

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DARIN MATTHEWS,
Plaintiff,
v.
COUNTY OF SANTA CRUZ; STEVEN
CARNEY; CITY OF SCOTTS VALLEY;
SCOTTS VALLEY POLICE OFFICERS
(NAMES UNKNOWN) BADGE
NUMBERS 5430, 5140, 5890, 5281;
TWENTY UNKNOWN DEPUTIES/
AGENTS/EMPLOYEES OF THE
COUNTY OF SANTA CRUZ AND
TWENTY UNKNOWN
OFFICERS/AGENTS/EMPLOYEES OF
THE CITY OF SCOTTS VALLEY;
Defendants.

Case No. [5:20-cv-01619-EJD](#)

**ORDER GRANTING MOTION TO
DISMISS CLAIMS MADE AGAINST
CITY DEFENDANTS**

Re: Dkt. No. 25

Plaintiff Darin Matthews (“Plaintiff”) recently filed a complaint (Dkt. No. 1, “Complaint”) in this matter against County of Santa Cruz; Steven Carney¹; City of Scotts Valley; Scotts Valley Police Officers (Names Unknown) Badge Numbers 5430, 5140, 5890, 5281; twenty unknown deputies/agents/employees of the County of Santa Cruz; and twenty unknown officers/agents/employees of the City of Scotts Valley (“All Defendants”). Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, all City of Scotts Valley defendants (City of Scotts Valley; Scotts Valley police officers (Names Unknown) Badge Numbers 5430, 5140, 5890,

¹ Steven Carney is a County Sheriff’s Deputy for the County of Santa Cruz. *See, e.g.*, Motion to Dismiss, Dkt. No. 25, at 3.
Case No.: [5:20-cv-01619-EJD](#)
ORDER GRANTING MOTION TO DISMISS CLAIMS MADE AGAINST CITY DEFENDANTS

1 5281; and twenty unknown officers/agents/employees of the City of Scotts Valley) (“City
2 Defendants”) seek to dismiss all causes of action made against them in the Complaint.² Motion to
3 Dismiss, Dkt. No. 25 (“MTD”). The Court took the motions under submission for decision
4 without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons below, the Court
5 **GRANTS** the motion to dismiss claims made against City Defendants.

6 **I. Background**

7 Plaintiff Darin Matthews is a resident of the County of Santa Cruz. Complaint ¶ 3.³
8 Plaintiff alleges that, at approximately 6:30am PST on February 19, 2019, while Plaintiff was
9 driving to work, Plaintiff was pulled over by police officers driving a City of Scotts Valley
10 (“City”) police vehicle. *Id.* ¶ 7. Plaintiff stopped his car at the Union 76 gas station on Mt. Herman
11 Road, about one half of a mile from Plaintiff’s home. *Id.* The officers informed him that the reason
12 the officers pulled his car over was that Plaintiff was using paper license plates on his vehicle. *Id.*
13 ¶ 8. Plaintiff told the officers that “he had recently purchased the vehicle from a dealership in
14 Oregon.” *Id.* Plaintiff offered to show the officers the paperwork but the officers “did not look at
15 or check [P]laintiff’s paperwork.” *Id.*

16 The officers asked Plaintiff to get out of his vehicle. *Id.* ¶ 9. The officers told Plaintiff that
17 they “were going to search him.” *Id.* Plaintiff alleges that “[w]hen PLAINTIFF asked what was
18 the real reason for the stop, OFFICERS failed and refused to give plaintiff any further
19 explanation.” *Id.* At the request of the officers, Plaintiff provided his California driver’s license,
20 which was “current and valid.” *Id.* The officers did not request “proof of registration or
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23 ² All County of Santa Cruz defendants (County of Santa Cruz; Steven Carney; and twenty
24 unknown deputies agents/employees of the County of Santa Cruz) (“County Defendants”) separately filed an answer and a demand for a jury trial in response to Complaint. Dkt. No. 17.

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26 ³ For the purpose of this Motion, the Court relays the following background facts as alleged in the
27 Complaint.

1 ownership” of the vehicle. *Id.*

2 Plaintiff alleges that “[o]ne of the OFFICERS held [P]laintiff’s hands behind his back
3 while another OFFICER pat searched PLAINTIFF.” *Id.* ¶ 10. After the pat search, Plaintiff
4 “noticed . . . that there were more marked police cars, including a green COUNTY Sheriff’s car[,]
5 parked behind [Plaintiff’s] vehicle.” *Id.* In Plaintiff’s recounting of the events in the Complaint,
6 the arrival of the County Sheriff’s car appears to indicate the arrival of County Sheriff’s Deputy
7 Steven Carney (“Carney”). *Id.* ¶ 11.

