terrell explains that the claim was “inadvertently omitted from the complaint” but does not
otherwise address Defendants’ argument. ECF 40 at 2 n.1. In failing to do so, he has conceded
the issue. *See Ardente, Inc. v. Shanley*, No. C 07-4479 MHP, 2010 WL 546485, at *6 (N.D. Cal.
Feb. 9, 2010) (“Plaintiff fails to respond to this argument and therefore concedes it through
silence.”).

1 *the City of New York*, 436 U.S. 658 (1978), (7) ratification under Section 1983 and *Monell*,
2 (8) unconstitutional policy under Section 1983 and *Monell*, (9) negligence, (10) assault,
3 (11) battery, (12) intentional infliction of emotional distress, (13) violation of the Ralph Act, Cal.
4 Civ. Code § 51.7, and (14) violation of the Bane Act, Cal. Civ. Code § 52.1. ECF 1 at 12-30. Mr.
5 Terrell asserts claims one through four against all Defendants, claims six and seven against the
6 City of Petaluma, the Petaluma Police Department, Chief Ken Savano, and Does 1-50, claim eight
7 against all Defendants, claims nine through twelve against Sergeant Rick Cox and Officers Wirtz,
8 Haug, Clustka, and Smith, and Does 1-50, and claims thirteen and fourteen against all Defendants.
9 *Id.* at 12-30.

10 Defendants removed the action to this Court on September 22, 2022 and filed their answer
11 on September 29, 2022. ECF 1, 9. They moved for judgment on the pleadings on May 31, 2023.
12 ECF 38. Mr. Terrell filed his opposition to the motion on June 14, 2023. ECF 40. Defendants’
13 reply followed on June 21, 2023. ECF 41.

14 **II. LEGAL STANDARD**

15 Under Federal Rule of Civil Procedure 12(c), “[a]fter the pleadings are closed – but early
16 enough not to delay trial – a party may move for judgment on the pleadings.” Fed. R. Civ. P.
17 12(c). A motion under Rule 12(c) is “functionally identical” to a Rule 12(b)(6) motion, and courts
18 should apply the same standard. *Dworkin v. Hustler Mag., Inc.*, 867 F.2d 1188, 1192 (9th Cir.
19 1989). In ruling on a Rule 12(c) motion, the courts must “accept the facts as pled by the
20 nonmovant.” *Cafasso*, 637 F.3d at 1053. A court need not, however, accept conclusory
21 allegations as true. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988). “Judgment
22 on the pleadings is proper when the moving party clearly establishes on the face of the pleadings
23 that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter
24 of law.” *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir.
25 1990).

26 “Courts have discretion to grant leave to amend in conjunction with 12(c) motions, and
27 may dismiss causes of action rather than grant judgment.” *Carmen v. San Francisco Unified Sch.*
28 *Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997) (internal quotations and citation omitted). Leave

1 to amend should be granted unless amendment would be futile. *Cook, Perkiss and Liehe, Inc. v.*
2 *N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

3 **III. DISCUSSION**

4 Defendants’ motion “pertains solely to [Mr. Terrell’s] improper designation” of two
5 defendants—the Petaluma Police Department and Chief Savano. ECF 38 at 8. The Court will
6 first address the arguments the parties advance with respect to the Department then turn to the
7 arguments concerning Chief Savano.

8 **A. The Petaluma Police Department**

9 Defendants argue that the Petaluma Police Department is not a proper defendant for two
10 reasons. ECF 38 at 11-13. First, the Department is a local government sub-unit and thus not a
11 “person” subject to suit under Section 1983. *Id.* at 11. Second, the Department is a duplicative
12 and redundant defendant because Mr. Terrell already names the City as a defendant. *Id.* at 12-13.
13 Neither argument is grounds for judgment on the pleadings.

14 **1. The Department as a defendant under Section 1983**

15 Citing *Streit v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001), Mr. Terrell argues
16 that the Department is a proper defendant. ECF 40 at 5. Mr. Terrell is correct, but neither party
17 cites a key recent decision—*Duarte v. City of Stockton*, 60 F.4th 566 (9th Cir. Feb. 16, 2023), *cert.*
18 *denied* 143 S. Ct. 2665 (June 26, 2023)—issued almost four months before Defendants filed their
19 opening brief in this case. There, the Ninth Circuit reversed the district court’s ruling that the City
20 of Stockton and the Stockton Police Department were not “persons” subject to suit under Section
21 1983. *Id.* at 573. Reinforcing “longstanding precedent establish[ing] that both California
22 municipalities and police departments are ‘persons’ amenable to suit under Section 1983,” the
23 court explained:

24
25 As to the Stockton Police Department, we held over thirty years ago
26 that municipal police departments in California “can be sued in
27 federal court for alleged civil rights violations.” *Karim-Panahi v.*
28 *L.A. Police Dep’t*, 839 F.2d 621, 624 n.2 (9th Cir. 1988) (citations
omitted). More recently, we reaffirmed this holding and extended it
to California’s county sheriffs’ departments. *Streit v. County of Los*
Angeles, 236 F.3d 552, 565-66 (9th Cir. 2001). We have never
overruled *Karim-Panahi*.

