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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NICOLAS AQUINO,
Plaintiff,
v.
COUNTY OF MONTEREY SHERIFF’S
DEPARTMENT, et al.,
Defendants.

Case No. [5:14-cv-03387-EJD](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT; GRANTING IN PART
AND DENYING IN PART PLAINTIFF’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Re: Dkt. Nos. 37, 38

Plaintiff Nicolas Aquino (“Plaintiff”) brings this action against Monterey County Sheriff’s Office (sued herein as County of Monterey Sheriff’s Department) (“Monterey County”), Sheriff’s Deputy Ivan Rodriguez (“Dep. Rodriguez”), and Sheriff’s Sergeant David Murray (“Sgt. Murray”) (collectively, “Defendants”) for alleged violations of his Fourth Amendment rights and related state law claims. Compl. ¶ 1, Dkt. No. 1. Presently before the court is Defendants’ Motion for Summary Judgment (“Def. Mot”) and Plaintiff’s Motion for Partial Summary Judgment (“Pl. Mot”). Dkt. Nos. 37, 38. Defendants move for summary judgment on all claims, and Plaintiff moves for partial summary judgment as to claims one, two, four, seven, eight, and eleven.

Based on the parties’ briefings and the arguments of counsel, and for the reasons stated below, the court has determined summary judgment is appropriate as to some, but not all, of the claims presented. Thus, both Defendants’ motion for summary judgment and Plaintiff’s motion for partial summary judgment will be GRANTED IN PART and DENIED IN PART.

1 directed Dep. Rodriguez to Plaintiff’s residence. Rodriguez Depo. at 68:18-69:7; 70:14-71:6. The
2 man’s identity was unknown at the time of contact but he was later identified as Christopher
3 Adamski (“Adamski”). Id. at 71:15-17; 100:1-101:8; Pl. Fact 14.

4 **B. Dep. Rodriguez’s Inspection of the Portola Avenue Property**

5 After speaking with Adamski, Dep. Rodriguez approached the Portola Avenue property
6 and looked over the north gate and into the backyard for signs of forced entry. Rodriguez Depo. at
7 71:23-25; 72:2-8; Pl. Fact 21. He did not discover any evidence of a break-in and saw “nothing
8 broken, nothing forced, [and] nothing suspicious.” Rodriguez Depo. at 72:12-16. Dep. Rodriguez
9 then proceeded to the opposite side of the property, looked over the southern fence, and again
10 found no evidence of forced entry. Id. at 74:2-12; 75:8-13. While in front of the house, he
11 observed someone visible in one of the front windows and saw the shutters close, obscuring any
12 further view inside. Id. at 74:11-20. Based on this observation, Dep. Rodriguez decided to retreat
13 from the property, return to his patrol car, and await backup. Id. at 76:3-18.

14 As Dep. Rodriguez was leaving, Plaintiff opened the front door and inquired as to his
15 presence on the property. Aquino Decl. ¶ 7; Depo. of Nicolas Aquino (“Aquino Depo.”) at 69:12,
16 Dkt. No. 38-2. Dep. Rodriguez believed Plaintiff matched the description of the man from the 911
17 call in that he was a Hispanic male wearing a hooded sweatshirt. Pl. Fact 30. Dep. Rodriguez
18 informed Plaintiff that he was investigating a report of suspicious activity in the area and asked
19 Plaintiff who he was. Rodriguez Depo. at 82:1-24; Aquino Decl. ¶ 9. Plaintiff responded that he
20 lived on the property, at which point Dep. Rodriguez requested to see Plaintiff’s identification.
21 Rodriguez Depo. at 82:13-83:11. Plaintiff then asked Dep. Rodriguez if he was being detained;
22 why Dep. Rodriguez was asking him for identification; and whether Dep. Rodriguez had a
23 warrant. Rodriguez Depo. 83:25-84:8; Pl.’s Resp. to Defs.’ Fact (“Def. Fact”) 7, Dkt. No. 41-1.
24 Dep. Rodriguez responded that Plaintiff was being detained until Dep. Rodriguez could determine
25 if Plaintiff lived on the property and that he was requesting Plaintiff’s identification in order to
26 confirm this. Rodriguez Depo. at 84:9-15.

1 In response, Plaintiff pulled out his wallet, verbally informed Dep. Rodriguez that he was
2 in the military,¹ and showed Dep. Rodriguez his military issued ID card. Pl. Fact 46; Aquino
3 Decl. ¶ 14. There is some dispute as to the manner in which Plaintiff presented the ID card to
4 Dep. Rodriguez, but the parties generally agree that (1) Plaintiff took out and visibly displayed the
5 ID card for Dep. Rodriguez to see; (2) Plaintiff did not actually hand Dep. Rodriguez the card
6 itself; (3) Dep. Rodriguez stepped forward and reached out toward Plaintiff to take the ID card; (4)
7 Plaintiff moved his hand away, preventing Dep. Rodriguez from acquiring the ID card; and (5) a
8 physical altercation ensued. Rodriguez Depo. at 90:13-92:21; Aquino Decl. ¶¶ 14-15.

9 **C. Physical Altercation Between Dep. Rodriguez and Plaintiff**

10 As a result of Plaintiff’s refusal to hand over his ID, Dep. Rodriguez states that he became
11 concerned for his safety and, believing Plaintiff may actually be a burglar, decided to physically
12 detain him in handcuffs. Rodriguez Depo. at 92:23-93:15; Def. Mot. at 4. In an effort to do so,
13 Dep. Rodriguez “lunged toward [Plaintiff] ... to grab his [right] wrist,” then grabbed his left wrist
14 and moved behind Plaintiff trying to get his hands behind his back. Rodriguez Depo. at 126:2-25;
15 Aquino Decl. ¶ 18; Pl. Facts 58, 60. Plaintiff then “spun” toward Dep. Rodriguez with his body
16 slightly bent forward. Rodriguez Depo. at 127:1-5; Aquino Decl. ¶ 18. While Defendants contend
17 Plaintiff was resisting Dep. Rodriguez’s attempt to handcuff him, Plaintiff states that he was
18 thrown off balance by Dep. Rodriguez’s actions and was not resisting. Def. Fact 10; Aquino Decl.
19 ¶ 18; Pl. Opp. to Def. Mot. (“Pl. Opp.”) at 6-7, Dkt. No. 41. At that point, Dep. Rodriguez
20 “wrapped [his] right arm around [Plaintiff’s] head and neck,” dragging him to the ground.
21 Rodriguez Depo. at 129:1-6; 130:20-23; Aquino Decl. ¶ 19.

22 While there is some dispute as to the details of what happened next, it appears that once on
23 the ground, Dep. Rodriguez ordered Plaintiff to get on his stomach and place his hands out at his
24 side, which Plaintiff failed to do. Rodriguez Depo. at 130:24-132-11; Pl. Fact 62; Def. Fact 10.
25 Maintaining a hold on Plaintiff’s head and neck, Dep. Rodriguez then used his body weight to

26 _____
27 ¹ Dep. Rodriguez did not recall Plaintiff saying he was in the military. Rodriguez Depo. 83:3-7.

1 push Plaintiff into the ground, pinning his arms and hands underneath him.² Aquino Decl. ¶¶ 19-
2 20; Pl. Opp. at 6-7; see also Rodriguez Depo. at 130:24-132-11.

3 After unsuccessfully attempting to handcuff Plaintiff in this position, a civilian,
4 subsequently identified as Rafael Salcedo, “appeared out of nowhere” and grabbed Plaintiff’s left
5 arm. Rodriguez Depo. at 132:20-133:6; Pl. Fact 65. Moments later, Monterey Sheriff’s deputy
6 Albert Ainuu (“Dep. Ainuu”), arrived and they successfully handcuffed Plaintiff and placed him in
7 the back of Dep. Rodriguez’s patrol car. Rodriguez Depo. at 133:6-24.; Pl. Facts 65-67.

8 **D. Alleged Search of Plaintiff’s Wallet and Residence**

9 After handcuffing and placing Plaintiff in his patrol car, Dep. Rodriguez picked up
10 Plaintiff’s wallet and ID card that had fallen onto the ground during the struggle and looked at the
11 items. Rodriguez Depo. at 137:22-138:15; Pl. Fact 71. Upon review of the items, Dep. Rodriguez
12 identified what he believed to be a military ID, as well as a Texas driver’s license and a Naval
13 Postgraduate identification card. Rodriguez Depo. at 138:14-140:1. When the wallet was later
14 returned to Plaintiff, Plaintiff alleges that fifty dollars was missing. Aquino Depo. at 148: 21-25.

15 After looking at Plaintiff’s identification, Dep. Rodriguez left the patrol car and “went
16 looking for people who could verify” that Plaintiff lived on the property. Rodriguez Depo. at
17 143:2-14.; Def. Facts 14-16. While none of the of the neighbors who spoke with Dep. Rodriguez
18 identified Plaintiff as the occupant of the house, one recalled that the resident of the property went
19 by the name “Nico,” which Dep. Rodriguez recognized could be short for “Nicolas,” Plaintiff’s
20 first name. Def. Facts 15-16.

21 Around this time, Plaintiff appears to allege - and Defendants appear to dispute - that Dep.
22 Rodriguez entered Plaintiff’s residence without his consent and retrieved a utility bill from inside
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24 ² There is also some dispute as to whether Dep. Rodriguez’s actions caused Plaintiff to hit his head
25 on the pavement. Plaintiff alleges that it did, and that he lost visual and auditory awareness for a
26 few seconds. Aquino Decl. ¶ 19; Pl. Fact. 63. Defendants purportedly dispute this fact by citing
27 “Aquino depo. 107:6-8,” but the court was unable to locate this section of testimony in the record
and no further docket number of identifying information was provided by Defendants. See Dkt.
No. 40-2, at 10, Pl. Fact 63.

