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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NORA MANNI,

Plaintiff,

v.

CITY OF SAN DIEGO, et al.,

Defendants.

CASE No: 11-CV-0435W (DHB)

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' SUMMARY-
JUDGMENT MOTION [DOC. 46]**

Pending before the Court is Defendants City of San Diego and Officer Salvador Hurtado's summary-judgment or, in the alternative, summary-adjudication motion [Doc. 46]. Plaintiff Nora Manni opposes.

The Court decides the matter on the papers submitted and without oral argument under Civil Local Rule 7.1(d)(1). For the reasons stated below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion [Doc. 46].

I. BACKGROUND

On June 6, 2010, Plaintiff Nora Manni was in San Diego attending the wedding of her best friend, Peggy Kulato, as the maid of honor. After the wedding, Ms. Manni,

1 the newlyweds, and a group of friends went to a local Pacific Beach bar called
2 “Moondoggies.”

3 The bride’s brother, Fourat Kulato, was not allowed to enter Moondoggies because
4 of an issue with his identification. At some point, Ms. Manni alleges that one of the bar’s
5 bouncers pushed him. When the groom attempted to intervene, three or four bouncers
6 tackled the groom, handcuffed him, and one of the bouncers punched him in the face.
7 A member of the wedding party then called 911.

8 At approximately 10:58p.m., Defendant Police Officer Salvador Hurtado and his
9 partner, Officer Mike Sylvester, were dispatched to Moondoggies. (*See Galipo Dec.* [Doc.
10 49-1], Ex. 7 (the Dispatch printout) [Doc. 49-8], p.1.) Dispatch reported that one of the
11 bouncers may have assaulted a male. (*Hurtado Dep.*, 15:25–16:8.¹)

12 Upon arriving, the officers noticed a group of people outside Moondoggies yelling
13 at the bar staff. (*Hurtado Dep.*, 23:1–2; *Sylvester Dep.*, 9:4–11.²) One of the bouncers was
14 holding the groom face down on the ground with his hands handcuffed behind his back.
15 (*Hurtado Dep.*, 23:7–22.) Officer Sylvester approached, helped the groom to his feet, and
16 began walking him toward the patrol car to find out what happened. (*Sylvester Dep.*,
17 13:3–20, 14:1–7.) Officer Hurtado stayed back about 6 or 8 feet observing the crowd.
18 (*Hurtado Dep.*, 25:2–10.)

19 When Ms. Kulato, the bride, saw Officer Sylvester walking with her husband, she
20 thought he was being arrested so ran toward them and began trying to talk to Officer
21 Sylvester. (*P. Kulato Dep.*, 61:19–23.³) The officer told Ms. Kulato several times that she

23 ¹ Portions of Officer Salvador Hurtado’s deposition (“Hurtado Dep.”) are attached to
24 Defendant’s List of Evidence [Doc. 46-2] as Exhibit 5 [Doc. 46-7], and to Dale Galipo’s
25 Declaration as Exhibit 2 [Doc. 49-3].

26 ² Portions of Officer Michael Sylvester’s deposition (“Sylvester Dep.”) are attached to
27 Defendant’s List of Evidence as Exhibit 6 [Doc. 46-8], and to Dale Galipo’s Declaration as
28 Exhibit 3 [Doc. 49-4].

³ Portions of Ms. Kulato’s deposition (“P. Kulato Dep.”) are attached to Defendant’s List
of Evidence as Exhibit 2 [Doc. 46-4].

1 could not come with them. (*Id.*, 61:24-62:1.) However, Ms. Kulato ignored Officer
2 Sylvester and continued to follow. (*Id.*, 62:3-8.) Ms. Kulato also testified that as she
3 followed them, she kept “grabbing my husband’s arm so that I could go with both of
4 them.” (*Id.*, 83:20-22.)

5 Officer Hurtado believed Ms. Kulato was attempting to interfere with Officer
6 Sylvester, and intervened. (*Hurtado Dep.*, 28:11-16.) He stepped in front of Ms. Kulato,
7 put his arms on her shoulders, and said “really firmly you cannot go there[.]” (*P. Kulato*
8 *Dep.*, 62:14-18.) Ms. Kulato, who was crying, pleaded with Officer Hurtado to let her
9 follow Officer Sylvester and her husband, but Officer Hurtado again told her “no, you
10 can’t go there.” (*Id.*, 62:22-25.) Ms. Kulato ignored him and “proceeded to go there.”
11 (*Id.*, 62:25-63:4.) Officer Hurtado then “pulled [her] away,” put one of his arms on the
12 “mid range” of her body (i.e., by her stomach), and pushed her back. (*Id.*)