1 *Duarte*, 60 F.4th at 568, 573-74. It rejected the district court’s reasoning that “*Karim-Panahi*
2 could not be reconciled with a concurring opinion in *United States v. Kama*, 394 F.3d 1236, 1240
3 (9th Cir. 2005).” In *Kama*, “without citing *Karim-Panahi* or *Streit*, a judge commented that
4 ‘municipal police departments and bureaus are generally not considered “persons” within the
5 meaning of 42 U.S.C. § 1983.’” *Duarte*, 60 F.4th at 573 (citing *Kama*, 394 F.3d at 1239-40
6 (Ferguson, J., concurring)). The Ninth Circuit made clear “[n]either a lone concurring judge nor
7 the full *Kama* panel could overrule *Karim-Panahi*.” *Id.* at 574.

8 Here, Defendants urge this Court to adopt the reasoning already rejected in *Duarte*. ECF
9 41 at 9. They argue, in part:

10 *Streit* was decided prior to *United States v. Kama*, 394 F.3d 1236
11 (9th Cir. 2005), in which the Ninth Circuit reaffirmed that
12 “municipal police departments and bureaus are generally not
13 considered ‘persons’ within the meaning of 42 U.S.C. § 1983.” *Id.*,
14 at 1239-1240 (Ferguson, J., concurring), citing *Hervey v. Estes*, 65
15 F.3d 784, 791 (9th Cir. 1995), *Dean v. Barber*, 951 F.2d 1210, 1214
16 (11th Cir. 1992), and *SmithBerch, Inc. v. Baltimore County*, 68
17 F.Supp.2d 602, 626-27 (D.Md. 1999). The Ninth Circuit does not
18 generally adjudicate matters in conflict with its own authority.
19 Indeed, there is no conflict here because, as discussed, *Streit* did not
20 adjudicate whether a municipal department is considered a suable
21 “person” under section 1983. And, as the Ninth Circuit made
22 expressly clear in *Kama*, municipal departments are not suable
23 persons under section 1983.

24 *Id.* Defendants’ position is no longer tenable post-*Duarte*.

25 In line with *Duarte*, *Streit*, *Karim-Panahi*, and the district court decisions adhering to this
26 binding authority, the Court concludes that the Department is subject to suit under Section 1983.
27 *See Est. of Debbs v. Cnty. of Sacramento*, No. 2:20-CV-01153-TLN-DB, 2023 WL 4108320, at *4
28 (E.D. Cal. June 21, 2023) (“Recent Ninth Circuit authority makes clear that ‘both California
municipalities and police departments are “persons” amenable to suit under [Section] 1983.’”)
(quoting *Duarte*, 60 F.4th at 568); *Leon v. Hayward Bldg. Dep’t*, No. 17-CV-02720-LB, 2017 WL
3232486, at *3 (N.D. Cal. July 31, 2017) (“[U]nder the guidance of these Ninth Circuit decisions,
this court holds that the Hayward Building Department is a ‘public authority’ or ‘public agency,’
hence a ‘public entity,’ and is a proper [Section] 1983 defendant.”) (applying *Streit*). Accordingly,
the Court denies Defendants’ motion for judgment on the pleadings as to the Section 1983 claims

1 asserted against the Petaluma Police Department.

2 **2. The Department as a duplicative and redundant defendant**

3 Defendants next argue that the Department is purely “duplicative and redundant” because
4 Mr. Terrell has already named the City as a defendant. ECF 38 at 12-13. Specifically, Defendants
5 point to Mr. Terrell’s allegations that the Department “is a ‘subdivision’ of the City and ‘identical’
6 to the City.” ECF 38 at 12 (citing Compl. ¶ 5). Defendants read these allegations as an implicit
7 concession the City and the Department “represent the same source of funding for any potential
8 recovery.” *Id.* On this basis, they ask both the federal claims and state law claims be dismissed as
9 to the Department. *Id.* In response, Mr. Terrell acknowledges that the Court has discretion to
10 dismiss redundant defendants but argues that he “is the master of his claim and the Court need not
11 unilaterally decide which entities are named.” ECF 40 at 5-6. Mr. Terrell adds that Defendants do
12 not argue that he has inadequately alleged liability. *Id.* at 6. In reply, Defendants contend that Mr.
13 Terrell does not dispute that the Department and the City are redundant defendants and that he
14 offers no reason why the Court should not exercise its discretion to dismiss a redundant defendant.
15 ECF 41 at 11. In the absence of any such reason, Defendants argue that the risk of improper
16 double recovery warrants dismissal of the Department as a duplicative defendant, which will
17 simplify and streamline the litigation and preserve judicial resources. *Id.*