1 the house. Compl. ¶17; Pl. Facts 75, 76; Def. Facts 17, 18, 28; Rodriguez Depo. at 148:23-25.
2 There are internal inconsistencies in the arguments and evidence presented by both parties on this
3 issue. See Pl. Facts 75-76; Def. Facts 17-18.³ However, it is undisputed that at some point Dep.
4 Rodriguez returned to the patrol car, removed Plaintiff’s handcuffs, and allowed him to enter the
5 house and obtain utility bills himself, which showed that he was the lawful resident. Id. Dep.
6 Rodriguez then gave Plaintiff a sheet of paper with a report number, released him, and left the area
7 with Dep. Ainuu. See Def. Facts 18-20.

8 **II. LEGAL STANDARD**

9 A motion for summary judgment or partial summary judgment should be granted if “there
10 is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of
11 law.” Fed. R. Civ. P. 56(a); Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). A
12 fact is material when, under governing substantive law, it could affect the outcome of the case.
13 Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine
14 if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id.

15 The moving party bears the initial burden of informing the court of the basis for the motion
16 and identifying the portions of the pleadings, depositions, answers to interrogatories, admissions,
17 or affidavits that demonstrate the absence of a triable issue of material fact. Celotex Corp. v.
18 Catrett, 477 U.S. 317, 323 (1986). If the moving party meets this initial burden, the burden then
19 shifts to the nonmoving party to go beyond the pleadings and designate “specific facts showing
20 that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324. The court
21 must regard as true the opposing party’s evidence, if supported by affidavits or other evidentiary
22 material. Celotex, 477 U.S. at 324. However, the mere suggestion that facts are in controversy, or
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24 ³ See also, Supplemental Report of Dep. Ainuu (“Ainuu Report”), Ex. D at 9, Avila Decl., Dkt.
25 No. 41-3; Depo. of Albert Ainuu (“Ainuu Depo.”) at 71:15-75:21, Ex. G, Avila Decl. Dkt. No. 41-
26 3. Initially, Dep. Ainuu recalled that Dep. Rodriguez had been the one to “recover” documents
27 with Plaintiff’s name from inside the house. He later claimed he could not remember how Dep.
28 Rodriguez got the documents, but given that Plaintiff was in the patrol car, stated he did not know
how else Dep. Rodriguez would have obtained the document other than by entering the residence.

1 conclusory and speculative testimony in affidavits and moving papers, is insufficient to defeat
2 summary judgment. See Thornhill Publ'g Co. v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979).

3 Where the nonmoving party will have the burden of proof at trial on an issue, the moving
4 party need only point out “that there is an absence of evidence to support the nonmoving party’s
5 case.” Celotex, 477 U.S. at 325. Provided there has been adequate time for discovery, summary
6 judgment should be entered against a party who fails to make a showing sufficient to establish the
7 existence of an essential element to that party’s case. Id. at 322-23. “[A] complete failure of
8 proof concerning an essential element of the nonmoving party’s case necessarily renders all other
9 facts immaterial.” Id. at 323.

10 **III. DISCUSSION**

11 **A. § 1983 Claim Against Dep. Rodriguez (Claim One)**

12 Plaintiff’s first cause of action alleges that Dep. Rodriguez violated his Fourth Amendment
13 rights to be free from unreasonable searches and seizures, as well as his right to be free from the
14 excessive use of force. Defendants move for summary judgment on the grounds that Dep.
15 Rodriguez had reasonable suspicion to detain Plaintiff for the purposes of investigation, used
16 reasonable force in doing so, and because he has no liability under the doctrine of qualified
17 immunity. Plaintiff also moves for summary judgment on the § 1983 claim.

18 **i. Unreasonable Seizures**

19 Plaintiff alleges that Dep. Rodriguez lacked any legal basis to verbally or physically detain
20 him, and therefore he was unlawfully seized in violation of the Fourth Amendment. Defendants
21 assert that the facts and circumstances surrounding Dep. Rodriguez’s encounter with Plaintiff
22 established reasonable suspicion to detain Plaintiff in conjunction with the investigation of the 911
23 call reporting a suspicious person on the property.

24 **a. Initial Investigatory Detention**

25 Under the Supreme Court precedent set in Terry v. Ohio, a police officer may detain a
26 suspect for limited investigative purposes if the officer has reasonable suspicion the suspect was

1 engaged in criminal activity. 392 U.S. 1, 20-21 (1968); see United States v. Hensley, 469 U.S.
2 221, 229 (1985). The reasonable suspicion standard “is a less demanding standard than probable
3 cause, and merely requires a minimal level of objective justification.” Gallegos v. City of Los
4 Angeles, 308 F.3d 987, 990 (9th Cir. 2002) (internal quotations omitted). The scope of a
5 permissible Terry-stop has been expanded to include “asking the detainee a moderate number of
6 questions to determine his identity and to try to obtain information confirming or dispelling the
7 officer’s suspicions.” United States v. Washington, 387 F.3d 1060, 1067 (9th Cir. 2004) (quoting
8 Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984)). A detention premised on reasonable
9 suspicion must also be “sufficiently brief and minimally intrusive” to be constitutional under the
10 Fourth Amendment. Id.; see United States v. Sharpe, 470 U.S. 675, 685, (1985).

11 Here, Dep. Rodriguez’s initial decision to detain Plaintiff in order to determine whether he
12 was lawfully on the property was supported by reasonable suspicion and was therefore
13 constitutional. The record reflects that Dep. Rodriguez was responding to a 911 call concerning a
14 suspicious individual and that upon arriving at the scene, a neighbor confirmed the report of the
15 suspicious individual and directed Dep. Rodriguez to Plaintiff’s property. Pl. Fact 8; Rodriguez
16 Depo. at 68:18-69:7; 70:14-71:6. The record further indicates that in the course of his
17 investigation, Dep. Rodriguez observed an unknown person inside the house and then encountered
18 Plaintiff, who generally matched the description of the individual from the 911 call, coming out of
19 the house towards him. Rodriguez Depo. at 74:11-20; Aquino Depo. at 69:12. Finally, when Dep.
20 Rodriguez asked Plaintiff for identification, Plaintiff asked if he was being detained, and Dep.
21 Rodriguez responded that he was being detained until he could determine if Plaintiff lived on the
22 property. Rodriguez Depo. 83:25-84:15; Pl. Fact 7.

23 As an officer acting in the scope of his professional duties in responding to a report of a
24 suspicious person, it was both reasonable and prudent of Dep. Rodriguez to inquire as to
25 Plaintiff’s identity. Under these circumstances, Dep. Rodriguez had a reasonable, articulable
26 suspicion that a burglary may have occurred and that Plaintiff might be involved. Accordingly,
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1 Dep. Rodriguez's initial investigative detention for the purposes of confirming or dispelling this
2 suspicion was warranted here. See Washington, 387 F.3d at 1067. Based on the foregoing, the
3 court finds as a matter of law that Dep. Rodriguez did not violate Plaintiff's Fourth Amendment
4 rights when executing this initial investigatory detention. Thus, to the extent that the parties'
5 respective motions are based on the initial investigatory detention, Defendants' motion for
6 summary judgment is GRANTED and Plaintiff's motion for partial summary judgement is
7 DENIED.

8 **b. Extended Physical Seizure**

9 Beyond the initial investigatory detention, the parties further disagree as to whether the
10 physical seizure and continued detention of Plaintiff - including the use of force, the use of
11 handcuffs, and placing Plaintiff inside the patrol car - remained a valid investigatory detention
12 under Terry, or whether it extended past what could be considered "sufficiently brief and
13 minimally intrusive" under the Fourth Amendment, instead becoming a *de facto* arrest. See
14 Washington, 387 F.3d at 1069; Sharpe, 470 U.S. at 685.

15 Where an officer engaged in a Terry-like stop exceeds the permissible scope of a brief
16 investigatory detention, the stop is transformed into an arrest requiring probable cause. There is
17 "no bright line rule for determining when an investigatory stop crosses the line and becomes an
18 arrest." United States v. Parr, 843 F.2d 1228, 1231 (9th Cir.1988). Whether a specific detention
19 amounts to an arrest or an investigatory stop "is a fact-specific inquiry guided by the general
20 Fourth Amendment requirement of reasonableness" and ascertained in light of the "totality of the
21 circumstances." Gallegos, 308 F.3d at 991 (internal citations omitted); Green v. City & Cty. of
22 San Francisco, 751 F.3d 1039, 1047 (9th Cir. 2014); Washington v. Lambert, 98 F.3d 1181, 1185
23 (9th Cir. 1996). When making this determination, courts consider the "intrusiveness of the
24 methods used in light of whether these methods were reasonable given the specific
25 circumstances." Green, 751 F.3d at 1047. Generally, the use of "especially intrusive means" is
26 permitted only under special circumstances, such as "(1) where the suspect is uncooperative or
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1 takes action at the scene that raises a reasonable possibility of danger or flight; (2) where the
2 police have information that the suspect is currently armed; (3) where the stop closely follows a
3 violent crime; and (4) where the police have information that a crime [potentially involving]
4 violence is about to occur.” Green, 751 F.3d at 1047 (quoting Washington, 98 F.3d at 1189).
5 “[W]hen the police have only reasonable suspicion to make an investigatory stop, drawing
6 weapons and using handcuffs and other restraints will violate the Fourth Amendment.”
7 Washington, 98 F.3d at 1187.