13 As Officer Hurtado was focused on Ms. Kulato—and members of the wedding
14 party and bouncers exchanged verbal hostilities—Ms. Manni ran toward Officer Hurtado
15 and, while putting her hand on his shoulder, loudly told him not to push the bride
16 because she was pregnant. (*P. Kulato Dep.*, 64:14-65:1; *Manni Dep.*, 74:14-75:25.⁴)
17 According to Ms. Manni, she had to speak loudly to Officer Hurtado because of the
18 chaos. (*Manni Dep.*, 74:20, 75:3-4.) Officer Hurtado immediately told Ms. Manni she
19 was under arrest, took hold of her left wrist, and he began pushing her towards the
20 nearby patrol car. (*Id.*, 76:23-77:10.) As he moved Ms. Manni toward the car, Officer
21 Sylvester observed men approaching and called for more officers. (*Sylvester Dep.*,
22 26:16-23.⁵) Officer Hurtado also called for additional officers. (*Hurtado Dep.*, 56:4-6.)

24 ⁴ Portions of Plaintiff Nora Manni’s deposition (“Manni Dep.”) are attached to
25 Defendant’s List of Evidence as Exhibit 3 [Doc. 46-5], and to Dale Galipo’s Declaration as
26 Exhibit 1 [Doc. 49-2].

27 ⁵ There are a numerous problems with Defendants’ citations to evidence. Specifically,
28 certain pages of deposition transcripts were not included with the exhibits. For example, pages
62, 83, 84, 99, 116, 117 to Officer Hurtado’s deposition transcript, cited in support of
“undisputed fact” numbers 58-61 (*see Def.s’ Sep. State* [Doc. 46-1]) are not included in Exhibit
5. Page 31 of Timothy Walter’s deposition, page 42 of Deniz Guraydin’s deposition, and certain

1 When Officer Hurtado and Ms. Manni reached the car, Officer Hurtado pushed
2 Ms. Manni up against the car, put her left arm behind her back and handcuffed her left
3 wrist. (*Manni Dep.* 77:25-78:5.) While handcuffing her, Ms. Manni testified that Officer
4 Hurtado “was pushing my face pretty much against the trunk [of the patrol car and], I
5 was saying ouch or something like that.” (*Id.*, 79:24-80:1.) After her right wrist was
6 handcuffed, Officer Hurtado placed Ms. Manni in the backseat of the car. (*Id.*, 83:4-11.)

7 While Officer Hurtado was handcuffing Ms. Manni, he felt a pop in her upper
8 arm and suspected that he may have broken it. (*Hurtado Dep.*, 84:3-9, 86:6-8, 97:1-11.)
9 Once Ms. Manni was placed in the back of the patrol car, she realized her arm was
10 broken because she was in pain. (*Manni Dep.*, 85:25-86:6.) However, while in the back
11 of the car, she did not try to say anything or alert anyone to the fact that she was injured
12 or in pain. (*Id.*, 86:9-16.)

13 After placing Ms. Manni in the back of the car, Officer Hurtado contacted his
14 supervisor because he believed Ms. Manni was injured. (*Hurtado Dep.*, 97:1-11.) He
15 then called for paramedics and asked a female officer who had arrived on scene, Officer
16 Vanessa Holland, to check Ms. Manni’s arm. (*Id.*, 97:16-22.)

17 Approximately 5 to 10 minutes after Ms. Manni was put in the car, Officer
18 Holland arrived to talk to her. (*Manni Dep.*, 87:1-8.) Ms. Manni told Officer Holland
19 that her “arm is killing me” and an ambulance arrived approximately three to five
20 minutes later. (*Id.*, 87:15-88:2.) The ambulance transported Ms. Manni to the hospital,
21 where she was diagnosed with a broken arm.

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25 pages of Officer Sylvester’s deposition are missing. To the extent the Court has cited these pages,
26 it is because Ms. Manni included them in her opposition.

27 The Court is also troubled by Defendants’ citation to Ms. Kulato’s deposition transcript
28 as evidence that members of the wedding party charged Officer Hurtado. (*See Def.s’ Sep. State.*,
Fact No. 42.) The citation is to a portion of a question Ms. Kulato was asked, and Defendants
fail to include the portion of the transcript that includes her answer. It should be obvious to
counsel that the attorney’s question, absent Ms. Kulato’s response, is not evidence that the men
charged Officer Hurtado.

1 **II. LEGAL STANDARD**

2 Summary judgment is appropriate under Rule 56(c) where the moving party
3 demonstrates the absence of a genuine issue of material fact and entitlement to judgment
4 as a matter of law. See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322
5 (1986). A fact is material when, under the governing substantive law, it could affect the
6 outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986);
7 Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997). A dispute about a material fact
8 is genuine if “the evidence is such that a reasonable jury could return a verdict for the
9 nonmoving party.” Anderson, 477 U.S. at 248.