18 As the movants, Defendants must show that “no material issue of fact remains to be
19 resolved and that it is entitled to judgment as a matter of law.” *See Hal Roach Studios*, 896 F.2d at
20 1550. The Court acknowledges that Mr. Terrell’s allegations about the Department suggest it is
21 merely an agency of the City. At this stage, however, the record before the Court is insufficient to
22 support that conclusion as a matter of law. *See Woods v. City of Hayward*, Case No. 19-cv-01350-
23 JCS, 2020 WL 1233841, *5 (N.D. Cal. Mar. 13, 2020) (denying motion to dismiss plaintiff’s
24 claims against the police department and noting it was unclear that “dismissing as redundant
25 claims against the Hayward Police Department, while allowing claims against the City of
26 Hayward to proceed, would have any practical effect on the case”). Defendants may renew their
27 argument at a later stage and a more fully developed record. The parties may also explore whether
28 they can reach a stipulation on this issue to avoid unnecessary motions practice.

1 **B. Chief Savano**

2 Defendants also seek dismissal of Chief Savano. ECF 38 at 13-19. Defendants argue that
3 Mr. Terrell alleges no facts establishing Chief Savano’s liability in a personal capacity under
4 Section 1983 or state law. ECF 38 at 13-17; ECF 41 at 12-17. Defendants also argue that any
5 claims asserted against Chief Savano in his official capacity are redundant and duplicative of Mr.
6 Terrell’s claims against the City. ECF 38 at 17-19; ECF 41 at 18-19.

7 Mr. Terrell counters that Chief Savano is liable not because he was personally involved,
8 but because “his action(s) and/or inaction(s) as a supervisor demonstrated deliberate indifference
9 to this pattern and practice of violations of rights by failing to take necessary, appropriate, or
10 adequate measures to ensure the cessation of such conduct.” ECF 40 at 6-7. He contends that
11 “[s]uch deliberate indifference amounts to an informal policy or custom, and ratification of said
12 policy or custom resulted in their being another proximate cause of [his] injury[.]” *Id.* at 7.

13 A supervisor may be liable under Section 1983 “if there exists either (1) his or her personal
14 involvement in the constitutional deprivation, or (2) a sufficient causal connection between the
15 supervisor’s wrongful conduct and the constitutional violation.” *Starr v. Baca*, 652 F.3d 1202,
16 1207 (9th Cir. 2011) (citing *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). “A supervisor
17 can be liable in his individual capacity for his own culpable action or inaction in the training,
18 supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation;
19 or for conduct that showed a reckless or callous indifference to the rights of others.” *Id.* at 1208
20 (quoting *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998)).

21 As Defendants point out, the contentions in Mr. Terrell’s opposition brief are untethered to
22 any factual allegations in the complaint. The few paragraphs Mr. Terrell highlights in his
23 opposition brief consist of generalized recitations of the elements his causes of action. *See* ECF
24 40 at 7. For example, Mr. Terrell alleges that the City, the Department, and the Chief “had a duty
25 to train, supervise discipline, and instruct,” “failed to maintain adequate and proper training,” and
26 “were deliberately indifferent to the obvious consequences of its failure to train.” ECF 1 at 17-19.
27 Mr. Terrell’s citation to three lawsuits, which allegedly evidence a history of “excessive force,
28 false/unlawful arrest, and malicious prosecution,” *see id.* at 21, is also devoid of any facts from

1 which the Court could draw a proper inference that Defendants “knew or had constructive
2 knowledge that [they] should train [their] law enforcement personnel in proper investigation and
3 detention policies and procedures,” *see id.*

4 Defendants also correctly argue that these pleading deficiencies similarly extend to Mr.
5 Terrell’s state law claims, including those for false imprisonment, violation of the Ralph Act, and
6 violation of the Bane Act. In his opposition, Mr. Terrell does not address the lack of factual
7 allegations as to Chief Savano and does not address Defendants’ arguments as to the false
8 imprisonment claim at all. *See generally* ECF 40. Instead, he argues, only as to the claimed
9 violations of the Ralph and Bane Acts, that “California law establishes that supervisors may be
10 vicariously liable through for the negligent hiring, supervision, or retention of a police officer that
11 causes damage to a person.” ECF 40 at 8. He then acknowledges that California courts have not
12 explicitly addressed this issue,³ though some “have implicitly held that a Ralph or Bane Act claim
13 can be asserted against a sheriff based on his . . . conduct as a supervisor.” *Id.* This Court need
14 not resolve the unsettled legal question at this stage, as Mr. Terrell has failed to meet the settled
15 standard of pleading sufficient facts to plausibly allege a claim against Chief Savano in his
16 personal capacity.