8 As reflected above and below, Plaintiff regularly refers to “OFFICERS” in the Complaint.
9 *See id.* ¶¶ 7–17. Elsewhere in the Complaint, Plaintiff states the following:

10 Officers Badge Numbers 5430, 5140, 5890, and 5281 . . . are
11 members of the CITY police department and are named defendants
12 herein in both their official and individual capacities for their actions
13 against [P]laintiff[] taken under color of state law. OFFICERS and
14 employees of the CITY have engaged in the acts complained of
15 herein pursuant to the policies, practices and customs of the CITY.

16 *Id.* ¶ 5. In their MTD, City Defendants identify the names of the City police officers whose badge
17 numbers are included in the list of defendants in the Complaint. MTD at 1. The officer identified
18 as badge number 5430 is Wayne Belville (“Belville”). *Id.* The officer identified as badge number
19 5890 is Michael Birley (“Birley”). *Id.* The officer identified as badge number 5281 is Michael
20 Neronde (“Neronde”). *Id.* The officer identified as badge number 5140 is Paul Lopez (“Lopez”).
21 *Id.* Plaintiff names, in addition to these four officers, “twenty unknown officers/agents/employees
22 of the City of Scotts Valley” as defendants. Complaint ¶ 6. In the Complaint, Plaintiff often uses
23 the term “OFFICERS” without specifying if the term refers to Belville, Lopez, Birley, Neronde,
24 any of the twenty unknown officers/agents/employees of the City, a combination of these, or none
25 of these. *See id.* ¶¶ 7–17. Plaintiff’s allegations of what took place after Carney’s arrival at the
26 scene of the detainment seem to distinguish the actions of Carney (a County Sheriff’s Deputy)

1 from the actions of the other “OFFICERS.” *See, e.g., id.* ¶ 11. Nevertheless, it is possible that
2 Plaintiff’s use of the term “OFFICERS” may also refer at times to Carney.

3 Carney approached Plaintiff and told Plaintiff “to sit on the bumper of one of the police
4 vehicles.” *Id.* ¶ 11. The officers, without Plaintiff’s permission, searched Plaintiff’s vehicle, the
5 backpack located in the front seat of Plaintiff’s vehicle, and the trunk of Plaintiff’s vehicle. *Id.* The
6 officers “found nothing unlawful in [P]laintiff’s vehicle.” *Id.* The officers did not ask Plaintiff’s
7 permission to conduct any of the searches they carried out, and Plaintiff did not give permission.
8 *Id.*

9 Carney told Plaintiff that “they had a search warrant to search [Plaintiff’s] home.” *Id.* ¶ 12.
10 Carney “inquired of [P]laintiff if there was a reason why the Las Vegas police would know
11 [Plaintiff’s] name.” *Id.* Plaintiff told Carney that Plaintiff “owned a home in Las Vegas and
12 traveled there frequently,” but that Plaintiff “had never received so much as a parking ticket in Las
13 Vegas.” *Id.*

14 The officers “placed [P]laintiff in the back seat of one of the CITY [p]olice vehicles and
15 drove [Plaintiff] to . . . [Plaintiff’s] home.” *Id.* ¶ 13. The officers asked Plaintiff for Plaintiff’s
16 house key, which Plaintiff provided. *Id.* The officers “assured [P]laintiff that the search would be
17 discreet,” but the officers instead “made a great show for [P]laintiff’s neighbors[,] with two
18 OFFICERS stationed at the back of [P]laintiff’s condo while another 3 or 4 OFFICERS entered
19 [Plaintiff’s] home through the front door.” *Id.* Many of Plaintiff’s neighbors “saw the
20 commotion,” including “the police vehicles parked in front of [Plaintiff’s] condo and [P]laintiff
21 sitting in the back of the patrol car.” *Id.*

