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SOUTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALLEN BAKER,

vs.

COUNTY OF SAN DIEGO; et al.,

Plaintiff,

Defendants.

CASE NO. 09-CV-1194 BEN (WMc)

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT FOR
DEFENDANT BLANKENBAKER

[Docket No. 27]

Before the Court is Defendant Damon Blankenbaker's motion ("Motion") for summary judgment in the above-captioned action. For the reasons set forth herein, the Motion is **GRANTED**.

BACKGROUND

This action is based on 42 U.S.C. § 1983 and arises from the arrest of Plaintiff Allen Baker on July 26, 2008. The operative complaint is the Second Amended Complaint filed on April 30, 2010. The Second Amended Complaint asserts claims against the two arresting officers, their supervisor, San Diego County, and the San Diego County Sheriff's Department. (Docket No. 15.)

According to the Second Amended Complaint, the two arresting officers, Defendants Hodge and Guthrie, violated Plaintiff's constitutional rights by using excessive force against him during the course of the arrest and by filing false police reports. (SAC, ¶¶ 13-17.) Defendant Blankenbaker, their supervisor, "signed off" on the officers' reports, despite allegedly knowing that the reports were false. (SAC, ¶ 18.) Based thereon, the Second Amended Complaint alleges claims for excessive force in violation of Plaintiff's First, Fourth, Fifth and Fourteenth Amendment rights, assault and battery,

1 intentional infliction of emotional distress, negligence, and violation of the California Unruh/Banes
2 Civil Rights Act. *Id.*

3 On March 2, 2011, Defendant Blankenbaker filed the Motion currently before the Court.
4 (Docket No. 27.) Plaintiff did not file an opposition.

5 For the reasons set forth below the Motion is **GRANTED**.

6 **DISCUSSION**

7 Summary judgment must be granted where the record shows “there is no genuine dispute as
8 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
9 Where, as here, the opposing party files no opposition to a summary judgment motion, the Court may
10 deem admitted the facts submitted by the moving party to show there is no triable issue of fact. *Beard*
11 *v. Banks*, 548 U.S. 521, 527 (2006); *see also* Local Civil Rule 7.1.f.

12 **I. Section 1983 Claim**

13 It is well-established that “liability under [§] 1983 arises only upon a showing of personal
14 participation by the defendant. A supervisor is only liable for the constitutional violations of. . .
15 subordinates if the supervisor participated in or directed the violations, or knew of the violations and
16 failed to act to prevent them. There is no respondeat superior liability under [§] 1983.” *Taylor v. List*,
17 880 F.2d 1040, 1045 (9th Cir. 1989) (citations omitted). Supervisors “can be held liable for: 1) their
18 own culpable action or inaction in the training, supervision, or control of subordinates; 2) their
19 acquiescence in the constitutional deprivation of which a complaint is made; or 3) for conduct that
20 showed a reckless or callous indifference to the rights of others.” *Edgerly v. City & County of San*
21 *Francisco*, 599 F.3d 946, 961-62 (9th Cir. 2010) (citing *Cunningham v. Gates*, 229 F.3d 1271, 1292
22 (9th Cir. 2000)).

23 It is undisputed that Blankenbaker was the supervisor of deputies Hodge and Guthrie at the
24 time their reports were signed. (Blankenbaker Decl., ¶ 4.) However, the undisputed facts also show
25 that, at the time of the alleged incident, Blankenbaker was regularly assigned to the Santee station, not
26 the Ramona station where Hodge and Guthrie worked. (Blankenbaker Decl., ¶ 2.) Blankenbaker was
27 only filling in for the patrol sergeant in Ramona, in order to acquire more overtime shifts. (*Id.*, ¶ 3.)
28 In the one year prior to the alleged incident, Blankenbaker had never worked with Hodge or Guthrie

1 and was not responsible for their training or supervision on a regular basis. (*Id.*, ¶ 5.) Therefore,
2 Blankenbaker cannot be liable under Section 1983 on the grounds that he trained or supervised Hodge
3 or Guthrie. Additionally, Blankenbaker was not on duty at the time of Plaintiff's arrest, which
4 occurred at approximately 2:00 a.m. (*Id.*, ¶ 3.) When Blankenbaker arrived at the Ramona station
5 eight hours later, Hodge's and Guthrie's reports were already in his box. (*Id.*, ¶ 4.) Under these
6 circumstances, no reasonable trier of fact could find that Blankenbaker had any personal involvement
7 in the incident. It is also undisputed that Blankenbaker did not know, and had no reason to know, that
8 the facts alleged in the reports were false. (*Id.*, ¶¶ 4, 5.) Accordingly, no reasonable trier of fact could
9 find that Blankenbaker acquiesced to the allegedly unlawful conduct or that Blankenbaker's conduct
10 showed a reckless or callous indifference to Plaintiff's rights. In light of the above, the Court finds that
11 Plaintiff's Section 1983 claim against Blankenbaker fails as a matter of law.

12 **II. State Law Claims**

13 Plaintiff also alleges the following state law claims against Blankenbaker: assault and battery;
14 intentional infliction of emotional distress; negligence; and, violation of the California Unruh/Banes
15 Civil Rights Act. To succeed on these claims, Plaintiff must show, at a minimum, that Blankenbaker
16 participated in Plaintiff's arrest or, with respect to the negligence claim, Blankenbaker owed a duty
17 to Plaintiff. Cal. Penal Code §§ 240, 242; Cal. Civ. Code §§ 52 and 52.1(h); *Ladd v. County of San*
18 *Mateo*, 12 Cal. 4th 913, 917 (1996); *Christensen v. Superior Court*, 54 Cal. 3d 868, 903 (1991). Here,
19 however, it is undisputed that Blankenbaker did not participate in the arrest. (Blankenbaker Decl., ¶¶
20 4-5.) Additionally, Blankenbaker did not owe a duty to Plaintiff to independently investigate Hodge's
21 and Guthrie's reports or the circumstances surrounding Plaintiff's arrest, because officers are entitled
22 to rely on information from fellow officers, such as that provided from Hodge and Guthrie, which
23 seems routine and unremarkable. *See Motley v. Parks*, 432 F.3d 1072, 1081 (9th Cir. 2005).
24 (Blankenbaker Decl., ¶ 4.) Accordingly, the Court finds that Plaintiff's state law claims against
25 Blankenbaker also fail as a matter of law.

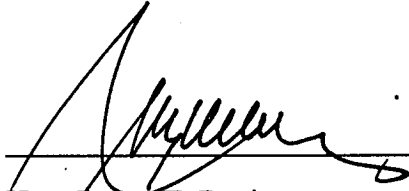
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1 **CONCLUSION**

2 For the reasons set forth above, the Court hereby GRANTS Defendant Blankenbaker's motion for
3 summary judgment. Judgement shall be entered in favor of Defendant Blankenbaker on all claims set
4 forth in Plaintiff's Second Amended Complaint.

5 **IT IS SO ORDERED.**

6 Date: May 4, 2011

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8 Hon. Roger T. Benitez
9 United States District Court Judge
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