17 Because Mr. Terrell has failed to plead sufficient facts, the Court dismisses the claims
18 asserted against Chief Savano in his personal capacity. *See Mitchell v. Cnty. of Contra Costa*, 600
19 F. Supp. 3d 1018, 1034 (N.D. Cal. 2022) (granting motion to dismiss where “complaint
20 contain[ed] no factual allegations to support the inference that any . . . supervisor was personally
21 involved” in underlying wrongful conduct or “that there was a causal connection between a
22 supervisor’s wrongful conduct and the [alleged] constitutional violations”); *Arteaga v. City of*
23 *Oakley*, No. 19-CV-05725-JCS, 2020 WL 511876, at *7 (N.D. Cal. Jan. 31, 2020) (granting
24 motion to dismiss where allegations were of supervisory liability were “entirely conclusory” and
25 there were “[n]o specific facts are alleged that would support a plausible inference . . . [of] . . . any
26 causal connection between the Officer Defendants’ conduct and the unconstitutional conduct of

27 _____
28 ³ Defendants agree on this point. *See* ECF 41 at 16 (“California courts have still not squarely
addressed the issue of whether supervisory liability exists under the Bane Act or Ralph Act.”).

1 any supervisor.”). Because leave to amend should be freely granted, the Court will grant Mr.
2 Terrell leave to amend his claims against Chief Savano in his personal capacity.

3 Defendants’ final argument is that any claims asserted against Chief Savano in his official
4 capacity are redundant and duplicative of those asserted against the City. ECF 41 at 18. “This
5 position is well-established in the caselaw.” *Gillespie v. Cnty. of Alameda*, No. 20-CV-03735-
6 DMR, 2020 WL 5106858, at *3 (N.D. Cal. Aug. 31, 2020). When both a municipal officer and a
7 local government entity are named, and the officer is named in an official capacity, the court may
8 dismiss the officer as a redundant defendant. *Id.* (citation omitted). “There is no longer a need to
9 bring official capacity actions against local government officials [because] under *Monell* . . . local
10 government units can be sued directly for damages and injunctive or declaratory relief.”). *Haines*
11 *v. Brand*, No. C-11-1335 EMC, 2011 WL 6014459, at *3 (N.D. Cal. Dec. 2, 2011) (citing
12 *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985) (modifications in original)).

13 The sole case Mr. Terrell cites on this issue—*Fireman’s Fund Ins. Co. v. City of Lodi,*
14 *California*, 302 F.3d 928, 957 (9th Cir. 2002)—does not render established caselaw inapplicable.
15 In *Fireman’s Fund*, “the municipal officers ‘we[re] classic *Ex Parte Young* defendants’ and the
16 official capacity claims [we]re necessary to ‘effectively foreclose any assertion by Lodi of
17 Eleventh Amendment Immunity.’” Defendants point out that in this case, “the City has never
18 asserted Eleventh Amendment Immunity . . . nor can it.” ECF 41 at 18. Indeed, “cities and
19 counties do not enjoy Eleventh Amendment immunity.” *Ray v. Cnty. of Los Angeles*, 935 F.3d
20 703, 713 (9th Cir. 2019). *Fireman’s Fund* thus provides no reason to sustain Mr. Terrell’s claims
21 against Chief Savano in his official capacity. Those claims are dismissed without leave to amend.
22 *See Crosby v. Cnty. of Alameda*, No. 20-CV-08529-MMC, 2021 WL 764120, at *3 (N.D. Cal.
23 Feb. 26, 2021) (dismissing claims asserted against officer in her official capacity without leave to
24 amend as duplicative of the claims asserted against the county).

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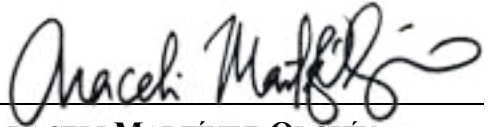
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IV. CONCLUSION

For the reasons set forth above, Defendants’ motion for judgment on the pleadings is granted in part and denied in part with leave to amend. Any amended complaint must be filed within 21 days of this order.

IT IS SO ORDERED.

Dated: September 2, 2023


ARACELI MARTÍNEZ-OLGUÍN
United States District Judge