22 The officers then “escorted [P]laintiff into [Plaintiff’s] home where they joined [Carney]
23 and [two] other unknown OFFICERS whom [Plaintiff] had not seen previously.” *Id.* ¶ 14. Plaintiff
24 asked Carney for the reasons why the search warrant was issued and his house was being
25 searched. *Id.* Carney “gave . . . a vague explanation[,] stating that there had been a lot of ‘coming
26 and going’ at [P]laintiff’s home.” *Id.* Carney “stated, falsely, that [P]laintiff’s name had been

1 mentioned in conjunction with a marijuana arrest in Las Vegas.” *Id.* Plaintiff “reiterated [to
2 Carney] that while [Plaintiff] owned a home [in Las Vegas], [Plaintiff] had never had any contact
3 with Las Vegas law enforcement or any other law enforcement agency.” *Id.* Carney then “told
4 [P]laintiff [that] [Plaintiff] was free to leave.” *Id.* ¶ 15. One of the officers drove Plaintiff back to
5 Plaintiff’s car, which had remained at the Union 76 gas station on Mt. Herman road. *Id.*

6 Plaintiff filed a tort claim against City and City officers on August 7, 2019. *Id.* ¶ 16. This
7 claim was denied by letter dated September 5, 2019. *Id.* Plaintiff also filed a tort claim against
8 Santa Cruz County and Carney on August 12, 2019. *Id.* ¶ 17. These claims were denied by letter
9 dated September 25, 2019. *Id.*

10 Plaintiff alleges six causes of action against City Defendants in the Complaint: (I)
11 violations of the constitutional right to be secure from unreasonable searches and seizures, under
12 42 U.S.C. Section 1983; (II) violations of the constitutional right to be secure from unreasonable
13 searches and seizures, under 42 U.S.C. Section 1983, specifically regarding the liability of the City
14 of Scotts Valley under a *Monell* theory; (III) violations of protections against false arrest and
15 unlawful search as provided by Art. 1, Section 13 of the California Constitution; (IV) assault and
16 battery; (V) intentional and/or negligent infliction of emotional distress; and (VI) violation of the
17 Bane Act, California Civil Code Section 52.1, *et seq.* *See id.* ¶¶ 18–73. Plaintiff seeks damages,
18 attorney’s fees, costs, and “other and further relief the Court deems just and proper.” *See id.* ¶¶
19 14–15. Plaintiff demands jury trial, *id.* ¶ 74, and seeks leave to amend or supplement the
20 Complaint “as the identities of the unknown defendants are discovered and new evidence is
21 uncovered,” *id.* ¶ 15.

22 City Defendants filed the present motion, seeking to dismiss all of Plaintiff’s claims
23 against them. Plaintiff filed an opposition to City Defendants’ motion. Dkt. No. 34 (“Opposition,”
24 “Opp’n”). City Defendants filed a reply to this opposition. Dkt. No. 35 (“Reply”).

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1 **II. Legal Standard**

2 A complaint must contain a “short and plain statement of the claim showing that the
3 pleader is entitled to relief” to give the defendant “fair notice” of what the claims are and the
4 grounds upon which they rest. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
5 555 (2007). A complaint does not need detailed factual allegations, but “a plaintiff’s obligation to
6 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a
7 formulaic recitation of the elements of a cause of action will not do. Factual allegations must be
8 enough to raise a claim for relief above the speculative level[.]” *Twombly*, 550 U.S. at 555
9 (cleaned up).

10 To survive a motion to dismiss, a complaint must contain sufficient factual allegations,
11 which when accepted as true, “state a claim to relief that is plausible on its face.” *Ashcroft v.*
12 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial
13 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
14 inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is
15 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a
16 defendant has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 557). “Where a complaint
17 pleads facts that are merely consistent with a defendant’s liability, it stops short of the line
18 between possibility and plausibility of ‘entitlement to relief.’” *Id.* (cleaned up) (quoting *Twombly*,
19 550 U.S. at 557).

20 **III. Discussion**

21 **A. First Cause of Action: 42 U.S.C. Section 1983**

22 In his first cause of action, Plaintiff alleges that all City Defendants violated 42 U.S.C.
23 Section 1983. Complaint ¶¶ 18–37. To state a claim under Section 1983, a plaintiff must allege
24 that a defendant, while acting under color of state law, caused a deprivation of the plaintiff’s
25 federal rights. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
26 1989) (citation omitted). There is no vicarious liability in Section 1983 lawsuits. *Iqbal*, 556 U.S. at

1 676. Hence, a government official, whether subordinate or supervisor, may be held liable under
2 Section 1983 only when his or her own actions have caused a constitutional deprivation. *OSU*
3 *Student All. v. Ray*, 699 F.3d 1053, 1069 (9th Cir. 2012).