8 Here, the record suggests that the “methods” used by Dep. Rodriguez to detain Plaintiff
9 became significantly more intrusive after the initial verbal detention. Specifically, triggered by
10 Plaintiff’s failure to directly hand over his identification, Dep. Rodriguez decided to detain
11 Plaintiff in handcuffs and began attempting to physically restrain him. See Rodriguez Depo. at
12 92:23-93:15. Perceiving some resistance, Dep. Rodriguez wrapped his arm around Plaintiff’s
13 head and neck, dragged him to the ground, and used his body weight to pin Plaintiff on the ground
14 while commanding him to put his hands out at his side. See Rodriguez Depo. at 130:24-132-11;
15 Aquino Decl. ¶¶ 19-20. Plaintiff was eventually handcuffed and put inside the patrol car.
16 Rodriguez Depo. at 133:6-24.; Pl. Facts 65-67.

17 While Dep. Rodriguez did not draw his weapon, the Ninth Circuit has consistently
18 reiterated that “handcuffing substantially aggravates the intrusiveness of an otherwise routine
19 investigatory detention and is not part of a typical Terry stop.” Green, 751 F.3d at 1047; see also,
20 United States v. Del Vizo, 918 F.2d 821, 825 (9th Cir. 1990) (finding the use of handcuffs to be an
21 important factor in determining that an arrest had taken place). Indeed, even minor restraints on
22 an individual’s liberty may be considered a *de facto* arrest if “the inherent danger of the situation
23 does not justify the intrusive police action. Washington, 98 F.3d at 1187; see, e.g., United States
24 v. Ricardo D., 912 F.2d 337, 340–42 (9th Cir. 1990) (finding that arrest occurred where police
25 held suspect in patrol car for twenty minutes without drawing weapons or handcuffing him).
26 Here, not only was Plaintiff put in handcuffs, he was subjected to significant physical force in the
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1 process, including being taken to the ground, and then restrained for some time in the back of the
2 patrol car. The question is therefore whether such objectively intrusive measures were warranted
3 by unique circumstances or the “inherent danger” of the situation.

4 Reviewing the circumstances in light of the Washington factors, the court concludes that a
5 reasonable jury could find that the prolonged detention of Plaintiff, including the use of force and
6 handcuffs, exceeded the limits of an investigative detention under Terry. There no evidence that
7 Plaintiff was armed or otherwise posed an immediate threat, the detention did not closely follow a
8 violent crime, and the police did not have any specific information that a crime was about to
9 occur. See Washington, 98 F.3d at 1189. By Dep. Rodriguez’s own testimony, he did not believe
10 Plaintiff was reaching for a weapon or displaying physical aggression toward him. Rodriguez
11 Depo. at 109:11-111:15; 114:22-115:9. Moreover, unlike in the cases cited by Defendants where
12 a 911 caller reported a recent or ongoing crime, an immediate threat, or the existence of weapons,
13 the 911 caller here did not provide any facts to suggest a specific crime was being committed,
14 made no mention of weapons, and even stated he was “not sure if [the person] is visiting.” See
15 Def. Mot at 6-7 (citing United States v. Terry-Crespo, 356 F.3d 1170, 1174 (9th Cir. 2004)
16 (finding reasonable suspicion to detain a suspect where the 911 caller reported that he had just
17 been threatened by a man with a .45 handgun, provided a physical description of the man, and
18 gave the location of the incident)).

19 There is some evidence to suggest that Plaintiff may have been somewhat “uncooperative”
20 or resistant to Dep. Rodriguez, causing Dep. Rodriguez to feel that he was in some danger. See
21 Rodriguez Depo. at 90:13-92:21; 132:12-19; 155:9-14. It is also worth noting that Dep. Rodriguez
22 was, at that time, alone, increasing the potential risk to himself. However, there is also evidence
23 that Plaintiff was generally attempting to comply with Dep. Rodriguez’s requests and, while he
24 did not directly hand his ID to Dep. Rodriguez, he did take it out and display it. See id.; Aquino
25 Decl. ¶¶ 14-15. Nothing in the record suggests Plaintiff was clearly noncompliant or attempting to
26 flee. At a minimum, there exists a triable issue as to whether Dep. Rodriguez’s tactics exceeded
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1 what was necessary or reasonable under the circumstances in violation of Plaintiff’s constitutional
2 rights. Accordingly, Defendants’ motion for summary judgment on this issue is DENIED.

3 Because this reasoning precludes judgment as a matter of law in favor of either party, Plaintiff’s
4 motion for partial summary judgment is also DENIED.

5 **ii. Excessive Force**

6 Plaintiff also asserts that Dep. Rodriguez violated his Fourth Amendment rights by using
7 excessive force when attempting to physically detain him. A claim of excessive force brought
8 against police officers must be analyzed under the Fourth Amendment’s “reasonableness”
9 standard. Graham v. Connor, 490 U.S. 386, 395 (1989); Smith v. City of Hemet, 394 F.3d 689,
10 700–01 (9th Cir. 2005). The “objective reasonableness” of an officer’s use of force in a particular
11 case is determined “in light of the facts and circumstances confronting [him], without regard to
12 [his] underlying intent or motivation.” Graham, 490 U.S. at 396-97. “Because this inquiry is
13 inherently fact specific, the determination whether the force used to effect an arrest was reasonable
14 under the Fourth Amendment should only be taken from the jury in rare cases.” Green, 751 F.3d
15 at 1049 (internal quotations omitted); see also Avina v. United States, 681 F.3d 1127, 1130 (9th
16 Cir. 2012) (“summary judgment or judgment as a matter of law in excessive force cases should be
17 granted sparingly.”); Chew v. Gates, 27 F.3d 1432, 1443 (9th Cir. 1994) (“[W]hether a particular
18 use of force was reasonable is rarely determinable as a matter of law.”).

19 Determining the reasonableness of the force used to effect a seizure requires balancing “the
20 nature and quality of the alleged intrusion” on a person’s liberty against the “countervailing
21 governmental interests at stake.” Graham, 490 U.S. at 396. Similar to the detention analysis,
22 there is no precise definition of what constitutes sufficient government interest to justify the
23 amount of force used. Rather, the assessment requires careful consideration of the particular facts
24 and circumstances at issue, including (1) the severity of the crime, (2) whether the suspect posed
25 an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively
26 resisting arrest or attempting to evade arrest by flight. Id.; Luchtel v. Hagemann, 623 F.3d 975,

1 980 (9th Cir. 2010). Of these factors, the most important generally is whether the suspect posed
2 an immediate threat. Graham, 490 U.S. at 396. However, courts must “examine the totality of the
3 circumstances and consider whatever specific factors may be appropriate in a particular case.”
4 Bryan v. MacPherson, 630 F.3d 805, 826 (9th Cir. 2010).

5 Here, Defendants argue that Dep. Rodriguez’s use of force was objectively reasonable
6 under the circumstances. Specifically, as to the degree of intrusion, Defendants argue that the
7 “the struggle was brief” and that no weapons, chemical agents, or Tasers were employed. Def.
8 Mot. at 12. As to the government interests justifying the use of force, Defendants emphasize that
9 Dep. Rodriguez was responding to a 911 call, that he believed a burglary may have occurred, and
10 that Plaintiff’s resistance and his failure to put his hands out to his side once on the ground made
11 Dep. Rodriguez fearful that he was reaching for a weapon. See Rodriguez Depo. at 85:2-11;
12 132:12-19. Defendants conclude that these circumstances are sufficient to justify the degree of
13 force used. However, Defendants’ argument that the degree of intrusion was “minimal” because
14 no weapons were used and the altercation was brief is unconvincing. Plaintiff alleges that Dep.
15 Rodriguez used significant physical force against him, including dragging him to the ground,
16 employing the use of a chokehold, and handcuffing him. See Aquino Decl. ¶¶ 19-20; see also
17 Rodriguez Depo. at 130:24-132-1. This degree of force is more than minimal. The only question,
18 then, is whether the force used was nevertheless justified by the “countervailing government
19 interest” at stake. See Graham, 490 U.S. at 396.

20 Applying the Graham factors to this case, and the reasons already discussed, the court
21 finds that there remain triable issues of fact precluding summary judgment as to whether Dep.
22 Rodriguez’s use of force was objectively reasonable under the circumstances. See 490 U.S. at
23 396. As to the “severity of the crime” at issue, while burglary may be considered a serious crime,
24 the 911 caller in this case noted only the presence of a potentially suspicious person on the
25 property. Neither the dispatch call nor the Call-For-Service (“CAD”) used the words “burglary in
26 process,” which might have elevated the severity or risk. Rodriguez Depo. at 101: 14-23; CAD,
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1 Ex. A, Avila Decl., Dkt No. 41-3. Second, there is no evidence that Plaintiff posed an immediate
2 threat to Dep. Rodriguez or others. Dep. Rodriguez testified that he did not perceive Plaintiff as
3 making any assaultive movement toward him and at no point did he see a weapon. Rodriguez
4 Depo. at 77:18-23; 109:11-111:15. And third, while there is some evidence Plaintiff may have
5 resisted Dep. Rodriguez’s attempts to handcuff and detain him, there is also evidence that he was
6 cooperative and sought to comply with Dep. Rodriguez’s instructions. See id. at 90:13-92:21;
7 132:12-19; 155:9-14; Aquino Decl. ¶¶ 14-15.

8 Because there remain disputes of material fact relevant to determining whether Dep.
9 Rodriguez’s use of force was “objectively reasonable,” this issue cannot be decided as a matter of
10 law. Accordingly, both motions for summary judgment on this issue are DENIED.

11 **iii. Warrantless Searches**

12 Plaintiff’s final claim under the Fourth Amendment alleges that Dep. Rodriguez conducted
13 unconstitutional searches of his yard, wallet, and residence. Plaintiff moves for partial summary
14 judgment as to the searches of the yard and the wallet. Pl. Mot. at 18-19. Defendants’ motion
15 does not specifically address these three searches, but instead argues generally that summary
16 judgment is proper because Dep. Rodriguez’s actions were based on reasonable suspicion. See
17 Def. Opp. to Pl. Mot. (“Def. Opp.”) at 6-7, 11-13, Dkt. No. 40.