10 A party seeking summary judgment always bears the initial burden of establishing
11 the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving
12 party can satisfy this burden in two ways: (1) by presenting evidence that negates an
13 essential element of the nonmoving party’s case; or (2) by demonstrating that the
14 nonmoving party failed to make a showing sufficient to establish an element essential to
15 that party’s case on which that party will bear the burden of proof at trial. Id. at 322-23.
16 “Disputes over irrelevant or unnecessary facts will not preclude a grant of summary
17 judgment.” T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630
18 (9th Cir. 1987).

19 “The district court may limit its review to the documents submitted for the
20 purpose of summary judgment and those parts of the record specifically referenced
21 therein.” Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1030 (9th Cir.
22 2001). Therefore, the court is not obligated “to scour the record in search of a genuine
23 issue of triable fact.” Keenan v. Allen, 91 F.3d 1275, 1279 (9th Cir. 1996) (citing
24 Richards v. Combined Ins. Co., 55 F.3d 247, 251 (7th Cir. 1995)).

25 If the moving party meets its initial burden, the nonmoving party cannot defeat
26 summary judgment merely by demonstrating “that there is some metaphysical doubt as
27 to the material facts.” Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S.
28 574, 586 (1986); Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir.

1 1995) (citing Anderson, 477 U.S. at 252) (“The mere existence of a scintilla of evidence
2 in support of the nonmoving party’s position is not sufficient.”). Rather, the nonmoving
3 party must “go beyond the pleadings and by her own affidavits, or by ‘the depositions,
4 answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that
5 there is a genuine issue for trial.’” Celotex, 477 U.S. at 324 (quoting Fed.R.Civ.P. 56(e)).

6 When making this determination, the court must view all inferences drawn from
7 the underlying facts in the light most favorable to the nonmoving party. See Matsushita,
8 475 U.S. at 587. “Credibility determinations, the weighing of evidence, and the drawing
9 of legitimate inferences from the facts are jury functions, not those of a judge, [when] he
10 [or she] is ruling on a motion for summary judgment.” Anderson, 477 U.S. at 255.

11 12 **III. DISCUSSION**

13 **A. The undisputed facts establish that Officer Hurtado had probable** 14 **cause to arrest Ms. Manni.**

15 “Probable cause exists when, under the totality of the circumstances known to
16 the arresting officers (or within the knowledge of the other officers at the scene), a
17 prudent person would believe the suspect had committed a crime.” Blankenhorn v.
18 City of Orange, 485 F.3d 463, 471 (9th Cir. 2007) (citing Dubner v. City & Cnty. of
19 San Francisco, 266 F.3d 959, 966 (9th Cir. 2001)). Probable cause to arrest is based
20 on an objective standard. U.S. v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007). Thus,
21 “[p]robable cause exists when, at the time of arrest, the agents know reasonable
22 trustworthy information sufficient to warrant a prudent person in believing that the
23 accused had committed or was committing an offense.” Allen v. City of Portland, 73
24 F.3d 232, 237 (9th Cir. 1995); Aguilera v. Baca, 394 F. Supp. 2d 1203, 1214 (C.D.
25 Cal. 2005) (“Probable cause exists when the facts and circumstances within the
26 officer’s knowledge are sufficient to warrant a prudent person to believe that the
27 suspect has committed, is committing, or is about to commit an offense.”) (internal
28 quotations and citation omitted).

1 The “standard of probable cause ‘applies to all arrests, without the need to
2 ‘balance’ the interests and circumstances involved in particular situations.” Atwater
3 v. City of Lago Vista, 532 U.S. 318, 354 (2001). Thus, “if an officer has probable
4 cause to believe that an individual has committed even a very minor criminal offense
5 in his presence, he may, without violating the Fourth Amendment, arrest the
6 offender.” Id.

7 Here, Defendants argue that Officer Hurtado had probable cause to arrest Ms.
8 Manni for violation of California Penal Code §§ 242, 243(b) and 148. Section 242
9 prohibits the “willful and unlawful use of force or violence upon the person of
10 another.” Section 243(b) provides that a battery “committed against the person of a
11 peace officer . . . engaged in the performance of his or her duties” is punishable by a
12 fine and/or imprisonment not exceeding a year. Section 148 prohibits a person from
13 “willfully resist[ing], delay[ing], or obstruct[ing] any . . . peace officer . . . in the
14 discharge or attempt to discharge any duty of his or her office.”