4 Allegations regarding causation “must be individualized and focus on the duties and
5 responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
6 constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citations omitted).
7 An individual “causes” a constitutional deprivation when he or she (1) “does an affirmative act,
8 participates in another’s affirmative acts, or omits to perform an act which he [or she] is legally
9 required to do that causes the deprivation” or (2) “set[s] in motion a series of acts by others which
10 the [defendant] knows or reasonably should know would cause others to inflict the constitutional
11 injury.” *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (citation and
12 quotation marks omitted).

13 **i. City of Scotts Valley Police Officers Belville, Lopez, Birley, and Neronde**

14 Plaintiff alleges that Belville, Lopez, Birley, and Neronde (“Four Identified Officers”)
15 violated 42 U.S.C. Section 1983 by violating Plaintiff’s Fourth Amendment rights. Complaint ¶¶
16 18–37. Plaintiff alleges the Four Identified Officers conducted an “unlawful seizure of his person”
17 and an “unlawful search of his person, his automobile, the effects within his automobile, and his
18 home.” *Id.* ¶ 24. Plaintiff argues that during his encounter with the officers on February 19, 2019,
19 the officers at all times “were acting under the color of state law in their capacity as . . .
20 OFFICERS[,] and their acts or omissions were conducted within the scope of their official duties
21 or employment.” *Id.* ¶ 20. Plaintiff argues that “[n]one of the OFFICERS took reasonable steps to
22 protect Plaintiff from the objectively unreasonable . . . acts of other OFFICERS,” and that “each
23 [are] therefore liable for the injuries and damages resulting from [these acts].” *Id.* ¶ 27.

24 City Defendants point to *Jones v. Williams*, 297 F.3d 930 (9th Cir. 2002), for the
25 proposition that “[i]n order for a person acting under color of state law to be liable under *section*
26 *1983 there must be a showing of personal participation in the alleged rights deprivation: there is*

1 *no respondent superior liability under section 1983.” Id.* at 934 (emphasis added by City
2 Defendants). City Defendants argue that “[t]he Complaint states no facts attributing any particular
3 conduct to each of the individual OFFICER Defendants and improperly attempts to premise
4 liability against each of the individual OFFICERS based on vague conduct of officers generally,
5 including the alleged conduct of unidentified officers other than the four officers/badge numbers
6 identified.” MTD at 6. City Defendants argue that “[t]he allegations of Plaintiff’s Complaint show
7 that Plaintiff uses the term ‘OFFICERS’ loosely to refer to officers with the four badge numbers
8 specified, as well as to other officers and officers who were on scene or had contact with Plaintiff
9 at various times during the incident.” *Id.* City Defendants argue that “[t]he Complaint fails to state
10 facts showing [the Four Identified Officers’] ‘individual participation in the unlawful conduct,’
11 [and] thus the Complaint fails to state a Section 1983 unreasonable search and seizure claim
12 against them.” *Id.* (citing *Jones*, 297 F.3d 930 at 935).

13 In his Opposition, Plaintiff “acknowledges that each Defendant is ultimately entitled to
14 know what charges he faces,” but states that he “does not yet have sufficient information to
15 distinguish the various Scotts Valley OFFICER Defendants[’] roles in [the alleged torts], one from
16 the other.” Opp’n at 13. Plaintiff argues there is no need to “make such specification at the
17 pleading stage.” *Id.* Plaintiff argues that it is his intention “to sue each of the Defendant
18 OFFICERS . . . [as being] responsible for each of the wrongs imputed to the group as a whole.” *Id.*
19 Plaintiff says it is “possible” that at least one of the Four Identified Officers “did not play any role
20 in the seizure and search events,” and that he will be “happy to diminish the claims against various
21 Defendant OFFICERS” “[a]s discovery progresses.” *Id.* at 14.

22 In their Reply, City Defendants respond that “Plaintiff offers no authority to support his
23 assertion that he does not need to attribute facts to the particular officers, or that he can assert
24 claims against them based on ‘wrongs imputed to the group as a whole.’” Reply at 2 (citing Opp’n
25 at 13).

