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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DANIEL RODRIGUEZ,

Plaintiff,

vs.

COUNTY OF CONTRA COSTA, OAKLEY
POLICE DEPARTMENT, CITY OF
OAKLEY, PITTSBURG POLICE
DEPARTMENT, CITY OF PITTSBURG,
ROGER CANADY, individually and in his
capacity as a police officer for the City of
Oakley; and DOES 1-50, inclusive,

Defendants.

Case No: C 13-02516 SBA

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS PITTSBURG
POLICE DEPARTMENT AND
CITY OF PITTSBURG’S MOTION
TO DISMISS FIRST AMENDED
COMPLAINT**

Dkt. 11

Plaintiff Daniel Rodriguez brings the instant excessive force action under 42 U.S.C. § 1983 against the Pittsburg Police Department and the City of Pittsburg (collectively “Defendants”)¹, among others. The Court has original jurisdiction over Plaintiff’s § 1983 claims and supplemental jurisdiction over his related state law causes of action. 28 U.S.C. § 1331, 1367.

The parties are presently before the Court on Defendants’ Motion to Dismiss Plaintiff’s Complaint. Dkt. 11. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS IN PART and DENIES IN PART the motion to dismiss for the reasons set forth below. The Court, in its

¹ Unless otherwise noted, all further references to “Defendants” shall mean specifically the Pittsburg Police Department and the City of Pittsburg.

1 discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ.
2 P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

3 **I. BACKGROUND**

4 **A. FACTUAL SUMMARY**

5 The following facts are taken from the Complaint, which, for purposes of this
6 motion, are accepted as true. On November 25, 2012, Plaintiff was walking home from his
7 job as a handyman at a local motel. Compl. ¶ 9, Dkt. 1. As Plaintiff approached his
8 mother’s house in Oakley, Oakley Police Officer Roger Canady drove up in his police
9 cruiser and ordered Plaintiff to lie down on the ground. Id. ¶ 9. Unbeknownst to Plaintiff,
10 Officer Canady was in pursuit of an armed robbery suspect who had robbed a liquor store
11 located a short distance away. Id. ¶ 10.

12 Plaintiff asked why he was being ordered to lay down. Id. Officer Canady did not
13 respond, and instead, took his police dog out of the car. Id. At this point, Plaintiff got on
14 his knees and placed his hand behind his head. Id. ¶ 11. Officer Canady aimed his pistol at
15 Plaintiff while yelling and screaming at him. Id. He then ordered his service dog to circle
16 Plaintiff and then to attack him. Id. ¶¶ 11-12. Officers from the Pittsburg Police
17 Department and the Contra Costa County Sheriff’s Department arrived on scene and drew
18 their weapons while shouting at Plaintiff to remain on the ground. Id. ¶ 13. The dog
19 continued to attack and bite Plaintiff on his back, arms, legs and face. Id. At no time did
20 any of the law enforcement officers attempt to stop the attack. Id.

21 An unidentified police officer eventually pulled the dog off of Plaintiff and placed
22 him in handcuffs. Id. ¶ 15. The officers summoned the robbery victim, the liquor store
23 owner, to the scene. Id. Upon his arrival, the store owner said, “You have the wrong guy.”
24 Id. Despite learning that they had detained the wrong person, the officers left Plaintiff in
25 handcuffs on the ground. Id. In addition, none of the officers left to look for the actual
26 suspect; instead, they stayed and taunted Plaintiff by calling him “insulting names.” Id. A
27 paramedic then arrived, and was advised that Plaintiff was a robbery suspect. Id. ¶ 16. The
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1 paramedic laughed and commented, “He looks like a criminal.” Id. Angry, Plaintiff told
2 the paramedic to go “screw herself” and refused treatment. Id.

3 Notably, several witnesses were present and complained to the officers that the dog
4 was used to attack the Plaintiff, who was defenseless. Id. ¶ 17. The officers told the
5 witnesses to “shut up” and to go back inside their houses. Id. ¶ 18. Plaintiff’s family
6 members took Plaintiff back to the motel where he worked and summoned an ambulance.
7 Id. Plaintiff was taken to the Delta Memorial emergency room, where he was treated for
8 his injuries. Id. ¶ 19. The examination revealed that Plaintiff had 56 puncture wounds on
9 his back, neck, arms and biceps. Id. He was treated and released. Id.