15 Ms. Manni argues that disputed issues of material fact exist regarding whether
16 there was probable cause to arrest her. Specifically, Ms. Manni contends the
17 following disputes exist:

- 18 1. Ms. Manni never jumped in between Officer Hurtado and Ms. Kulato,
19 but instead walked up to Officer Hurtado and slightly touched him on
20 his shoulder to get his attention as he was forcefully pushing the
21 pregnant bride. (*Opp.* [Doc. 49], 14:6–10, citing Fact No. 117.⁶)
- 22 2. Ms. Manni did not yell at Officer Hurtado, but instead “calmly told
23 Officer Hurtado to not push the bride because the bride was pregnant.”
24 (*Opp.*, 14:12–14, citing Fact No. 119.)

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26
27 ⁶ Although Ms. Manni contends that she “walked” up to Officer Hurtado, this fact is not
28 mentioned in Plaintiff’s Fact No. 117. (*See Pl.’s Resp. Sep. State.* [Doc. 48], No. 117.) Nor does
Ms. Manni’s Opposition cite any evidence supporting the contention. Additionally, Ms. Kulato
testified that she “saw Nora run to both of us . . .” (*P. Kulato Dep.*, 64:15.)

- 1 3. Ms. Manni did not grab Officer Hurtado’s arm and push it away, but
2 instead “only slightly touched Officer Hurtado on his left shoulder to get
3 his attention as he was forcefully pushing the pregnant bride.” (*Opp.*,
4 14:16–19, citing Fact No. 117.)
- 5 4. Ms. Manni did not interject herself in Officer Hurtado’s police
6 investigation because: (1) he was not conducting an investigation, but
7 instead was performing crowd-control responsibilities and manhandling
8 Ms. Kulato; and (2) her slight touching constituted, at most, a de
9 minimus interference with his duties. (*Opp.*, 14:20–28, citing Fact Nos.
10 22 and 117.)
- 11 5. The only person approaching Officer Sylvester was Ms. Kulato. (*Opp.*,
12 14:12–14, citing P. Kulato Dec., ¶ 6.)

13 The Court is not persuaded by Ms. Manni’s arguments for two reasons.

14 First, Ms. Manni’s contention that Officer Hurtado was not discharging his
15 duties when she touched him is absurd. The undisputed facts establish that when Ms.
16 Manni touched Officer Hurtado, he was attempting to stop Ms. Kulato from
17 interfering with Officer Sylvester’s discharge of his duties. Ms. Kulato testified that
18 when she ran to Officer Sylvester and her husband, Officer Sylvester told her, “you
19 can’t come over here, you can’t come over here, you can’t come over here.” (*P. Kulato*
20 *Dep.*, 61:24–62:1.) Rather than comply with Officer Sylvester, Ms. Kulato testified
21 that she

22 would reply to him please, again, you have the wrong guy, you have the
23 wrong guy; and then I heard another cop saying he might get arrested. I
24 just vaguely heard that, and that’s when I went again towards them, I like
25 (*Id.*, 62:3–8.) At that point, after repeatedly ignoring Officer Sylvester, Ms. Kulato
26 testified that “Officer Hurtado came to block me from going. His body literally was
27 like in front of me, and he put his arms on my shoulders, and he said really firmly you
28 cannot go there[.]” (*Id.* 62:15–18.) She admitted, however, that even after Officer
Hurtado told her that she could not follow Officer Sylvester and her husband, Ms.

1 Kulato ignored Officer Hurtado and tried to follow them, at which point Officer
2 Hurtado grabbed her:

3 I looked at [Officer Hurtado], and I was crying, and I said please, help me,
4 he's not the guy that you guys want, please, this our wedding night, I'm
5 pregnant, I just want my husband with me. I said, I just want to be with
6 him, can you guys question him while I'm with him, **and he was very firm
7 with me, and he said, no, you can't go there. So I again proceeded to go
there,** and he pulled me away, and then he put his arms at me like he put
one arm of his on my body, like on my mid range of my body, so where my
stomach would be, he pushed me back.
(*Id.*, 62:18-63:4, emphasis added.)

8 Ms. Kulato's testimony establishes that she was "willfully . . . delay[ing], or
9 obstruct[ing]" Officer Sylvester in the discharge of his duties. Indeed, Officer Hurtado
10 testified that he believed Ms. Kulato was attempting to stop Officer Sylvester from
11 escorting the groom away from the group. (*Hurtado Dep.*, 28:11-16.) Accordingly, in
12 attempting to stop Ms. Kulato from advancing on Officer Sylvester and her husband,
13 Officer Hurtado was clearly engaged in the discharge of his duties.