18 The Fourth Amendment protects “[t]he right of the people to be secure in their persons,
19 houses, papers, and effects against unreasonable searches and seizures.” U.S. Const. amend. IV.
20 In general, for a search to be “reasonable” under the Fourth Amendment, it must be conducted
21 pursuant to a warrant based on probable cause. Agnello v. United States, 269 U.S. 20, 33 (1925).
22 A “search” under the Fourth Amendment “occurs when the government invades an area in which a
23 person has a reasonable expectation of privacy.” Mendez v. Cty. of Los Angeles, 815 F.3d 1178,
24 1187 (9th Cir. 2016). It is widely established that nowhere is this expectation greater, or the
25 “protective force of the Fourth Amendment more powerful than within the sanctity of the home.”
26 United States v. Crapser, 472 F.3d 1141, 1157 (9th Cir. 2007). These protections also extend to

1 the area immediately adjacent to a home, known as the ‘curtilage.’” Mendez, 815 F.3d at 1187
2 (9th Cir. 2016) (citing United States v. Struckman, 603 F.3d 731, 739 (9th Cir. 2010)).

3 *a. Search of Plaintiff’s Yard*

4 For the purpose of summary judgment, the issue here is whether Dep. Rodriguez’s
5 entrance onto Plaintiff’s property was a “search” in violation of the Fourth Amendment. A
6 warrantless search of the home or the curtilage surrounding the home is considered
7 “presumptively unreasonable.” Sandoval v. Las Vegas Metropolitan Police Dep’t, 756 F.3d 1154,
8 1161 (9th Cir. 2014) (quoting Payton v. New York, 445 U.S. 573, 586 (1980)). However, it is “a
9 firmly-rooted notion in Fourth Amendment jurisprudence” that a resident’s expectation of privacy
10 will generally not be violated when an officer briefly intrudes onto the property for limited
11 investigatory purposes. See e.g., Crapser, 472 F.3d at 1156 (finding no invasion of privacy where
12 an officer entered onto the front porch and knocked on the door in a non-coercive manner to ask
13 questions of a resident.); United States v. Hammett, 236 F.2d 1054, 1060 (9th Cir. 2001) (finding
14 no invasion of privacy where an officer walked to the rear of a residence to locate and interview
15 the occupant); United States v. Ellis, 121 F. Supp. 3d 927, 949 (N.D. Cal. 2015) (holding that an
16 officer’s entry into a privately owned driveway or parking lot did not constitute a Fourth
17 Amendment violation); see also, Maryland v. Buie, 494 U.S. 325, 327 (1990) (affirming that
18 officers may conduct protective sweeps of private property when “the searching officer possessed
19 a reasonable belief based on specific and articulable facts which, taken together with the rational
20 inferences from those facts, reasonably warranted the officer in believing that the area swept
21 harbored an individual posing a danger to the officer or others.”).

22 Here, Dep. Rodriguez approached the property to investigate a report of a possible
23 burglary, looked over the north gate into the backyard for signs of forced entry, and then walked to
24 the south side of the house to do the same. Rodriguez Depo. at 71:23-72:8; 74:2-75:13. To the
25 extent that Dep. Rodriguez actually even entered the property before encountering Plaintiff, he did
26 so in a limited and minimally intrusive manner in keeping with his investigation of the 911 report.

1 Id. This conduct is consistent with what any reasonable officer would be expected to do in
2 response to such a report. As such, the court finds that Dep. Rodriguez did not violate any
3 constitutional right when he briefly looked and/or entered onto Plaintiff's property. To hold
4 otherwise would functionally prevent officers from making welfare checks or preliminary
5 investigations in response to 911 calls without a warrant.

6 Moreover, even if the court determined that Dep. Rodriguez had violated Plaintiff's Fourth
7 Amendment rights, the law on the subject is not so clearly established that an officer in Dep.
8 Rodriguez' position could not have reasonably believed that his entry into the yard was lawful.
9 See Burrell v. McIlroy, 423 F.3d 1121, 1124 (9th Cir. 2005). Thus, Dep. Rodriguez would also be
10 entitled to qualified immunity on this issue. See Pearson v. Callahan, 555 U.S. 223, 231 (2009).

11 For the foregoing reasons, Defendants' motion for summary judgment is GRANTED to the
12 extent it is based on the warrantless search of Plaintiff's yard. Plaintiff's motion for partial
13 summary judgement is therefore DENIED for the same reasons.

14 ***b. Search of Plaintiff's Wallet***

15 Plaintiff also moves for summary judgment as to his allegations that Dep. Rodriguez
16 conducted a search of his wallet in violation of the Fourth Amendment. Pl. Mot. at 18-21.
17 Defendants do not dispute that Dep. Rodriguez opened Plaintiff's wallet and searched it in order to
18 locate his identification. Rodriguez Depo. at 137:22-138:15; Pl. Fact 71. Rather, Defendants
19 argue that because Dep. Rodriguez had reasonable suspicion to detain Plaintiff, and the wallet fell
20 onto the ground during the detention, the search of the wallet was constitutional under the plain
21 view doctrine. Def. Opp. at 10-11.

22 As an initial matter, the court recognizes that Plaintiff had a reasonable expectation of
23 privacy in the contents of his wallet. See United States v. Monclavo-Cruz, 662 F.2d 1285, 1290-
24 91 (9th Cir. 1981) (concluding the individual's "expectation of privacy in her purse was one that
25 society recognizes as reasonable"); United States v. Davis, 332 F.3d 1163, 1170 (9th Cir. 2003)
26 (finding the defendant had a reasonable expectation of privacy in his gym bag); see also, People v.

1 Williams, 63 Mich. App. 398, 401 (1975) (holding that the “seizing of a person’s wallet and
2 examination of its contents constitutes a search in the constitutional sense since this interferes with
3 the person’s reasonable expectation of privacy.”). Accordingly, a warrantless search of a wallet is
4 unreasonable under the Fourth Amendment unless it is justified by a recognized exception.

5 The plain view doctrine is a limited exception permitting law enforcement officers to
6 “seize evidence in plain view, provided that they have not violated the Fourth Amendment in
7 arriving at the spot from which the observation of the evidence is made.” Kentucky v. King, 563
8 U.S. 452, 462 (2011) (citing Horton v. California, 496 U.S. 128, 136-140 (1990)). To fall within
9 the purview of the plain view doctrine, the Ninth Circuit has identified two requirements that must
10 be met: first “the officers must be lawfully searching the area where the evidence is found” and
11 second, “the incriminatory nature of the evidence must be immediately apparent.” United States
12 v. Stafford, 416 F.3d 1068, 1076 (9th Cir. 2005). The “incriminating character” of an object is
13 “immediately apparent” if the police have probable cause to believe that the item is illegal,
14 unlawful, or associated with criminal activity. Id.; see also, Minnesota v. Dickerson, 508 U.S.
15 366, 374-75 (1993). Neither requirement is met here.

16 First, as discussed, it remains an unsettled question as to whether Dep. Rodriguez violated
17 Plaintiff’s rights in reaching the point where he seized and searched the wallet. Second, there is
18 nothing inherently incriminating or illegal about a wallet. Moreover, the plain view doctrine was
19 developed in the context of seizures, not searches. Thus, even assuming the plain view
20 requirements were satisfied here, invoking the doctrine for the purposes of seizing the wallet does
21 not necessarily warrant its search. United States v. Cornejo, 598 F.2d 554, 556 (9th Cir. 1979)
22 (“The lawfulness of the seizure of the purse does not justify the search of its contents; although the
23 purse itself was in plain view, its contents were not.”). As the Third Circuit explained in
24 addressing this same issue, “[t]he plain view doctrine does not authorize an otherwise
25 unauthorized search...Indeed, the plain view doctrine does not authorize *searches*; by definition, it
26 only authorizes *seizures* of items in plain view to which the officer has a right of access.” United
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1 States v. Rivera-Padilla, 365 F. App'x 343, 346 (3d Cir. 2010) (emphasis in original).

2 Based on the foregoing, the court finds that the plain view doctrine is inapplicable here to
3 warrant Dep. Rodriguez's search of Plaintiff's wallet. Defendants advance no additional theory or
4 argument in support of the lawfulness of the search. Finding no valid basis for the search, the
5 court determines that the search of Plaintiff's wallet was unjustified and judgment in favor of
6 Plaintiff is therefore warranted. Accordingly, Plaintiff's motion for partial summary judgment is
7 GRANTED as to the search of the wallet. Damages, if any, will be assessed by a jury. To the
8 extent that Defendants move for summary judgment on this issue, the motion is DENIED.

9 *c. Search of Plaintiff's Residence*

10 Finally, it appears that Plaintiff also alleges Dep. Rodriguez entered his residence without a
11 warrant or consent in violation of the Fourth Amendment. Compl. ¶ 17; see Pl. Opp. at 9-11.
12 Warrantless searches are considered presumptively unreasonable. See Payton, 445 U.S. at 586.
13 "To make a lawful entry into a home in the absence of a warrant, officers must have either
14 probable cause and exigent circumstances or an emergency sufficient to justify the entry."
15 Sandoval, 756 F.3d at 1161. The government bears the burden of demonstrating exigency
16 sufficient to overcome the presumption of unreasonableness. See Welsh v. Wisconsin, 466 U.S.
17 740, 749 (1984); Silva v. City of San Leandro, 744 F. Supp. 2d 1036, 1051 (N.D. Cal. 2010).