10 **B. PROCEDURAL HISTORY**

11 On June 4, 2013, Plaintiff filed the instant action against: the County of Contra
12 Costa; the Oakley Police Department; the City of Oakley; the Pittsburg Police Department;
13 the City of Pittsburg; and Officer Canady. He alleges six claims for relief, styled as
14 follows: (1) violation of 42 U.S.C. § 1983 based on the First, Fourth, Fifth, Eighth and
15 Fourteenth Amendments; (2) assault and battery; (3) intentional infliction of emotional
16 distress (“IIED”); (4) violation of California Civil Code § 51.7; (5) violation of California
17 Civil Code § 52.1; and (6) negligence. Plaintiff seeks compensatory, statutory and punitive
18 damages.

19 Defendants Officer Canady, City of Oakley, County of Contra Costa and Oakley
20 Police Department filed their Answer on August 13, 2013. Dkt. 12.

21 Defendants City of Pittsburg and the Pittsburg Police Department have now filed a
22 motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes
23 the motion. The matter is fully briefed and is ripe for adjudication.²

24
25 ² There is no indication that Defendants met and conferred with Plaintiff prior to
26 filing their motion to dismiss, as expressly required by the Court’s Standing Orders. In the
27 interest of expediting his matter, the Court will review Defendants’ motion,
28 notwithstanding their apparent non-compliance with the Orders of this Court. The parties
are warned that the Court will not consider any other motion or non-stipulated request
absent confirmation in the record that they have first met and conferred regarding the issue
being presented.

1 **II. LEGAL STANDARD**

2 “Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a
3 cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal
4 theory.” Somers v. Apple, Inc., -- F.3d --, 2013 WL 5712731, at *3 (9th Cir. Sept. 3,
5 2013). “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
6 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,
7 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).
8 In assessing the sufficiency of the pleadings, “courts must consider the complaint in its
9 entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6)
10 motions to dismiss, in particular, documents incorporated into the complaint by reference,
11 and matters of which a court may take judicial notice.” Tellabs, Inc. v. Makor Issues &
12 Rights, Ltd., 551 U.S. 308, 322 (2007). The court is to “accept all factual allegations in the
13 complaint as true and construe the pleadings in the light most favorable to the nonmoving
14 party.” Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir.
15 2007). Where a complaint or claim is dismissed, leave to amend generally is granted,
16 unless further amendment would be futile. Chaset v. Flee/Skybox Int’l, 300 F.3d 1083,
17 1087-88 (9th Cir. 2002).

18 **III. DISCUSSION**

19 **A. CONSTITUTIONAL VIOLATIONS PURSUANT TO 42 U.S.C. § 1983**

20 **1. City of Pittsburg**

21 Defendants contend that the Complaint fails to allege a viable theory of liability
22 under 42 U.S.C. § 1983. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege
23 two essential elements: (1) that a right secured by the Constitution or laws of the United
24 States was violated; and (2) that the alleged violation was committed by “a person” acting
25 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). Section 1983 is not
26 itself a source of substantive rights, but a jurisdictional vehicle for vindicating federal rights
27 elsewhere conferred. See Thornton v. City of St. Helens, 425 F.3d 1158, 1164 (9th Cir.
28 2008) (citations omitted).

1 There is no respondeat superior liability under 42 U.S.C. § 1983. Monell v. Dep't of
2 Soc. Serv. of N.Y., 436 U.S. 658, 692 (1978). Instead, to establish municipal liability
3 under Monell, the plaintiff must “identify a municipal ‘policy’ or ‘custom’ that caused the
4 plaintiff’s injury.” Bd. of Cnty. Comm’rs v. Brown, 520 U.S. 397, 403 (1997) (citing
5 cases). Specifically, a plaintiff must show that (1) he was deprived of a constitutional right;
6 (2) the defendant had a policy, custom or practice; (3) the policy, custom or practice
7 amounted to a deliberate indifference to his constitutional rights; and (4) the policy, custom
8 or practice was the moving force behind the constitutional violation. Dougherty v. City of
9 Covina, 654 F.3d 892, 900 (9th Cir. 2011) (citing Mabe v. San Bernadino County, Dept. of
10 Public Social Servs., 237 F.3d 1101, 1110-11 (9th Cir. 2001)).