14 Second, based entirely on Ms. Manni's version of events, Officer Hurtado had
15 probable cause to arrest her. Ms. Manni admits that she touched Officer Hurtado's
16 left shoulder for the specific purpose of getting his attention while he was attempting
17 to stop Ms. Kulato. (*See Pl.'s Resp. Sep. State.*, No. 117, citing *Manni Dep.*, 75:22-76:22.)
18 The simple touching of Officer Hurtado constitutes a battery and violation of Penal
19 Code §§ 242 and 243(b). Moreover, given the chaos, with approximately six male
20 members of the wedding party arguing with the bouncers, Ms. Manni's decision to
21 touch Officer Hurtado's left shoulder to shift his attention away from Ms. Kulato
22 confirms probable cause to arrest Ms. Manni for willfully attempting to obstruct or
23 delay Officer Hurtado's performance of his duties, a violation of section 148. (*Manni
24 Dep.*, 64:12-65:22; *Pl.'s Resp. Sep. State.*, No. 21, (clarifying that "any 'verbal hostilities'
25 were between members of the wedding party and the bouncers, and were not directed
26 at police."); *Hurtado Dep.*, 15:14-16, 21:6-7, 23:1-2, 24:9-20.)

27 In light of these circumstances, the Court easily concludes that Officer Hurtado
28 had probable cause to arrest Ms. Manni when she "touched" Officer Hurtado's

1 shoulder in attempt to draw his attention away from the performance of his duties.
2 Accordingly, Defendants are entitled to summary adjudication on Ms. Manni's
3 unlawful arrest claim.

4
5 **B. Ms. Manni was not denied reasonable post-arrest medical care.**

6 Defendants seek summary adjudication of Ms. Manni's claim for the denial of
7 medical assistance. Claims for the denial of medical assistance are analyzed under the
8 Fourth Amendment. Tatum v. City and Cnty. of S.F., 441 F.3d 1090, 1098-99 (9th
9 Cir. 2006) (explaining that Fourth Amendment applies to such claims). The Fourth
10 Amendment requires officers to provide objectively reasonable post-arrest care to an
11 apprehended suspect. Id. at 1099.

12 For example, in Tatum, officers placed the handcuffed suspect on the ground,
13 and laid him on his side. After officers noticed that the suspect's eyes were bulging
14 and his breathing was heavy, they called for an ambulance. While waiting for the
15 ambulance, the suspect's breathing became shallow so the officers sent a second radio
16 message requesting that the ambulance be given priority. When paramedics arrived,
17 the suspect was no longer breathing and the suspect was pronounced dead. In the
18 Section 1983 action that followed, the suspect's mother argued that the officers
19 should have performed CPR. The Ninth Circuit disagreed:

20 [T]he critical inquiry is not whether the officers did all that they could have
21 done, but whether they did all that the Fourth Amendment requires. Here,
22 the officers promptly requested medical assistance, and the Constitution
23 required them to do no more. [Citation omitted.] We hold that it was
24 objectively reasonable for Officers Smith and Chan to request an
25 ambulance for Fullard, rather than performing CPR themselves.

26 Tatum, 441 F.3d at 1099.

27 Ms. Manni contends that she was denied appropriate post-arrest medical care
28 because Officer Hurtado "waited approximately ten minutes until he finally
summoned medical attention." (*Opp.*, 26:4-7.) Similar to plaintiff's claim in Tatum,
Ms. Manni's claim appears premised on the contention that Officer Hurtado could
have done more (i.e., acted quicker) in obtaining medical care. But Tatum clearly

1 stands for the proposition that the Fourth Amendment does not require officers to do
2 everything possible, but instead to act objectively reasonable. Based on the
3 undisputed facts, the Court finds Officer Hurtado provided objectively reasonable
4 care in obtaining medical care for Ms. Manni within 15 minutes.

5 First, although Officer Hurtado immediately believed he may have injured Ms.
6 Manni, she did not react to her arm breaking in such a way as to suggest she needed
7 urgent medical care. According to Ms. Manni, while Officer Hurtado “was pushing
8 my face pretty much against the trunk [of the patrol car and], I was saying ouch or
9 something like that.” (*Manni Dep.*, 79:24–80:1.) She then noticed that Officer
10 Hurtado took longer to handcuff her right wrist, but she did not know why. (*Id.*,
11 83:4–11.) But she did not say anything or react to the pop in her arm, which Officer
12 Hurtado felt. (*Hurtado Dep.*, 84:3–9, 86:6–8.) Ms. Manni further testified that it was
13 not until she was placed in the back of the patrol car that she realized her arm was
14 broken. (*Manni Dep.*, 84:9–11, 85:25–86:6.) However, she did not say anything or
15 try to alert anyone to the fact that she was injured. (*Id.*, 86:9–16.) Accordingly, while
16 Officer Hurtado knew he had injured Ms. Manni, her reaction did not suggest that
17 urgent medical care was needed.