26 The Court finds that there is a rich discussion in the case law regarding the standard for

1 finding individual liability under 42 U.S.C. Section 1983 in situations involving a group of
2 individuals each of whom had an unclear role in the alleged violations. *See, e.g., Jones*, 297 F.3d
3 930; *Rutherford v. City of Berkeley*, 780 F.2d 1444 (9th Cir. 1986); *Chuman v. Wright*, 76 F.3d
4 292 (9th Cir. 1996); *OSU Student All.*, 699 F.3d 1053. But Plaintiff’s claims fail to meet the more
5 fundamental standard under *Twombly* and *Iqbal* that a plaintiff must give defendants “fair notice,”
6 and “plead[] factual content that allows the court to draw the reasonable inference that the
7 defendant is liable for the misconduct alleged.” 550 U.S. at 557; 556 U.S. 662, 678. Plaintiff’s
8 allegations are imprecise when referring to the various defendants described in the Complaint. The
9 Complaint fails to adequately give defendants fair notice of the allegations against each of them
10 individually, and therefore prevents the Court from drawing reasonable inferences about any given
11 City Defendant’s liability.

12 The ambiguity in the Complaint mainly comes from Plaintiff’s use of the word
13 “OFFICER(S).” Plaintiff indicates that the term “OFFICERS” will refer to the Four Identified
14 Officers. Complaint ¶ 5 (“Officers Badge Numbers 5430, 5140, 5890, and 5281 (‘OFFICERS’)
15 are members of the CITY police department and are named defendants herein.”). But in at least
16 two instances Plaintiff appears to use the term “OFFICERS” to refer to police officers other than
17 the Four Identified Officers. *See, e.g., id.* ¶ 13 (“[T]wo OFFICERS were stationed at the back of
18 plaintiff’s condo while another 3 or 4 OFFICERS entered his home through the front door.”); *id.* ¶
19 14 (“[T]he OFFICERS [sic] removed [P]laintiff from the car and escorted him into his home where
20 they joined CARNEY and 2 other unknown OFFICERS whom he had not seen previously.”).
21 Similarly, in at least three instances, Plaintiff appears to use the lower-cased term “officers” to
22 refer to the Four Identified Officers. *See, e.g., id.* ¶ 13 (“The officers then placed plaintiff in the
23 back seat of one of the CITY Police vehicles and drove him to the front of his home.”); *id.* ¶ 25
24 (“These individual defendant officers unlawfully seized [P]laintiff’s person by means of threat of
25 physical force.”); *id.* ¶ 26 (“These individual defendant officers unlawfully searched [P]laintiff’s
26 person, his vehicle and his home by means of threats based on false and defamatory

1 information.”). In at least one instance, Plaintiff appears to use the term “officers” to refer to
2 police officers other than the Four Identified Officers. *See, e.g., id.* ¶ 45 (“Defendants have . . .
3 failed to properly train and/or supervise its officers.”).

4 There is additional confusion because the Complaint names as defendants “twenty
5 unknown officers/agents/employees,” *id.* at 1, and in instances when the Complaint seems to
6 identify an officer other than the Four Identified Officers, it is unclear whether Plaintiff is
7 purposefully delineating this other officer as one of the twenty other defendants. *See, e.g., id.* ¶ 26.
8 Moreover, for every cause of action besides the *Monell* cause of action, Plaintiff makes claims
9 again “[a]gainst all Defendants,” without distinguishing between the Four Identified Officers, the
10 twenty unidentified officers/agents/employees, and the City of Scotts Valley. *See, e.g., id.* ¶ 6. On
11 its face, the Complaint appears to make allegations against an undefined group of City police
12 officers, four of whom are identified, and none of whom are individually connected to specific
13 allegations.

14 Plaintiff’s Opposition invites an inference that the Four Identified Officers were the
15 officers who were first on the scene of Plaintiff’s detainment, in that it specifies there were four
16 police officers initially at the scene of the detainment, and this number coincides with the number
17 of officers identified in the Complaint. *See Opp’n* at 13 (“Although there were four Scotts Valley
18 OFFICERS at the scene, Plaintiff was summoned to stop his vehicle by only one police vehicle.
19 Accordingly, only one (or possibly two) of the four Scotts Valley Officer Defendants are currently
20 known to be responsible for the initial detention of Plaintiff’s vehicle and him as a driver of that
21 vehicle. [D]ifferent of these four Scotts Valley OFFICER Defendants may have participated in
22 various of the seizures and searches that occurred.”). But even if this suggestion was dispositive of
23 the ambiguity in the Complaint, a brief opposing a motion to dismiss cannot amend a complaint.
24 *See, e.g., Diamond S. J. Enter., Inc. v. City of San Jose*, 395 F. Supp. 3d 1202, 1231 (N.D. Cal.
25 2019).