11 Defendants argue that, as to the City of Pittsburg, Plaintiff is predicated liability
12 solely on a theory of respondeat superior, as opposed to Monell. The basis of this
13 contention is unclear, given that the Complaint *expressly* alleges that the City of Pittsburg,
14 among others, “maintained, enforced, tolerated, permitted, acquiesced in, and applied
15 *policies, practices, or customs*” that amounted to deliberate indifference to Plaintiff’s
16 constitutional rights. Compl. ¶ 7 (emphasis added). In addition, the pleadings specify the
17 nature of those alleged policies, practices and customs. Id. ¶ 7a-f. The Court finds that
18 Plaintiff has adequately alleged a § 1983 claim under Monell against the City of Pittsburg.

19 **2. Pittsburg Police Department**

20 Defendant next contend that the Pittsburg Police Department is not a proper party-
21 defendant to a § 1983 claim. The Court agrees. Although municipalities, such as cities and
22 counties, are amenable to suit under Monell, sub-departments or bureaus of municipalities,
23 such as the police departments, are not generally considered “persons” within the meaning
24 of § 1983. Hervey v. Estes, 65 F.3d 784, 791 (9th Cir. 1995).

25 Plaintiff’s reliance on Shaw v. State of California Department of Alcoholic Beverage
26 Control, 788 F.2d 600 (9th Cir. 1986) is misplaced. Shaw held that for purposes of
27 California law, a police department is a “public entity” under California Government Code
28 § 811.2, and as such, “[a] Police Department may be sued in Federal court.” Id. at 605. In

1 this case, the issue is not whether the Pittsburg Police Department may be sued in federal
2 court. Rather, the question is whether the Pittsburg Police Department it is a proper party
3 for purposes of a § 1983 claim, which Shaw did not address. Therefore, Pittsburg Police
4 Department is dismissed as a party-defendant from Plaintiff’s first claim under § 1983.

5 **3. Sufficiency of the Allegations**

6 The Supreme Court has held that “all claims that law enforcement officers have used
7 excessive force . . . in the course of an arrest . . . should be analyzed under the Fourth
8 Amendment and its ‘reasonableness’ standard.” Graham v. Connor, 490 U.S. 386, 395
9 (1989); Forrester v. City of San Diego, 25 F.3d 804, 806 (9th Cir. 1994). The Complaint
10 appropriately alleges a Fourth Amendment claim, the sufficiency of which is not at issue in
11 Defendants’ motion to dismiss. However, the pleadings also allege violations of the First,
12 Fifth, Eighth and Fourteenth Amendments. Compl. ¶ 25. As such, Defendants move to
13 dismiss Plaintiff’s first claim under § 1983 to the extent it relies on constitutional violations
14 *other than* the Fourth Amendment. The Court discusses each claim, in turn.

15 **a) First Amendment**

16 Plaintiff’s First Amendment claim is based on Officer Canady’s use of force, which
17 allegedly was in retaliation for Plaintiff’s inquiry as to why he was being ordered to lay
18 down. Opp’n at 9 (citing Compl. ¶ 10). Questioning an officer’s authority arguably is
19 protected speech. See City of Houston v. Hill, 482 U.S. 451, 461 (1987) (“[T]he First
20 Amendment protects a significant amount of verbal criticism and challenge directed at
21 police officers.”).³ Nonetheless, the person allegedly violating Plaintiff’s First Amendment
22 rights is Officer Canady, who is employed by the City of Oakley, not the City of Pittsburg.
23 Compl. ¶ 5. Moreover, a municipality’s liability for such conduct must be pursuant to
24 policy, custom or practice of denying citizens their First Amendment rights, which is not
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26 ³ In order to state a claim for a First Amendment violation, a plaintiff must allege
27 (1) that he was engaged in a constitutionally protected activity, (2) that the officers’ actions
28 would chill a person of ordinary firmness from continuing to engage in that activity and
See Mendocino Env’tl. Ctr. v. Mendocino Cnty., 192 F.3d 1283, 1300-01 (9th Cir. 1999).

1 alleged here. Accordingly, Plaintiff's § 1983 claim is dismissed without leave to amend as
2 to Defendants insofar as it based on a violation of the First Amendment.