18 Second, the undisputed facts also establish that when Ms. Manni’s arm broke,
19 Officer Hurtado believed the scene was getting out of hand and, therefore, was not
20 only confronted with having to contact paramedics. Ms. Manni described the scene
21 as chaotic, with approximately six male members of the wedding party engaged in
22 “verbal hostilities” with three or four bouncers. (*See Pl.’s Resp. Sep. State.*, No. 21,
23 (stating “‘verbal hostilities’ were between members of the wedding party and the
24 bouncers[.]”); *Manni Dep.*, 64:12–15, 64:25–65:22.) The officers were also confronted
25 with Ms. Kulato’s interference, and the men approaching Officer Hurtado as he was
26 arresting Ms. Manni. (*See Pl.’s Resp. Sep. State.*, Nos. 43, 44; *Sylvester Dep.*, 26:16–23.)
27 The officers’ urgent call for additional units is evidence that they felt the situation was
28 becoming unstable. (*See Sylvester Dep.*, 26:16–23; *Hurtado Dep.*, 56:4–6.) Thus,

1 although Officer Hurtado thought he had injured Ms. Manni, there is no dispute that
2 he also believed that he needed to calm the scene. (*Hurtado Dep.*, 49:22–25.)

3 Third, Ms. Manni testified that approximately 5 to 10 minutes after she was
4 put in the car, Officer Holland arrived to check on her. (*Manni Dep.*, 87:1–8.)
5 Approximately three to five minutes later, the ambulance arrived. (*Id.*, 87:15–88:2.)
6 Given Ms. Manni’s delayed reaction to her break, and the chaotic scene the officers
7 faced when Ms. Manni was arrested, the Court concludes that Officer Hurtado acted
8 objectively reasonable by securing medical attention for Ms. Manni within 15 minutes
9 of the time she was arrested.

10 For these reasons, the Court will grant Defendants’ motion with respect to Ms.
11 Manni’s claim for the denial of medical treatment.

12
13 **C. Factual disputes exist regarding Ms. Manni’s excessive-force claim.**

14 In determining whether an officer used excessive force, courts consider “the
15 nature and quality of the intrusion on the individual’s Fourth Amendment interests
16 against the countervailing governmental interests at stake.” Graham v. Connor, 490
17 U.S. 386, 396 (1989). Courts examine the nature of the crime, the threat to officers,
18 whether the suspect resists arrest, the amount of force used to arrest, the availability
19 of alternatives to the amount of force used, and the mental and emotional state of the
20 plaintiff. See Davis v. City of Las Vegas, 478 F.3d 1048, 1054-57 (9th Cir. 2007);
21 Deorle v. Rutherford, 272 F.3d 1272, 1282 (9th Cir. 2001). Although a court views
22 evidence in the light most favorable to the non-moving party in summary judgment,
23 “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective
24 of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”
25 Graham, 490 U.S. at 396. The applicable standard is “whether the officers’ actions
26 are ‘objectively reasonable’ in light of the facts and circumstances confronting them,
27 without regard to their underlying intent or motivation.” Id., at 397.

28

1 Here, Defendants’ argument that Officer Hurtado did not use excessive force is
2 premised on the contention that Ms. Manni resisted arrest. Specifically, Defendants
3 argue that Ms. Manni “struggled and tried to pull away from Officer Hurtado,” and
4 that she “ignore[d] [his] orders to give him her left arm.” (*P&A* [Doc. 46], 13:14–21.)
5 According to Defendants, “Officer Hurtado’s use of force in response to Plaintiff’s
6 *Active Resistance* and *Assaultive Behavior* was within the San Diego Police
7 Department’s Use of Force Procedure 1.04 and reasonable.” (*Id.*, 13:23–25.)

8 But Ms. Manni has provided evidence that contradicts Defendants’ claim that
9 she resisted and attempted to kick Officer Hurtado. During Ms. Manni’s deposition,
10 she denied attempting to pull away or struggle with Officer Hurtado, and stated that
11 she repeatedly told him that he was hurting her. (*Manni Dep.*, 78:21–79:16.) She also
12 denied attempting to kick him. (*Id.*, 127:18–23.) Joel Reveles, another member of
13 the wedding party who was at Moondoggies during the arrest, stated that Ms. Manni
14 never attempted to pull away from Officer Hurtado, was compliant with his attempts
15 to handcuff her, did not resist or do anything “at all to move away or avoid being
16 handcuffed,” and that “Ms. Manni never kicked Officer Hurtado or attempted to kick
17 Officer Hurtado.” (*Reveles Dec.* [Doc. 49-13], ¶¶ 3–13, 15.) Flora Manni, Plaintiff’s
18 sister, repeated these statements. (*See F. Manni Dec.* [Doc. 49-12], ¶¶ 4–14, 16.)