18 Neither Plaintiff nor Defendants specifically address the search of the house with clarity in
19 their respective motions or other pleadings. In fact, there are inconsistencies even within each
20 party's own allegations on this issue.⁴ Generally, Defendants contend that there is no evidence
21 Dep. Rodriguez entered the Aquino residence. See Def. Mot. at 23; Def. Opp. at 14; Def. Facts
22 17, 18, 28. However, Plaintiff offers Dep. Ainuu's testimony that Dep. Rodriguez entered the

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25 ⁴ For example, Plaintiff's Facts 75 and 76, which are undisputed by Defendants, state that after
26 Dep. Rodriguez spoke with a neighbor, he released Plaintiff so that Plaintiff could go inside his
27 house and retrieve some utility bills as "proof" that he lived on the property, which Plaintiff did.
Dkt. No 40-2. However, Plaintiff disputes Defendants' Facts 17, 18, and 28, which allege
essentially the same facts, and instead assert here that it was Dep. Rodriguez who initially
retrieved the utility bill from Plaintiff's residence. Dkt. No. 41-1.

1 house and obtained a PG&E bill with Plaintiff's name on it. Def. Fact 28; Ainuu Report, Ex. D at
2 9; Ainuu Depo. at 71:15-75:21. While there is also evidence to suggest Plaintiff retrieved the
3 utility bill, at a minimum, this fact, as well as the issue of whether Dep. Rodriguez entered and/or
4 searched Plaintiff's home, is disputed, thus precluding summary judgment. Accordingly,
5 Defendants' motion for summary judgment and Plaintiff's motion for partial summary judgment
6 are DENIED.

7 **iv. Qualified Immunity**

8 The doctrine of qualified immunity "protects government officials from liability for civil
9 damages insofar as their conduct does not violate clearly established statutory or constitutional
10 rights of which a reasonable person would have known." Pearson, 555 U.S. at 231 (citing Harlow
11 v. Fitzgerald, 457 U.S. 800, 818 (1982)); Maxwell v. Cnty. of San Diego, 708 F.3d 1075, 1082
12 (9th Cir. 2013). The qualified immunity analysis is a two-step inquiry. "[A]n officer will be
13 denied qualified immunity in a § 1983 action only if (1) the facts alleged, taken in the light most
14 favorable to the party asserting injury, show that the officer's conduct violated a constitutional
15 right, and (2) the right at issue was clearly established at the time of the incident such that a
16 reasonable officer would have understood her conduct to be unlawful in that situation." Green,
17 751 F.3d at 1051-52; see also Hopkins v. Bonvicino, 573 F.3d 752, 762 (9th Cir. 2009).

18 At the summary judgment stage, "determinations that turn on questions of law, such as
19 whether an officer had probable cause or reasonable suspicion to support their actions, are
20 appropriately decided by the court." Hopkins, 573 F.3d at 762-63. "However, a trial court should
21 not grant summary judgment when there is a genuine dispute as to the facts and circumstances
22 within an officer's knowledge or what the officer and claimant did or failed to do." Id. (internal
23 quotations omitted).

24 In the preceding analysis, the court determined that the question of whether Dep.
25 Rodriguez violated Plaintiff's constitutional rights remains an open question for the jury with
26 respect to (1) the extended physical seizure of Plaintiff; (2) the use of force; and (3) the search of
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1 Plaintiff's house, if any. The court also found that Dep. Rodriguez did violate Plaintiff's
2 constitutional right with respect to the search of the wallet. However, Dep. Rodriguez may
3 nevertheless be entitled to qualified immunity if the court determines that a reasonable officer in
4 his situation would have believed his conduct in these circumstances was in line with established
5 law at the time. The court must therefore also engage the second step of the qualified immunity
6 analysis: whether the right at issue was "clearly established" at the time of the incident. Green,
7 751 F.3d at 1051-52

8 In order to decide whether a constitutional right is clearly established, the court must make
9 two separate determinations: first, "whether the law governing the conduct at issue was clearly
10 established," and second, "whether the facts as alleged could support a reasonable belief that the
11 conduct in question conformed to the established law." Id. at 1052; see also Maxwell, 708 F.3d at
12 1082 (holding that for a right to be considered clearly established, "its contours must be
13 sufficiently clear that a reasonable official would understand that what he is doing violates that
14 right."). Both inquiries are questions of law that must be answered by the court.

15 In the instant case, the first requirement is satisfied as a matter of law. At the time of the
16 incident, it was clearly established that individuals may not be subjected to searches, seizure or the
17 use force without reasonable suspicion or exigent circumstances. See Green, 751 F.3d at 1052;
18 Mendez, 815 F.3d at 1187; U.S. Const. amend. IV. The law is also clear that a police officer's use
19 of force on a suspect who does not pose an immediate threat to the officer or others is excessive.
20 Bryan, 630 F.3d at 826; See e.g., Chew, 27 F.3d at 1443 ("severe force" used to arrest a suspect
21 who did not pose an immediate threat to the safety of officers precluded summary judgment for
22 the officer, even though the suspect attempted to flee and was the subject of three outstanding
23 felony warrants). Thus, the remaining inquiry here is whether, under the facts alleged, Dep.
24 Rodriguez could have reasonably believed that he had sufficient grounds to detain Plaintiff at the
25 time, and that the force used was lawful under the circumstances. See Green, 751 F.3d at 1052
26 (citing Torres v. City of Madera, 648 F.3d 1119, 1127 (9th Cir. 2011)).

1 As to the seizure and use of force, Defendants argue that Dep. Rodriguez had reasonable
2 suspicion to physically detain Plaintiff because Plaintiff became “confrontational,” refused to hand
3 over his identification, and was behaving erratically. Defs.’ Reply in Supp. of Def. Mot. (“Def.
4 Reply”) at 3-4, Dkt. No. 42. Defendants contend that, combined with the information already
5 known to Dep. Rodriguez at the time, “officer safety” warranted the use of handcuffs and the
6 exercise of reasonable force. Id. at 4.

7 However, there are disputed material facts here as to whether Plaintiff was, in fact, being
8 confrontational or erratic in his interaction with Dep. Rodriguez such that Dep. Rodriguez might
9 reasonably believe his actions were lawful. As discussed above, the record contains some
10 evidence to support Defendants’ claims that Plaintiff was being uncooperative, but it also contains
11 evidence that Plaintiff was making efforts to comply with Dep. Rodriguez. See Rodriguez Depo.
12 at 90:13-92:21; 109:11-111:15; 132:12-19; 155:9-14; Aquino Decl. ¶¶ 14-15. There is also
13 conflicting evidence regarding how much force was actually used against Plaintiff. Resolving all
14 factual disputes in Plaintiff’s favor, it is not clear from the record that an officer under these
15 circumstances would believe that the seizure and use of force against Plaintiff - including the use
16 of a chokehold and handcuffing him - was lawful. See Sanders v. City of Fresno, 551 F. Supp. 2d
17 1149, 1166 (E.D. Cal. 2008), aff’d, 340 Fed. Appx. 377 (9th Cir. 2009) (“[W]hen the
18 circumstances show that a reasonable officer” would not perceive the need for force, “any force
19 used is constitutionally unreasonable.”).

20 Because the question of whether Dep. Rodriguez acted reasonably depends on factual
21 circumstances that are disputed in the record, this question cannot presently be determined by the
22 court, but must instead be resolved by a jury. See Johnson v. Bay Area Rapid Transit Dist., 724
23 F.3d 1159, 1180 (9th Cir. 2013); Act Up!/Portland v. Bagley, 988 F.2d 868, 873 (9th Cir. 1993)
24 (explaining that factual findings regarding the circumstances within an officer’s knowledge and
25 the conduct of the parties involved must be made by a finder of fact); Deorle v. Rutherford, 272
26 F.3d 1272, 1281 (9th Cir. 2001) (clarifying that “[a] simple statement by an officer that he fears

1 for his safety or the safety others is not enough; there must be objective factors to justify such a
2 concern.”). Accordingly, with respect to the seizure and the use of force, the court cannot make a
3 determination regarding qualified immunity at this stage. Defendants’ motion for summary
4 judgment based on qualified immunity is therefore DENIED.

5 As to the alleged search of Plaintiff’s house and wallet, Defendants’ analysis lacks any
6 mention of, or argument as to whether and on what grounds Dep. Rodriguez would be entitled to
7 qualified immunity for these searches. Consequently, finding no basis upon which to assess or
8 grant qualified immunity as to the search of the house of wallet, to the extent that Defendants
9 move for summary judgment on these grounds, the motion is also DENIED.

10 **B. Municipal Liability Under Monell (Claim Two)**

11 Plaintiff’s second cause of action also alleges liability under § 1983 against Sgt. Murray
12 and Monterey County. Both parties move for summary judgment this claim. Municipalities
13 cannot be held vicariously liable for the actions of their employees. Monell v. Dep’t of Soc.
14 Servs. of City of New York, 436 U.S. 658, 691 (1978). For a city to be liable under § 1983, a
15 plaintiff must prove that a municipal “policy or custom” caused his constitutional injury. Id. at
16 694. It is insufficient for a plaintiff simply to identify an act “attributable to the municipality;”
17 rather, the plaintiff must “demonstrate that, through its deliberate conduct, the municipality was
18 the ‘moving force’ behind the injury alleged.” Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v.
19 Brown, 520 U.S. 397, 404 (1997) (quoting Monell, 436 U.S. at 694). The challenged policy may
20 be one of “action or inaction.” Waggy v. Spokane Cty. Washington, 594 F.3d 707, 713 (9th Cir.
21 2010). “Under an inaction policy claim, a plaintiff can allege that through its omissions the
22 municipality is responsible for a constitutional violation committed by one of its employees.” Id.