3 ***b) Fifth Amendment***

4 The Fifth Amendment to the United States Constitution states as follows:

5 No person shall be held to answer for a capital, or otherwise
6 infamous crime, unless on a presentment or indictment of a
7 Grand Jury, except in cases arising in the land or naval forces,
8 or in the Militia, when in actual service in time of War or public
9 danger; nor shall any person be subject for the same offence to
10 be twice put in jeopardy of life or limb; nor shall be compelled
11 in any criminal case to be a witness against himself, nor be
12 deprived of life, liberty, or property, without due process of
13 law; nor shall private property be taken for public use, without
14 just compensation.

11 U.S. Const. amend V. In neither his Complaint nor his opposition to Defendants'
12 opposition brief does Plaintiff identify what conduct supports his claim that Defendants
13 violated the Fifth Amendment or that Defendants had a policy, custom or practice of
14 violating an individual's Fifth Amendment rights. In any event, the Fifth Amendment only
15 applies to the federal government. Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir.
16 2008) ("the Fifth Amendment's due process clause only applies to the federal
17 government"). Because Defendants are alleged to be state and not federal actors, Plaintiff's
18 Fifth Amendment claim must fail. Plaintiff's § 1983 claim is dismissed without leave to
19 amend insofar as it is based on a violation of the Fifth Amendment.

20 ***c) Eighth Amendment***

21 Defendants contend that Plaintiff has failed to allege any facts to support a claim
22 under the Eighth Amendment. Plaintiff does not respond to Defendants' contention. In
23 addition, the Court notes that the Eighth Amendment only applies to excessive force claims
24 brought by convicted inmates. Hudson v. McMillian, 503 U.S. 1, 7 (1992). Accordingly,
25 Plaintiff's § 1983 claim is dismissed without leave to amend insofar as it is based on a
26 violation of the Eighth Amendment.

1 *d) Fourteenth Amendment*

2 Defendants argue that Plaintiff may not predicate his excessive force claim on the
3 Due Process Clause of the Fourteenth Amendment because such a claim must be construed
4 solely under the Fourth Amendment. The Court agrees. The Supreme Court in Graham
5 held that the Fourth Amendment “and its ‘reasonableness’ standard”—as opposed to the
6 Fourteenth Amendment—govern excessive force claims arising during an investigatory
7 stop. 490 U.S. at 395; Tekle v. United States, 511 F.3d 839, 844 (9th Cir. 2007) (applying
8 Graham and noting that the legal framework for analyzing excessive force claims under the
9 Fourth Amendment is “clearly established.”).

10 Ignoring Graham, Plaintiff argues that the Ninth Circuit’s decision in Bingue
11 recognizes that an excessive force claim may be pursued under the Fourteenth Amendment.
12 Not so. Bingue involved a § 1983 action brought by the driver of a vehicle struck by a
13 police vehicle engaged in a high speed pursuit of another. 512 F.3d at 1174-77. The court
14 held that in the context of a substantive due process claim under the Fourteenth
15 Amendment, the “intent to harm” standard “applies to all high-speed chases.” Id. at 1177.
16 This case does not involve the injury of a bystander resulting from a high speed chase.
17 Rather, it involves the allegedly excessive use of force against a putative arrestee. In that
18 situation, the Supreme Court has made it clear that the Fourth Amendment is the applicable
19 constitutional provision. Graham, 490 U.S. at 395. Therefore, Plaintiff’s § 1983 claim is
20 dismissed without leave to amend insofar as it is based on a violation of the Fourteenth
21 Amendment.⁴

22 **B. ASSAULT AND BATTERY, IIED AND NEGLIGENCE**

23 Defendants next move to dismiss Plaintiff’s claims for assault and battery (second
24 claim), IIED (third claim) and negligence (sixth claim) on the grounds that they are
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26 ⁴ Though not mentioned by the parties, the Court notes that the Fourth Amendment
27 is applicable to the States through the Fourteenth Amendment. Maryland v. Pringle, 540
28 U.S. 366, 369 (2003). Thus, Plaintiff’s reference to the Fourteenth Amendment in his
Complaint is not superfluous. However, Plaintiff cannot state a claim directly under
Fourteenth Amendment.