19 Defendants’ and Ms. Manni’s version of events concerning her arrest differ
20 significantly. Because on summary judgment the Court may not weight evidence or
21 resolve factual disputes, Defendants’ request for summary adjudication of Ms.
22 Manni’s excessive-force claim is denied.

23 24 **D. Qualified Immunity**

25 Defendants also seek summary adjudication based on qualified immunity.
26 “The doctrine of qualified immunity protects government officials ‘from liability for
27 civil damages insofar as their conduct does not violate clearly established statutory or
28 constitutional rights of which a reasonable person would have known.’” Pearson v.

1 Callahan, 555 U.S. 223, 231 (2009). “Qualified immunity balances two important
2 interests—the need to hold public officials accountable when they exercise power
3 irresponsibly and the need to shield officials from harassment, distraction, and
4 liability when they perform their duties reasonably.” Id.

5 In evaluating qualified immunity, the Court must evaluate two issues. First,
6 whether the facts show the violation of a constitutional right. Saucier v. Katz, 533
7 U.S. 194, 201 (2001). Second, whether the right was “clearly established” at the time
8 of defendant’s misconduct. Id. “Qualified immunity is applicable unless the official’s
9 conduct violated a clearly established constitutional right.” Pearson, 555 U.S. at 232.

10
11 1. **Qualified immunity applies to Ms. Manni’s claims for lack of**
12 **probable cause and denial of medical attention.**

13 In light of the finding that Officer Hurtado had probable cause to arrest Ms.
14 Manni and provided her with reasonable post-arrest medical care, the Court finds Ms.
15 Manni has failed to establish a violation of a constitutional right with respect to these
16 claims. Accordingly, Officer Hurtado is entitled to qualified immunity with respect to
17 Ms. Manni’s claim for lack of probable to arrest and the denial of medical attention.

18
19 2. **Disputed issues of fact exist with respect to Officer Hurtado’s**
20 **request for qualified immunity for the excessive-force claim.**

21 Defendants argue that Officer Hurtado is entitled to qualified immunity with
22 respect to Ms. Manni’s excessive-force claim. Defendants concede that the
23 constitutional right at issue was clearly established at the time of Ms. Manni’s arrest,
24 but argue that it was objectively reasonable for Officer Hurtado to believe his conduct
25 was lawful at the time. (*Reply* [Doc. 50], 5:6–8.)

26 But Defendants’ argument is based on the contention that Ms. Manni “actively
27 resisted and attempted to assault Officer Hurtado.” (*P&A*, 16:4–6.) As set forth
28

1 above, numerous disputed issues of fact exist regarding Ms. Manni's conduct.
2 Accordingly, summary adjudication is not appropriate with respect to this claim.

3
4 E. Summary adjudication is appropriate with respect to Ms. Manni's
5 Monell claim.

6 Defendants seek summary adjudication with respect to Ms. Manni's *Monell*
7 claim. In response, Ms. Manni has agreed to withdraw the claim. (*See Opp.*, 31:1-3.)
8 Accordingly, summary adjudication of Ms. Manni's *Monell* claim is appropriate.

9
10 F. Summary adjudication is appropriate with respect to Ms. Manni's
11 claims for false arrest, and certain negligence claims.

12 Defendants seek summary adjudication with respect to each of Ms. Manni's
13 state claims. With respect to Ms. Manni's false arrest, battery, and negligence claims,
14 the parties' arguments essentially repeat the arguments addressed above regarding Ms.
15 Manni's section 1983 claims. Accordingly, for the reasons already stated above, the
16 Court rules as follows on the state claims:

- 17 (1) Because Officer Hurtado had probable cause to arrest Ms. Manni, the
18 Court will grant Defendants' request summary adjudication of her claim
19 for false arrest and negligence (to the extent it is based on the lack of
20 probable cause).
- 21 (2) Because Ms. Manni was not denied reasonable post-arrest medical care,
22 the Court will grant Defendants' request for summary adjudication of
23 her negligence claim (to the extent its based on the failure to provide
24 adequate medical care).
- 25 (3) Because disputed issues of material fact exist regarding whether Officer
26 Hurtado used excessive force to arrest Ms. Manni, summary adjudication
27 is not appropriate with respect to her claim for batter or negligence (to
28 the extent its based on the force used to arrest her).

