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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DEON EDWARDS and LAKEASHA
12 EDWARDS,
13 Plaintiffs,
14 v.
15 MIRACOSTA COLLEGE et al.,
16 Defendants.

Case No.: 3:16-cv-01024-BEN-JMA

ORDER:

(1) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS (ECF No. 27); and

(2) DENYING PLAINTIFF'S MOTION TO CLARIFY THE RECORD (ECF No. 37)

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20 Plaintiffs Deon Edwards and Lakeasha Edwards, husband and wife respectively,
21 filed a Second Amended Complaint ("SAC") against Defendants Sunita Cooke, Dick
22 Robertson, Robert Norcross, Ralph Garcia, Ubense Perez, Bill Waldrop, and James
23 Beckman.¹ The Defendants are employees of MiraCosta Community College District
24 ("MiraCosta"). Mr. Edwards alleges violations of his due process rights when he was
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28 ¹ Plaintiffs' SAC does not bring claims against MiraCosta College.

1 suspended from MiraCosta in December 2015. Mr. and Mrs. Edwards also plead
2 violations of their Fourth Amendment rights against unreasonable searches.

3 Currently before the Court is Defendants' Motion to Dismiss Plaintiffs' SAC
4 pursuant to Federal Rule of Civil Procedure 12(b)(6). (MTD, ECF No. 27). Plaintiffs
5 filed an Opposition to the Motion (Opp'n, ECF No. 30) and Defendants filed a Reply
6 (Reply, ECF No. 35). Plaintiffs filed three Notices of Errata. (ECF Nos. 31, 38, 39).
7 Additionally, Plaintiffs filed a Motion to Clarify the Record Regarding the Motion to
8 Dismiss (ECF No. 37) and, almost four months after the motion to dismiss was filed, an
9 Objection to Defendants' Request for Judicial Notice of Exhibit #10 (ECF No. 40).
10 Defendants filed a response to Plaintiffs' Objection. (ECF No. 41).

11 Having considered the allegations of the SAC, the parties' arguments, and the law,
12 the Court grants in part and denies in part Defendants' motion to dismiss.

13 **BACKGROUND**

14 **I. Introduction of Extrinsic Evidence**

15 In the briefing on the motion to dismiss, Plaintiffs and Defendants each introduced
16 extrinsic evidence outside the pleadings. The evidence includes multiple declarations,
17 exhibits attached to declarations, and Defendants' request for judicial notice. When
18 deciding a Rule 12(b)(6) motion to dismiss, "courts generally consider only the
19 allegations contained in the complaint, exhibits attached to [or incorporated by reference
20 into] the complaint, and matters" of judicial notice. *Outdoor Media Grp., Inc. v. City of*
21 *Beaumont*, 506 F.3d 895-899-900 (9th Cir. 2007); *Van Buskirk v. Cable News Network*,
22 284 F.3d 977, 980 (9th Cir. 2002). However, "[i]f, on a motion under Rule 12(b)(6) . . . ,
23 matters outside the pleadings are presented to *and not excluded by the court*, the motion
24 must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d)
25 (emphasis added).

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1 The Court declines to convert the motion to dismiss to a motion for summary
2 judgment.² The Court will not consider extrinsic evidence beyond what is allowable on a
3 Rule 12(b)(6) motion. In this instance, that means the Court will not consider the parties'
4 various declarations and, instead, will only consider the allegations of the SAC and
5 proper matters of judicial notice. The Court thus **DENIES** Plaintiff's motion to clarify
6 the record. (ECF No. 37).

7 Judicial notice may be taken of a fact not subject to reasonable dispute because it
8 either is generally known within the trial court's territorial jurisdiction or can be readily
9 determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid.
10 201(b). Upon reviewing the parties' submissions, the Court takes judicial notice of
11 exhibits 1 through 7 of Defendants' request for judicial notice.