1 common law torts from which they are immune from suit. Under California law, “a public
2 entity is not liable for injury arising from an act or omission except as provided by statute.”
3 Hoff v. Vacaville Unified Sch. Dist., 19 Cal.4th 925, 932 (1998) (citing Cal. Gov. Code
4 § 815(a)). As a result, “there is no common law tort liability for public entities in
5 California.” Torres v. Department of Corrections and Rehabilitation, 217 Cal.App.4th 844,
6 881 (2013) (affirming order sustaining demurrer to complaint which sounded in
7 negligence).

8 Plaintiff tacitly concedes that he cannot directly sue Defendants for common law tort
9 violations, but instead contends that they are vicariously liable for the acts or omissions of
10 their employees. California Government Code § 815.2(a) provides that “[a] public entity is
11 liable for injury proximately caused by an act or omission of an employee of the public
12 entity within the scope of his employment” “Through this section, the California Tort
13 Claims Act expressly makes the doctrine of respondeat superior applicable to public
14 employers.” Hoff, 19 Cal.4th at 932.

15 While § 815.2 may supply Plaintiff with a viable theory of liability, the Complaint
16 does not expressly premise Defendants’ liability under the doctrine of respondeat superior.
17 If a claim is not pled in the Complaint, it is not properly before the Court. See Schneider v.
18 Calif. Dep’t of Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir.1998) (“‘new’ allegations
19 contained in the [plaintiff]’s opposition . . . , are irrelevant for Rule 12(b)(6) purposes.”).
20 Accordingly, the Court dismisses Plaintiffs second, third and sixth claims as to Defendants
21 with leave to amend to allege liability under Government Code § 815.2(a).

22 C. CALIFORNIA CIVIL CODE § 51.7

23 Plaintiff’s fourth claim alleges a violation of the Ralph Act, California Civil Code
24 § 51.7, which proscribes the use of force on account of a person’s race, color, ancestry, or
25 national origin. See Austin B. v. Escondido Union Sch. Dist., 149 Cal.App.4th 860, 880-81
26 (2007). To state a claim under § 51.7, the plaintiff must allege: (1) that the defendant
27 threatened or committed violent acts against the plaintiff or his or her property; (2) that a
28 motivating reason for the defendant’s conduct was his or her perception of race (or other

1 protected status); (3) that the plaintiff was harmed; and (4) that the defendant’s conduct was
2 a substantial factor in causing the plaintiff harm. Id.

3 Defendants assert there are no allegations that City of Pittsburg police officers
4 “acted violently towards Plaintiff or threatened violence against him.” Mot. at 8. This
5 contention is wholly without merit. The Ninth Circuit has held that the “pointing of a gun
6 at someone may constitute excessive force, even if it does not cause physical injury.”
7 Tekle, 511 F.3d at 845; see also Robinson v. Solano Cnty., 278 F.3d 1007, 1013-14 (9th
8 Cir. 2002) (holding that the officers’ use of a drawn gun at close range when they pointed
9 the gun at the head of unarmed misdemeanor suspect is actionable) (en banc). Here, the
10 conduct arguably is more egregious in that Defendants’ officers arrived on scene with their
11 guns drawn, while taunting Plaintiff and insulting him and ordering him to remain on the
12 ground as he was being viciously attacked by a police dog. Compl. ¶ 13.

13 Although Plaintiff has adequately alleged the threat or commission of violent acts,
14 he has insufficiently alleged that the motivating reason for Defendants’ conduct was their
15 perception of his race. The pleadings merely allege that Plaintiff was “recognizable as a
16 Hispanic” without any accompanying facts demonstrating or suggesting that he was
17 targeted *because of* his ethnicity. Such allegations fall short of the pleading standard
18 established in Iqbal and Twombly. Plaintiff’s fourth claim is therefore dismissed with
19 leave to amend to allege facts establishing that a motivating reason for Defendants’ conduct
20 was their perception of Plaintiff’s race.