1 G. Ms. Manni has failed to produce evidence that she suffered severe
2 emotional distress.

3 Defendants seek summary adjudication of Ms. Manni’s claim for intentional
4 infliction of emotional distress. To prevail on this claim, Ms. Manni must establish:
5 (1) outrageous conduct by the Defendants; (2) their intent to cause or reckless
6 disregard of the probability of causing emotional distress; (3) Ms. Manni suffered
7 severe or extreme emotional distress; and (4) actual and proximate causation. Galvez
8 v. Kuhn, 933 F.2d 773, 779 (9th Cir. 1991). For conduct to be extreme and
9 outrageous, it must be “so extreme as to exceed all bounds of that usually tolerated in
10 a civilized community.” Cervantez v. J.C. Penney Co., 24 Cal.3d 579, 593 (1979).

11 Here, Defendants raise two arguments regarding this claim. First, Defendants
12 argue that Officer Hurtado’s “actions do not rise to the level of outrageous conduct or
13 recklessness within the meaning of the law.” (*P&A*, 24:6-7.) In support of this
14 argument, Defendants contend that “Officer Hurtado had probable cause to arrest
15 [Ms. Manni] and used reasonable force to effectuate the arrest and overcome her
16 resistance.” (*Id.*, 24:16-18.) Because disputed issues of material fact exist regarding
17 whether Officer Hurtado used excessive force to effectuate Ms. Manni’s arrest, this
18 argument is not persuasive.

19 Second, Defendants argue that Ms. Manni “has neither alleged nor submitted
20 facts to sustain” a finding that she suffered severe emotional distress. (*P&A*,
21 24:23-24.) The Court agrees.

22 In opposition, Ms. Manni states in her declaration that “I suffered severe
23 emotional distress as a result of this incident.” (*Manni Dec.* [Doc. 49-10], ¶ 28.) “A
24 declaration is too conclusory to be cognizable when it ‘state[s] only conclusions, and
25 not ‘such facts as would be admissible in evidence.’” Corkill v. Preferred Employers
26 Grp., LLC, 2011 WL 5975678 (S.D. Cal. Nov. 28, 2011) (citing United States v.
27 Shumway, 199 F.3d 1093, 1104 (9th Cir.1999). When a “declaration state[s] only
28 conclusions, and not ‘such facts as would be admissible in evidence,” a court may

1 disregard the self-serving declaration for purposes of summary judgment. S.E.C. v.
2 Phan, 500 F.3d 895, 909 (9th Cir. 2007).

3 Ms. Manni's declaration is insufficient because the statement that she "suffered
4 severe emotional distress as a result of this incident" is conclusory and she fails to
5 identify any supporting facts. For example, there is no indication that Ms. Manni has
6 had problems sleeping since the incident, has seen a psychologist as a result of the
7 incident, or any other fact suggesting she suffered emotional distress. Because Ms.
8 Manni identifies no facts and cites no evidence suggesting that she suffered emotional
9 distress, summary adjudication is appropriate as to this claim.

10
11 **H. Disputed issue of material fact exist regarding Ms. Manni's Bane Act**
12 **claim.**

13 Defendants seek summary adjudication of Ms. Manni's claim under California
14 Civil Code § 52.1(b), the Bane Act. In support of this claim, Defendants argue that
15 the elements of a Section 52.1 excessive-force claim are essentially identical to those of
16 a Section 1983 excessive-force claim. (*P&A*, 25:19-20, citations omitted.)
17 Accordingly, for the reasons stated above, the Court finds disputed issues of material
18 fact exist with respect to Ms. Manni's Bane Act claim.

19
20 **IV. CONCLUSION & ORDER**

21 For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES**
22 **IN PART** Defendants' motion [Doc. 46], and **ORDERS** as follows:

- 23 (1) Summary adjudication is **GRANTED** as to Plaintiff's 1st claim
24 for Unreasonable Search and Seizure - Detention and Arrest (42 U.S.C.
25 § 1983);
26 (2) Summary adjudication is **GRANTED** as to Plaintiff's 3rd claim for
27 Denial of Medical Care (42 U.S.C. § 1983);
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- (3) Summary adjudication is **GRANTED** as to Plaintiff's 4th claim for Municipal Liability for Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983);
- (4) Summary adjudication is **GRANTED** as to Plaintiff's 5th claim for False Arrest/False Imprisonment;
- (5) Summary adjudication is **GRANTED** as to Plaintiff's 7th claim for Negligence, to the extent it is based on the lack of probable cause to arrest and the denial of medical care; and
- (6) Summary adjudication is **GRANTED** as to Plaintiff's 8th claim for Intentional Infliction of Emotional Distress.

The motion is **DENIED** as to all remaining issues.

IT IS SO ORDERED.

DATE: November 25, 2013



HON. THOMAS J. WHELAN
United States District Court
Southern District of California