23 There are three ways a plaintiff may prove the existence of a policy of custom sufficient to
24 prevail on a Monell claim against a municipality:

- 25 (1) the plaintiff may prove that a public entity employee committed
26 the alleged constitutional violation pursuant to a formal policy or a
27 longstanding practice or custom, which constitutes the standard
operating procedure of the local government entity; (2) the plaintiff

1 may establish that the individual who committed the constitutional
2 tort was an official with “final policy-making authority” and that the
3 challenged action itself thus constituted an act of official
government policy; or (3) the plaintiff may prove that an official
with final policy-making authority ratified a subordinate’s
unconstitutional decision or action.

4 Avalos v. Baca, 596 F.3d 583, 587-88 (9th Cir. 2010); see also Menotti v. City of Seattle, 409
5 F.3d 1113, 1147 (9th Cir. 2005); Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992). To
6 prove a policy or custom through ratification, a plaintiff must “show that the authorized
7 policymakers...have knowledge of the constitutional violation and actually approve of it.” Lytle
8 v. Carl, 382 F.3d 978, 987 (9th Cir. 2004) (internal quotations omitted).

9 Here, Plaintiff fails to satisfy his burden to produce evidence creating a genuine issue of
10 material fact on the Monell claim. Rather, Plaintiff simply states that the alleged “deprivations
11 imposed on [him] were the result of Monterey County’s own customs, practices, standards,
12 protocols, and procedures.” Pl. Mot. at 22. Despite asserting multiple times that “[t]he evidence
13 on this issue is clear, unequivocal and cannot be disputed,” Plaintiff offers no factual support for
14 this claim, points to no express county policy or custom, and provides no evidence showing even
15 an inference that such a policy exists. See id.; Pl. Opp. at 22.; see also Waggy, 594 F.3d at 713
16 (affirming summary judgment for county where plaintiff failed to provide any evidence of a
17 specific municipal policy, practice or custom).

18 The only specific facts Plaintiff relies on in support of this claim are that Sgt. Murray
19 counseled Dep. Rodriguez about later charging Plaintiff with a violation of Penal Code 148(a)(1),
20 and that Sgt. Murray, Cmdr. Thornburg, and Monterey County “affirmed” Dep. Rodriguez’s
21 conduct at issue here. See id.; Depo. of Sheriff’s Sgt. David Murray at 35:21-25; Avila Decl., Ex.
22 F, Dkt. No. 37. First, Plaintiff does not establish that Sgt. Murray was an official with
23 policymaking authority. See Gillette, 979 F.2d at 1346 (“Whether a particular official has final
24 policy-making authority is a question of state law.”). Second, even if he had made this showing,
25 Plaintiff further fails to demonstrate how Sgt. Murray or Cmdr. Thornburg’s general support for
26 Dep. Rodriguez regarding the events that transpired in this case amounts to knowledge and
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1 approval of a constitutional violation. See Lytle, 382 F.3d at 987. Finally, the court has not found
2 that Plaintiff suffered a constitutional violation with respect to the use of force, but rather denied
3 summary judgment on the grounds that there remain disputes of material fact relevant to making
4 that determination that must be resolved by a jury. Consequently, even if Plaintiff had satisfied
5 his burden on this claim, he would still not be entitled to summary judgment because he would be
6 unable to show approval of a constitutional violation. Scott v. Henrich, 39 F.3d 912, 916 (9th Cir.
7 1994) (“While the liability of municipalities doesn’t turn on the liability of individual officers, it is
8 contingent on a violation of constitutional rights.”).

9 Accordingly, in the absence of any evidence upon which a jury could find liability under
10 Monell, Defendants’ motion for summary judgment on Plaintiff’s second cause of action is
11 GRANTED. Plaintiff’s motion for summary judgment is therefore DENIED.

12 **C. Claims Alleging Racial Animus (Claims Three and Six)**

13 The third and sixth causes of action allege that Dep. Rodriguez violated Plaintiff’s
14 constitutional and California statutory right to be free from racially discriminatory actions under
15 42 U.S.C. § 1981 and California Civil Code § 51.7. Defendants move for summary judgment on
16 the basis that Plaintiff failed to offer any evidence that the complained of acts were motivated by
17 racial animus. Def. Mot at 16-19. Because the court finds that the record lacks sufficient evidence
18 upon which a jury could find Dep. Rodriguez’s actions were motivated by racial animus or
19 intentional discrimination, Defendants are entitled to summary judgment.

20 Section 1981 guarantees that no person shall be denied equal rights under the law on
21 account of race. See Evans v. McKay, 869 F.2d 1341, 1344 (9th Cir. 1989). Because claims
22 brought under § 1981 are grounded in the Equal Protection Clause of the Fourteenth Amendment,
23 an “essential element” of a valid § 1981 action is that the defendant “acted with the *intent* to
24 discriminate on the basis of race.” McKenzie v. City of Milpitas, 738 F. Supp. 1293, 1301 (N.D.
25 Cal. 1990), aff’d, 953 F.2d 1387 (9th Cir. 1992) (emphasis in original); Gen. Bldg. Contractors
26 Ass’n, Inc. v. Pennsylvania, 458 U.S. 375, 391 (1982) (“[Section] 1981, like the Equal Protection

1 Clause, can be violated only by purposeful discrimination.”). To establish a claim under section
2 1981, the plaintiff must show overt acts by the defendant, “coupled with some direct evidence that
3 the defendant’s conduct was motivated by racial animus.” Evans, 869 F.2d at 1345. Where there
4 is direct evidence of discriminatory motive, such as statements that overtly implicate racial
5 prejudice, summary judgment on the question of racial bias generally is inappropriate. Metoyer v.
6 Chassman, 504 F.3d 919, 937 (9th Cir. 2007) (citing Cordova v. State Farm Ins. Cos., 124 F.3d
7 1145, 1149 (9th Cir.1997)). On the other hand, where there is only circumstantial evidence of
8 racial bias, that evidence must be “specific and substantial” in order to create a triable issue with
9 respect to whether defendant intended to discriminate. See Godwin v. Hunt Wesson, Inc., 150
10 F.3d 1217, 1222 (9th Cir. 1998), as amended (Aug. 11, 1998). A plaintiff’s subjective belief that a
11 defendant’s conduct is motivated by discriminatory intent is not sufficient to defeat summary
12 judgment. See Gomez v. City of Fremont, 730 F.Supp.2d 1056, 1069 (N.D. Cal. 2010).

13 Similarly, California Civil Code § 51.7, or the Ralph Act, prohibits the use of force against
14 any individual on account of their race, color, ancestry, or national origin. Cal. Civ. Code
15 § 51.7(a) (“All persons within [California] have the right to be free from any violence, or
16 intimidation by threat of violence, committed against their persons or property” because of race).
17 In order to establish a § 51.7 claim, a plaintiff must show “(1) the defendant threatened or
18 committed violent acts against the plaintiff; (2) the defendant was motivated by his perception of
19 plaintiff’s race; (3) the plaintiff was harmed; and (4) the defendant’s conduct was a substantial
20 factor in causing the plaintiff’s harm.” Austin B. v. Escondido Union Sch. Dist., 149 Cal. App.
21 4th 860, 880–81 (2007); see also Gomez, 730 F. Supp. 2d at 1069.

22 Summary judgment in § 1981 cases is governed by the burden shifting framework
23 established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Patterson v. McLean
24 Credit Union, 491 U.S. 164, 186-88 (1989). Under the McDonnell Douglas test, the plaintiff bears
25 the initial burden of establishing a prima facie case of racial discrimination. Patterson, 491 U.S. at
26 186. If the plaintiff succeeds in making a prima facie case, the burden shifts to the defendant “to
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1 articulate some legitimate, nondiscriminatory reason” for the allegedly discriminatory conduct.
2 McDonnell Douglas, 411 U.S. at 802. If the defendant meets this burden, the responsibility shifts
3 back to the plaintiff to prove that the reasons offered by the defendant were actually pretext for
4 discrimination. Id. at 804-05. Notwithstanding the shifting burden, the plaintiff retains the
5 ultimate burden of proving that he was the victim of intentional discrimination. See St. Mary’s
6 Honor Ctr. v. Hicks, 509 U.S. 502, 508 (1993).

7 Here, Plaintiff provided no evidence that Dep. Rodriguez’s conduct was motivated by
8 racial bias. Instead, Plaintiff asserts a subjective belief that Dep. Rodriguez “accepted, without
9 question, the comments of an unknown white male” regarding a “suspicious” Hispanic male,
10 while refusing to take Plaintiff, a Hispanic male, at his word that he resided on the property. Pl.
11 Opp. at 23. The speculative suggestion that “criminal behavior was erroneously presumed by
12 Rodriguez on the sole basis that [Plaintiff] was Hispanic and wearing a hoodie” fails to establish
13 discriminatory motive under § 1981 and is unsupported by the evidence. See id. The factual
14 reference to Plaintiff’s ethnicity in the regular course of an investigation - for example, to
15 physically describe a suspect - together with Dep. Rodriguez’s decision not to simply accept
16 Plaintiff’s statement as true without any further support, is insufficient to show racial animus.

17 Because a § 51.7 cause of action also requires a showing that the defendant was motivated
18 by racial animus when he used force against the plaintiff, this claim fails for the same reason. See
19 Austin B., 149 Cal. App. 4th at 880-81. In fact, outside of allegations contained in the Complaint,
20 Plaintiff makes no further reference to, or argument on behalf of, his § 51.7 claim.

21 Based on the foregoing, Defendant’s motion for summary judgment is GRANTED as to
22 Plaintiff’s third and sixth cause of action. See Gomez, 730 F. Supp. 2d at 1069 (granting summary
23 judgment in favor of defendant on § 1981 and § 51.7 claims where the plaintiff offered “only a
24 subjective belief, and not any evidence, that [the defendants] were motived by his ethnicity” when
25 they forcefully seized him while executing an arrest warrant).