26 For these reasons, the Court GRANTS the motion to dismiss the 42 U.S.C. Section 1983

1 claims brought against the Four Identified Officers. Leave to amend shall be freely given when
2 justice so requires. Fed. R. Civ. P. 15(a). *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.
3 1988). A “proposed amendment is futile only if no set of facts can be proved under the amendment
4 that would constitute a valid claim.” *Armas v. USAA Cas. Ins. Co.*, No. 5:17-CV-06909-EJD, 2019
5 WL 3323057, at *3 (N.D. Cal. July 24, 2019) (internal citation omitted). The Court does not find
6 that an amendment for this claim would necessarily be futile and therefore permits leave to amend.

7 **ii. Twenty Unknown Officers/Agents/Employees of the City of Scotts Valley**

8 For the same reasons given above, the Court finds that Plaintiff does not adequately state a
9 claim that any of the twenty unknown officers/agents/employees of the City violated Plaintiff’s
10 constitutional rights via his or her own actions. The Court therefore GRANTS with leave to amend
11 the motion to dismiss the 42 U.S.C. Section 1983 claims brought against the twenty unknown
12 officers/agents/employees of the City.

13 **iii. Public Entity City of Scotts Valley**

14 To the extent that Plaintiff is attempting to allege a cause of action against the City in its
15 supervisory role, he is precluded from doing so. *See Kentucky v. Graham*, 473 U.S. 159, 168, 105
16 S. Ct. 3099, 87 L. Ed. 2d 114 (1985) (holding that “a municipality cannot be made liable under 42
17 U.S.C. Section 1983 on a *respondeat superior* basis”). Therefore, the motion to dismiss the first
18 cause of action as to the City of Scotts Valley is GRANTED without leave to amend.

19 **B. Second Cause of Action: *Monell* – 42 U.S.C. Section 1983**

20 Plaintiff’s second cause of action alleges a Section 1983 claim against Defendant City of
21 Scotts Valley. Complaint ¶¶ 38–48. Local governments “can be sued directly under Section 1983
22 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be
23 unconstitutional implements or executes a policy statement, ordinance, regulation, or decision
24 officially adopted and promulgated by that body’s officers.” *Monell*, 436 U.S. at 690. Plaintiff
25 must plausibly plead the following elements to proceed with his *Monell* claim: “(1) that [he]
26 possessed a constitutional right of which he was deprived; (2) that the municipality had a policy,

1 custom or practice; (3) that the policy, custom or practice amounted to deliberate indifference to
2 [his] constitutional rights; and (4) that the policy, custom or practice was the moving force behind
3 the constitutional violation.” *Torres v. Saba*, No. 17-CV-06587-SI, 2019 WL 111039, at *6 (N.D.
4 Cal. Jan. 4, 2019), *aff’d*, 816 F. App’x 143 (9th Cir. 2020).

5 A *Monell* cause of action can be established in one of three ways. *See Thomas v. Cty. of*
6 *Riverside*, 763 F.3d 1167, 1170 (9th Cir. 2014). First, a local government may be held liable when
7 it acts “pursuant to an expressly adopted policy.” *Id.* (citing *Monell*, 436 U.S. at 694); *Lytle v.*
8 *Carl*, 382 F.3d 978, 982 (9th Cir. 2004). Second, a public entity may be held liable for a
9 “longstanding practice or custom.” *Thomas*, 763 F.3d at 1170. Third, a local government may be
10 held liable under Section 1983 as a final policy maker. *Id.* Plaintiff’s *Monell* cause of action is
11 premised on Defendants’ alleged policies, customs, or practices.