21 **D. CALIFORNIA CIVIL CODE § 52.1**

22 Plaintiff’s fifth cause of action alleges that Defendants violated the Bane Act,
23 California Civil Code section 52.1. See In re Joshua H., 13 Cal.App.4th 1734, 1748 n.9
24 (1993). The Bane Act “provides that a person may bring a cause of action ‘in his or her
25 own name and on his or her own behalf’ against anyone who ‘interferes by threats,
26 intimidation or coercion,’ with the exercise or enjoyment of any constitutional or statutory
27 right.” Bay Area Rapid Transit Dist. v. Superior Court, 38 Cal.App.4th 141, 144 (1995)
28 (quoting Cal. Civ.Code § 52.1). “Section 52.1 does not provide any substantive

1 protections; instead, it enables individuals to sue for damages as a result of constitutional
2 violations.” Reynolds v. County of San Diego, 84 F.3d 1162, 1170 (9th Cir. 1996),
3 overruled on other grounds, Acri v. Yarian Assocs., Inc., 114 F.3d 999 (9th Cir. 1997).
4 Critical to a Bane Act cause of action is the allegation that the defendant specifically used
5 threats, intimidation, or coercion. Austin B. v. Escondido Union Sch. Dist., 149 Cal. App.
6 4th 860, 883 (2007).

7 Defendants contend, without citation to any decisional authority, that the officers’
8 act of drawing their guns is insufficient to constitute a threat, intimidation or coercion
9 within the meaning of § 52.1. However, the Complaint alleges that the officers’ drew their
10 guns, taunted Defendant, and called him insulting names while shouting at him to remain
11 on the ground as he was being attacked by the police dog. Compl. ¶ 13. The combination
12 of these facts is sufficient to show the use of threats, intimidation or coercion. E.g.,
13 Cameron v. Buether., No. 09-CV-2498-IEG (WMc), 2010 WL 1202318, at *5 (S.D. Cal.
14 Mar. 23, 2010) (allegations that a team of deputies entered plaintiff’s home with guns
15 drawn in a SWAT-like raid was sufficient to show threatening, intimidating or coercive
16 conduct to state a claim under Civil Code § 52.1); see also Espinosa v. City & Cnty. of S.F.,
17 598 F.3d 528, 537 (9th Cir. 2010) (“pointing a loaded gun at a suspect, employing the
18 threat of deadly force, is use of a high level of force.”). The Court thus denies Defendants’
19 motion to dismiss Plaintiff’s fifth claim for violation of Civil Code § 52.1.

20 **E. PUNITIVE DAMAGES**

21 Plaintiff concedes that he cannot pursue punitive damages against Defendants. See
22 Cal. Gov’t Code § 818 (“Notwithstanding any other provision of law, a public entity is not
23 liable for damages awarded under Section 3294 of the Civil Code [governing exemplary
24 damages] or other damages imposed primarily for the sake of example and by way of
25 punishing the defendant.”). Therefore, Plaintiff’s punitive damage claim is dismissed as to
26 Defendants without leave to amend.

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28 //

1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT:

4 1. Defendants' Motion to Dismiss Complaint is GRANTED IN PART and
5 DENIED IN PART, as follows:

6 a. Plaintiff's first claim for violation of 42 U.S.C. § 1983 is DISMISSED
7 WITHOUT LEAVE TO AMEND as to Defendant Pittsburg Police
8 Department.

9 b. Plaintiff's first claim for violation of 42 U.S.C. § 1983 is DISMISSED
10 WITHOUT LEAVE TO AMEND as to Defendants, insofar as it is
11 based on violations of the First, Fifth, Eighth and Fourteenth
12 Amendments.

13 c. Plaintiff's second, third and sixth claims for assault and battery, IIED
14 and negligence, respectively, are DISMISSED WITH LEAVE TO
15 AMEND.

16 d. Plaintiff's fourth claim for violation of California Civil Code § 51.7 is
17 DISMISSED WITH LEAVE TO AMEND.

18 e. Plaintiff's claim for punitive damages as to Defendants is DISMISSED
19 WITHOUT LEAVE TO AMEND.

20 2. Plaintiff shall have twenty-one (21) days from the date this Order is filed to
21 file a First Amended Complaint, consistent with the Court's rulings and Rule 11 of the
22 Federal Rules of Civil Procedure. In the event Plaintiff fails to file an amended complaint
23 within that time-frame, the dismissal of Plaintiff's claims, as discussed above, will be with
24 prejudice.

25 IT IS SO ORDERED.

26 Dated: November 1, 2013

27 
SAUNDRA BROWN ARMSTRONG
28 United States District Judge