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D. State Law Claims

Plaintiff’s remaining causes of action allege claims under California state law against both the individual Defendants and Monterey County. As an initial matter, while municipal liability is precluded under § 1983 unless it adopted an unconstitutional policy or custom, California has rejected the Monell rule and “imposes liability on counties under the doctrine of respondeat superior for acts of county employees.” Robinson v. Solano Cty., 278 F.3d 1007, 1016 (9th Cir. 2002); Cal. Gov’t. Code § 815.2(a); Knapps v. City of Oakland, 647 F.Supp.2d 1129, 1165 (N.D. Cal. 2009) (citing Munoz v. City of Union City, 120 Cal. App. 4th 1077, 1110 (2004)). Under California law, a municipality is granted immunity from the acts of its employees “only where the public employee would also be immune.” Robinson, 278 F.3d at 1016. California denies immunity to officers who use excessive force in arresting a suspect. Mary M. v. City of Los Angeles, 54 Cal. 3d 202, 215 (1991) (“Since the enactment of the California Tort Claims Act in 1963, a governmental entity can be held vicariously liable when a police officer acting in the course and scope of employment uses excessive force or engages in assaultive conduct.”). Thus, for each of the claims listed below, whenever the motion for summary judgment against the officers is granted, the motion as to the City will be granted as well.

i. Assault and Battery (Claim Four)

Plaintiff’s forth cause of action for assault and battery under California law is governed by the same analysis as his §1983 claim for excessive force. See Nelson v. City of Davis, 709 F. Supp. 2d 978, 992 (E.D. Cal. 2010) (“Because the same standards apply to both state law assault and battery and Section 1983 claims premised on constitutionally prohibited excessive force, the fact that Plaintiff’s § 1983 claims under the Fourth Amendment survive summary judgment also mandates that the assault and battery claims similarly survive.”).

Here, due to unresolved questions of fact, the court concluded that judgment as a matter of law was improper on the issue of excessive force. Because neither Plaintiff nor Defendants are entitled to summary judgment on the excessive force claim, they are not entitled to summary

1 judgment on the assault and battery claim. See Blankenhorn v. City of Orange, 485 F.3d 463, 487
2 (9th Cir. 2007) (reversing summary judgment for assault and battery claim when summary
3 judgment was inappropriate on excessive force claim); Saman v. Robbins, 173 F.3d 1150, 1157 n.
4 6 (9th Cir. 1999) (police officer commits battery only when excessive force is used) (citing Cal.
5 Penal Code § 835(a)). Accordingly, both Defendants’ motion for summary judgment and
6 Plaintiff’s motion for partial summary judgment are DENIED.

7 **ii. Intentional/Negligent Infliction of Emotional Distress (Claims Five and Nine)**

8 Plaintiff’s fifth and ninth causes of action allege intentional and negligent infliction of
9 emotional distress against Dep. Rodriguez. With respect to the IIED claim, Plaintiff must prove:
10 (1) “extreme and outrageous conduct by the defendant with the intention of causing, or reckless
11 disregard of the probability of causing, emotional distress;” (2) that the plaintiff actually suffered
12 severe emotional distress; and (3) that the defendant’s outrageous conduct was the “actual and
13 proximate” cause of the plaintiff’s emotional distress. Catsouras v. Dep’t of Cal. Highway
14 Patrol, 181 Cal. App. 4th 856, 874-75 (2010).

15 A claim for NIED, on the other hand, is “not an independent tort, but rather is derived from
16 the tort of negligence.” Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc., 48 Cal.3d 583, 588
17 (1989). Thus, a claim for NIED requires the plaintiff to establish the traditional elements of duty,
18 breach of duty, causation, and damages, as well as show that he or she has suffered “serious”
19 emotional distress. Wong v. Tai Jing, 189 Cal. App. 4th 1354 (2010).

20 Here, Defendants move for summary judgment on the grounds that Dep. Rodriguez’s use
21 of force was reasonable under the circumstances and certainly did not go “beyond all possible
22 bounds of decency.” Def. Mot. at 18 (quoting Rest. 2d Torts, § 46); see also Ross v. Creel
23 Printing & Publ’g Co., 100 Cal. App. 4th 736, 744 (2002). While a law enforcement officer’s
24 unreasonable use of force could be considered extreme and outrageous, here, Plaintiff has failed to
25 satisfy the other elements of a claim for IIED or NIED. Specifically, Plaintiff’s pleadings are
26 devoid of any evidence establishing that Plaintiff suffered emotional distress of any kind, much
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1 less “serious” or “severe” distress. In fact, other than its inclusion in the section heading, Plaintiff
2 did not present any arguments or evidence in support of these causes of action at all. See Pl. Opp.
3 at 24-25. Defendants’ motion for summary judgment on the fifth and ninth causes of action is
4 therefore GRANTED.

5 **iii. The Bane Act (Claim Seven)**

6 Plaintiff’s seventh cause of action alleges that Defendants are liable under California Civil
7 Code § 52.1, or the Bane Act, for violations of his federal constitutional and statutory rights.

8 The Bane Act provides a claim for relief “against anyone who interferes, or tries to do so,
9 by threats, intimidation, or coercion, with an individual’s exercise or enjoyment of rights secured
10 by federal or state law.” Jones v. Kmart Corp., 17 Cal. 4th 329, 331 (1998). “The essence of a
11 Bane Act claim is that the defendant, by the specified improper means (i.e., ‘threats, intimidation
12 or coercion’), tried to or did prevent the plaintiff from doing something he or she had the right to
13 do under the law or [forced] the plaintiff to do something that he or she was not required to do
14 under the law. Austin B., 149 Cal. App. 4th at 883. When a § 52.1 claim is premised on the
15 violation of a constitutional right, the court must look to the elements of the constitutional claim to
16 determine whether the § 52.1 claim is meritorious. See Cameron v. Craig, 713 F.3d 1012, 1022
17 (9th Cir. 2013) (explaining that because the California right asserted by plaintiff was the same as
18 the rights guaranteed by the Fourth Amendment, resolution of the plaintiff’s excessive force claim
19 under § 52.1 was the same as under the § 1983 claim.).

20 Here, Plaintiff’s claim is premised on Defendants’ alleged unlawful seizure and use of
21 excessive force. As to the seizure, Defendants’ motion for summary judgment relies on California
22 Penal Code § 847, which states in relevant part that a law enforcement officer shall not be held
23 civilly liable for false arrest when the officer, “acting within the scope of his or her authority”
24 made a lawful arrest or “had reasonable cause to believe the arrest was lawful.” Cal. Pen. Code §
25 847(b); see Blankenhorn, 485 F.3d at 486-87. Pursuant to the analysis set forth with respect to
26 Plaintiff’s Fourth Amendment claims, the court finds that upon his initial encounter with Plaintiff,
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1 Dep. Rodriguez had good cause to “seize” Plaintiff for investigatory purposes. Thus, to the extent
2 that Plaintiff’s § 52.1 claim is based on this initial seizure, Defendants’ motion is GRANTED.

3 However, there remain disputed facts upon which a jury could find that Dep. Rodriguez
4 did not have reasonable cause to believe the seizure was lawful during the subsequent altercation
5 and detention. See § 836(a)(1); Blankenhorn, 485 F.3d at 486-87. A triable issue also remains as
6 to whether Dep. Rodriguez’s tactics amounted to excessive force. See Knapps, 647 F. Supp. 2d at
7 1168 (“The elements of a section 52.1 excessive force claim are essentially identical to those of a
8 § 1983 excessive force claim.”). Accordingly, except as specified above, both Defendants’ motion
9 for summary judgment and Plaintiff’s motion for partial summary judgment on the seventh cause
10 of action are DENIED.

11 **iv. Negligence (Claim Eight)**

12 Plaintiff’s eight cause of action for negligence asserts that Dep. Rodriguez failed to
13 exercise due care when executing a seizure of his person, causing him “unnecessary physical
14 harm” and distress. Compl. ¶ 24. Both parties move for summary judgment on this claim.

15 “In order to prove facts sufficient to support a finding of negligence, a plaintiff must show
16 that the defendant had a duty to use due care, that he breached that duty, and that the breach was
17 the proximate or legal cause of the resulting injury.” Hayes v. Cnty. of San Diego, 57 Cal. 4th
18 622, 629 (2013) (citations omitted). Law enforcement officers have a duty to act reasonably when
19 using force, which must be determined in light of the totality of the circumstances. Id. Therefore,
20 to prevail on a claim for negligence, a plaintiff must demonstrate that the officers “acted
21 unreasonably and that the unreasonable behavior harmed” the plaintiff. Price v. Cnty. of San
22 Diego, 990 F. Supp. 1230, 1245 (S.D. Cal. 1998)).

23 Because a jury could find that Dep. Rodriguez acted unreasonably in his use of force, and
24 that this force resulted in physical injury to Plaintiff, summary judgment in favor of either party on
25 the issue of negligence is improper at this time. Defendants’ motion for summary judgment and
26 Plaintiff’s motion for partial summary judgment are therefore both DENIED.

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v. Conversion of Property (Claim Ten)

The tenth cause of action alleges that Dep. Rodriguez removed a \$50.00 bill from Plaintiff's wallet in violation of California law. See Aquino Decl. ¶ 5-6. Under California law, the tort of conversion is the wrongful exercise of dominion over another's personal property. See Shopoff & Cavallo LLP v. Hyon, 167 Cal. App. 4th 1489, 1507-08 (2008). A claim for conversion requires (1) plaintiff's ownership or right to possession of the property at issue; (2) the defendant's conversion of the property by a wrongful act; and (3) damages. Spates v. Dameron Hosp. Assn., 114 Cal. App. 4th 208, 221 (2003). Defendants argue they are entitled to summary judgment because Plaintiff fails to provide any factual basis for his belief that Dep. Rodriguez took the money from his wallet.