12 “Liability for improper custom may not be predicated on isolated or sporadic incidents; it
13 must be founded upon practices of sufficient duration, frequency and consistency that the conduct
14 has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th
15 Cir. 1996), holding modified on other grounds by *Navarro v. Block*, 250 F.3d 729 (9th Cir. 2001);
16 *see also Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999) (“A single constitutional
17 deprivation ordinarily is insufficient to establish a longstanding practice or custom.”). Although
18 “[i]t is difficult to discern from the caselaw the quantum of allegations needed to survive a motion
19 to dismiss a pattern and practice claim,” *Gonzalez v. Cty. of Merced*, 289 F. Supp. 3d 1094, 1099
20 (E.D. Cal. 2017), “where more than a few incidents are alleged, the determination appears to
21 require a fully-developed factual record.” *Lemus v. Cty. of Merced*, No. 115CV00359MCEEPG,
22 2016 WL 2930523, at *4 (E.D. Cal. May 19, 2016), *aff’d*, 711 Fed. App’x 859 (9th Cir. 2017).

23 Here, Plaintiff alleges that the City “developed and maintained policies, procedures,
24 customs, and/or practices exhibiting deliberate indifference to the constitutional rights of citizens.”
25 Complaint ¶ 44. Plaintiff alleges that the City “created and tolerated an atmosphere of lawlessness,
26 and [has] developed and maintained long-standing, department-wide customs, law enforcement

1 related policies, procedures, customs, practices, and/or failed to properly train and/or supervise its
2 officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiff
3 and the public.” *Id.* ¶ 45. In his Opposition, Plaintiff argues that when there is a “larger number of
4 municipal employees involved [in violating individuals’ federal rights], it is more likely that their
5 actions are reflecting municipal policy or a failure of municipal training and supervision.” Opp’n
6 at 14. Plaintiff argues that the fact that “not one, but four, Scotts Valley Police Officers were
7 [allegedly] involved in a blatant violation of a constitutional right,” indicates that the City is liable
8 under *Monell. Id.*

9 City Defendants argue that Plaintiff’s *Monell* claim should be dismissed because
10 “Plaintiff’s Complaint states no facts showing any CITY official municipal policy or widespread
11 practice of unlawful search or seizure similar to Plaintiff’s alleged incident, or at all.” MTD at 9.
12 City Defendants argue that Plaintiff’s claim amounts to an “unsupported conclusion that
13 unspecified policies, procedures and customs existed.” *Id.*

14 The Court finds that Plaintiff fails to present sufficient factual allegations supporting the
15 existence of the policies, procedures, customs, or practices required under *Monell*. Plaintiff pleads
16 that four City police officers violated Plaintiff’s federal rights, and that this alone indicates that a
17 widespread municipal policy or practice exists. Opp’n at 14. In the section above, the Court found
18 that the facts alleged against the Four Identified Officers were insufficient to state a claim. *See*
19 *supra*. Even if Plaintiff had sufficiently stated a claim against the Four Identified Officers, one
20 isolated incident is not a sufficient basis for a *Monell* claim. *Trevino*, 99 F.3d at 918. Therefore,
21 the Court GRANTS City Defendants’ motion to dismiss Plaintiff’s *Monell* claim with leave to
22 amend.

23 **C. Third Cause of Action: California Constitution, Art. 1, Section 13**

24 Plaintiff argues that City Defendants’ actions violated Plaintiff’s rights as provided under
25 the California Constitution. Complaint ¶¶ 49–61. Several key cases have outlined a framework by
26 which courts determine whether a violation of the California Constitution creates an action for

1 damages. *See, e.g., Katzberg v. Regents of Univ. of California*, 29 Cal. 4th 300, 58 P.3d 339
2 (2002). Plaintiff does not engage with this framework. In the Opposition, Plaintiff appears to
3 concede his state constitutional claim, letting City Defendants’ motion to dismiss the claim go
4 unaddressed, and saying only that “[i]n the event the Fourth Amendment is construed in a manner
5 different than Plaintiff contends herein, Plaintiff reserves his right to seek an independent
6 construction of the Search and Seizure Clause of the California Constitution regarding these
7 matters.” Opp’n at 11. The Court therefore GRANTS City Defendants’ motion to dismiss
8 Plaintiff’s claims under the California Constitution with leave to amend.

9 **D. Fourth Cause of Action: Assault and Battery**

10 Plaintiff alleges in his Complaint that City Defendants’ actions during Plaintiff’s
11 detainment amount to assault and battery. Complaint ¶¶ 62–65. However, Plaintiff appears to
12 concede these claims, as in his Opposition he offers no response to City Defendants’ argument
13 that Plaintiff pleaded insufficient facts for an assault and battery claim. MTD at 14–16. The Court
14 GRANTS City Defendants’ motion to dismiss Plaintiffs’ assault and battery claims with leave to
15 amend.

16 **E. Fifth Cause of Action: Intentional and/or Negligent Infliction of Emotional Distress**

17 Plaintiff alleges in his Complaint that City Defendants’ actions during the search of
18 Plaintiff’s home amount to intentional and/or negligent infliction of emotional distress. Complaint
19 ¶¶ 66–70. In the MTD, City Defendants argue that Plaintiff pleaded insufficient facts for claims
20 of intentional and/or negligent infliction of emotional distress. MTD at 16–18 (arguing, *e.g.*,
21 “Plaintiff’s Complaint states no facts showing outrageous conduct by any CITY OFFICER, or any
22 facts showing intentional or reckless disregard by any CITY OFFICER of the probability of
23 causing severe emotional distress to Plaintiff”). In the Opposition, Plaintiff offers no response to
24 this argument. Opp’n at 12. Plaintiff states that “Scotts Valley Defendants can disregard all claims
25 that [they participated] in a home search that emotionally distressed Plaintiff and damaged his
26 reputation” as long as City Defendants show there was a “facially valid” search warrant. *Id.* The

1 Court finds that, regardless of whether City Defendants can produce the warrant in question,
2 Plaintiff has effectively conceded these claims. The Court therefore GRANTS with leave to amend
3 Plaintiff’s claims of intentional and/or negligent infliction of emotional distress.

4 **F. Sixth Cause of Action: Violation of California Civil Code Section 52.1**

5 Plaintiff’s sixth cause of action is for violation of California Civil Code Section 52.1 (“the
6 Bane Act”) against City Defendants. Complaint ¶¶ 71–73. The Bane Act authorizes individual
7 civil actions for damages and injunctive relief by individuals whose federal or state rights have
8 been interfered with by threats, intimidation, or coercion. *See* Cal. Civ. Code Section 52.1(a)
9 (proscribing interference “by threats, intimidation, or coercion, or attempts to interfere by threats,
10 intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights
11 secured by the Constitution or laws of the United States, or of the rights secured by the
12 Constitution or laws of this state”); *see also Jones v. Kmart Corp.*, 17 Cal. 4th 329, 338, 949 P.2d
13 941 (1998) (interpreting Bane Act’s use of “interferes” to mean “violates”).

14 “[T]he Bane Act does not require the ‘threat, intimidation or coercion’ element of the
15 claim to be transactionally independent from the constitutional violation alleged.” *Reese v. Cty. of*
16 *Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018) (citing *Cornell v. City & Cty. of San Francisco*,
17 17 Cal. App. 5th 766, 798 (2017), *as modified* (Nov. 17, 2017)). Instead, the Bane Act requires that
18 a defendant had a specific intent to violate the plaintiff’s protected rights. This specific intent
19 inquiry centers on two questions: “First, ‘is the right at issue clearly delineated and plainly
20 applicable under the circumstances of the case,’ and second, ‘did the defendant commit the act in
21 question with the particular purpose of depriving the citizen victim of his enjoyment of the
22 interests protected by that right?’” *Sandoval v. Cty. of Sonoma*, 912 F.3d 509, 520 (9th Cir. 2018)
23 (quoting *Cornell*, 17 Cal. App. 5th at 803 (alterations omitted)). Specific intent does not require a
24 showing that a defendant knew he was acting unlawfully; “[r]eckless disregard of the ‘right at
25 issue’ is all that [i]s necessary.” *Cornell*, 17 Cal. App. 5th at 804.

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1 For the same reasons given above, the Court finds that Plaintiff's Complaint did not clearly
2 identify which City Defendants were involved in the alleged violations to which the Bane Act
3 claims refer. While the right against unlawful searches and seizures is clearly delineated in the
4 allegations, Plaintiff does not provide sufficient facts to consider the question of the City
5 Defendants' purpose or intent. The Court GRANTS the motion to dismiss Plaintiff's Cal. Civ.
6 Code Section 52.1 claims with leave to amend.

7 **IV. Conclusion**

8 For the reasons stated above, the Court GRANTS City Defendants' motion to dismiss in full, with
9 leave for Plaintiff to amend his complaint in accordance with this Order. Plaintiff shall file an
10 amended complaint, if any, by no later than March 23, 2021.

11 **IT IS SO ORDERED.**

12 Dated: March 12, 2021

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15 EDWARD J. DAVILA
16 United States District Judge
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