The court agrees with Defendants. Plaintiff submits evidence suggesting that on November 4, 2013, he had \$250 in cash in his wallet. Aquino Decl. ¶ 30, Ex. C, Dkt. 41-2; Aquino Depo. at 149:1-23, Dkt 41-3. But the record contains no evidence that Dep. Rodriguez removed \$50.00 from the wallet. In fact, even though Plaintiff's pleadings continually assert that the wallet "only contained \$200 when it was returned to him," this fact is not included in either Plaintiff's written declaration or in his deposition testimony. See Pl. Opp. at 25; Aquino Decl., Dkt. 41-2; Aquino Depo. at 148:7-150:11. And even if it were included, that alone is insufficient to show that Dep. Rodriguez - or anyone - took the money through a "wrongful act." Plaintiff admits that he did not observe Dep. Rodriguez open his wallet at any time. Aquino Depo. at 148:7-12. Because Plaintiff has failed to satisfy the second element of a conversion cause of action, and there remains no disputed factual basis upon which a jury could find otherwise, summary judgment is GRANTED in favor of Defendants on the conversion claim.

vi. Trespass (Claim Eleven)

Plaintiff's eleventh cause of action alleges that Dep. Rodriguez trespassed on his property under California law when he entered and searched his property without consent. Plaintiff brings this claim against Dep. Rodriguez and Monterey County. Defendants again assert that Plaintiff

1 lacks evidence the Dep. Rodriguez ever entered his property, and argue that even if he had, Dep.
2 Rodriguez is entitled to immunity under California Government Code Section 820.2. Def. Mot. at
3 23. Both parties move for summary judgment on this claim.

4 Under Section 820.2, “a public employee is not liable for an injury resulting from his act or
5 omission where the act or omission was the result of the exercise of the discretion vested in him,
6 whether or not such discretion be abused.” Cal. Gov’t Code § 820.2. For immunity purposes,
7 whether an act may be considered “discretionary” generally turns on whether it required “personal
8 deliberation, decision and judgment,” or rather whether it amounted only to “obedience to orders
9 or the performance of a duty in which the officer is left no choice of his own,” and is thus more
10 appropriately considered “ministerial.” McCorkle v. City of Los Angeles, 70 Cal. 2d 252, 261
11 (1969); see also Martinez v. City of Los Angeles, 141 F.3d 1373, 1379 (9th Cir. 1998). California
12 courts also specifically distinguish between a law enforcement officer’s discretion in undertaking
13 an investigation and his or her negligence in conducting it. See McCorkle, 70 Cal.2d at 261.
14 Section 820.2 immunity “provides complete protection for the decision to investigate ... and for
15 actions necessary to make a meaningful investigation,” but does not extend to “non-discretionary
16 actions or to at least some intentional torts committed in the course of making the investigation.”
17 Wallis v. Spencer, 202 F.3d 1126, 1144 (9th Cir. 2000) (citing Newton v. Cnty. of Napa, 217
18 Cal.App.3d 1551 (1st Dist. 1990).

19 Here, Dep. Rodriguez’s entry onto Plaintiff’s property was part of his decision to
20 investigate the report of a suspicious person in the house, and was necessary to undertaking that
21 investigation. Based on his judgment and personal assessment of the circumstances, it was within
22 Dep. Rodriguez’s discretion to initiate this investigation by entering the property. While this does
23 not preclude him from liability for subsequent acts where he may be found to have used excessive
24 force or other improper means during the course of the investigation, section 820.2 does provide
25 immunity for the preliminary decisions involved in initiating the investigation itself. See Sullivan
26 v. City of San Rafael, No. C 12-1922 MEJ, 2013 WL 3357933, at *14 (N.D. Cal. July 2, 2013)

1 (explaining that an officer’s “initial, considered decision to enter [an individual’s] home may be
2 immunized by section 820.2, but the decisions made during the course of the subsequent operation
3 might not be.”) (quoting Obas v. Cnty. of Monterey, No. 09-CV-05540-LHK, 2011 WL 738159,
4 at *12 (N.D. Cal. Feb. 22, 2011) aff’d, 504 F. App’x 558 (9th Cir. 2013)).

5 Because the court finds that Dep. Rodriguez is entitled to immunity under section 820.2,
6 Defendants’ motion for summary judgment on Plaintiff’s eleventh cause of action for trespass is
7 GRANTED, and Plaintiff’s motion for partial summary judgment is DENIED.

8 **vii. Malicious Prosecution (Claim Twelve)**

9 Finally, Plaintiff’s twelfth cause of action alleges malicious prosecution against Dep.
10 Rodriguez and Monterey County. Defendants move for summary judgment on the grounds that
11 they are entitled to immunity under California Government Code section 821.6.

12 Section 821.6 provides immunity to public employees for actions taken in preparation for
13 formal proceedings, including actions related to investigations. Paterson v. City of Los Angeles,
14 174 Cal. App. 4th 1393, 1405 (2009). The “principal function” of section 821.6 is “to provide
15 relief from malicious prosecution.” Blankenhorn, 485 F.3d at 487-88 (citing Kayfetz v.
16 California, 156 Cal.App.3d 491, 497 (1984). The protection also extends to actions “incidental to
17 the investigation of crimes.” See Amylou R. v. Cnty. of Riverside, 28 Cal. App. 4th 1205, 1211
18 (1994). Under section 821.6, “[a] public employee is not liable for injury caused by his instituting
19 or prosecuting any judicial or administrative proceeding within the scope of his employment, even
20 if he acts maliciously and without probable cause.” Cal. Gov’t Code § 821.6. California courts
21 interpret section 821.6 broadly “in furtherance of its purpose to protect public employees in the
22 performance of their prosecutorial duties from the threat of harassment through civil suits.” Gillan
23 v. City of San Marino, 147 Cal. App.4th 1033, 1048 (2007).

24 In the instant case, Dep. Rodriguez is entitled to immunity under section 821.6. To the
25 extent that Plaintiff maintains any allegations pertaining to malicious prosecution, such allegations
26 fall within the purview of section 812.6’s protections for acts related to investigations and

1 prosecutions of crimes. But even without immunity, Plaintiff provides no evidence and makes no
2 further argument concerning the claim for malicious prosecution against Dep. Rodriguez or
3 Monterey County. Plaintiff did not respond to or oppose Defendants' motion for summary
4 judgment on this claim, nor was the claim mentioned in Plaintiff's motion for partial summary
5 judgment. Plaintiff fails to present evidence that he was in fact prosecuted or that Defendants
6 possessed a malicious motive in pursuing charges against him. See Usher v. City of Los Angeles,
7 828 F.2d 556, 562 (9th Cir. 1987) ("In California, the elements of malicious prosecution are (1)
8 the initiation of criminal prosecution, (2) malicious motivation, and (3) lack of probable cause.").
9 Accordingly, Defendants' motion for summary judgment is GRANTED.

10 **IV. CONCLUSION**

11 Based on the foregoing, Defendants' Motion for Summary Judgment (Dkt. No. 38) and
12 Plaintiff's Motion for Partial Summary Judgment (Dkt. No 37) are GRANTED IN PART and
13 DENIED IN PART as follows:

14 1. As to the first cause of action asserting violations of the Fourth Amendment under
15 42 U.S.C. § 1983 against Dep. Rodriguez: Defendants' motion is GRANTED to the extent it is
16 based on (1) the initial investigatory detention, and (2) the "search" of Plaintiff's yard, but is
17 DENIED on all other grounds. Plaintiff's motion as to this claim is GRANTED to the extent it is
18 based on the search of his wallet, and is DENIED in all other respects.

19 2. As to the second cause of action asserting violations of the Fourth Amendment
20 under 42 U.S.C. § 1983 (Monell) against Sgt. Murray and Monterey County: Defendants' motion
21 is GRANTED; Plaintiff's motion is DENIED.

22 3. Defendants' motion is GRANTED as to the third case of action for violation of 42
23 U.S.C. § 1981 against Dep. Rodriguez.

24 4. As to the fourth cause of action asserting assault and battery against Dep.
25 Rodriguez: Defendants' motion is DENIED; Plaintiff's motion is also DENIED.

26 5. Defendants' motion is GRANTED as to the fifth cause of action for intentional
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1 infliction of emotional distress against Dep. Rodriguez.

2 6. Defendants' motion is GRANTED as to the sixth cause of action for violation of
3 California Civil Code § 51.7 against Dep. Rodriguez.

4 7. As to the seventh cause of action asserting violation of the Bane Act (Cal. Civ.
5 Code § 52.1) against all Defendants: Defendants' motion is GRANTED to the extent it is
6 premised on the initial investigatory seizure, but DENIED in all other respects; Plaintiff's motion
7 is DENIED.

8 8. As to the eighth cause of action asserting negligence against all Defendants:
9 Defendants' motion is DENIED; Plaintiff's motion is also DENIED.

10 9. Defendants' motion is GRANTED as to the ninth cause of action for negligent
11 infliction of emotional distress against Dep. Rodriguez.

12 10. Defendants' motion is GRANTED as to the tenth cause of action for conversion of
13 property against Dep. Rodriguez.

14 11. As to the eleventh cause of action for trespass against Dep. Rodriguez and
15 Monterey County: Defendants' motion is GRANTED; Plaintiff's motion is DENIED.

16 12. Defendants' motion is GRANTED as to the twelfth cause of action for malicious
17 prosecution against Dep. Rodriguez and Monterey County.

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19 **IT IS SO ORDERED.**

20 Dated: September 29, 2016

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EDWARD J. DAVILA
United States District Judge

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