12 Exhibits 1 through 6 are certified copies of court records that detail Mr. Edwards's
13 criminal history as relevant to the allegations of the SAC. Plaintiffs do not dispute the
14 records. *See Shaw v. Hahn*, 46 F.3d 1128, 1128 n.1 (9th Cir. 1995) (explaining that court
15 may take judicial notice of matters of public record, such as court orders).

16 Exhibit 7 is a copy of MiraCosta's academic calendar for the 2015-2016 school
17 year. The calendar is publicly available online. Defendants ask the Court to take judicial
18 notice of the fact that Fall 2015 final exams occurred from December 14 through
19 December 19, 2015, and that the campus was closed from December 24, 2015 to January
20 1, 2016. Plaintiffs also ask this Court to consider a publicly available copy of the Fall
21 2015 final exam schedule, showing that the college administered final exams from
22 December 14 to 19, 2015. Because the parties do not dispute the dates of the final exams,
23 the Court takes judicial notice of this fact. The Court declines to take judicial notice of
24 the fact of when the campus was closed because such notice is unnecessary to resolve the
25 motion.

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28 ² The Court takes no position as to potential conversion of any future motions to dismiss.

1 **II. Facts³ and Procedural History**

2 On May 26, 2009, Deon Edwards pled guilty to a felony violation of California
3 Penal Code section 246.3(a) for unlawfully discharging a firearm in a grossly negligent
4 manner and a misdemeanor violation of California Vehicle Code section 23152(a) for
5 driving under the influence of alcohol. (Defs.’ RJN, Ex. 1). Pursuant to the terms of his
6 guilty plea, Mr. Edwards was placed on probation, the terms of which prohibited him
7 from possessing a firearm and required him to submit his “person, vehicle, residence,
8 property, personal effects, computers, and recordable media to search at any time with or
9 without a warrant, and with or without reasonable cause, when required by probation
10 officer or other law enforcement officer.” (Defs.’ RJN, Ex. 2).

11 On June 21, 2012, the Superior Court of California found that Mr. Edwards had
12 violated the terms of his probation, summarily revoked his probation, and issued a bench
13 warrant for his arrest without bail. (Defs.’ RJN, Ex. 3). Under California law, the terms
14 of Mr. Edwards’s probation remained in effect pending his arrest. *See People v. Barkins*,
15 81 Cal. App. 3d 30, 32-33 (1978).

16 At some point, Mr. Edwards enrolled as a student at MiraCosta. (SAC ¶ 2). He
17 alleges that campus police officers “attempted to search” his cellular phone while he was
18 “in custody” on November 23, 2015 and December 2, 2015. (SAC ¶¶ 13, 13a, 13b).
19 Later, on December 7, 2015, Mr. Edwards was arrested on the warrant and booked into
20 jail. (Defs.’ RJN Ex. 4). On the same day, MiraCosta’s Vice President of Student
21 Services, Defendant Dick Robertson, suspended Mr. Edwards from campus for ten days.
22 (SAC ¶ 5). Mr. Edwards was not provided an opportunity to be heard, and Dr. Robertson
23 informed Mr. Edwards that he could not appeal. (*Id.* ¶ 7). The basis for the immediate
24 suspension was “information provided to the Campus Police indicat[ing] [Mr. Edwards
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27 ³ The Court is not making any findings of fact, but rather, summarizing the relevant
28 allegations of the Second Amended Complaint and matters of judicial notice for purposes
of evaluating Defendants’ Motion to Dismiss.

1 is] a threat to others.” (*Id.* ¶ 8). Mr. Edwards’s detention and suspension overlapped
2 with his final exam dates for the Fall 2015 term, prohibiting him from taking his exams.
3 (*Id.* ¶ 6; Defs.’ RJN Exs. 5-7).

4 Also on December 7, 2015, campus police officers searched a residence at 145
5 Canyon Drive, #239, Oceanside, CA 92045. (*Id.* ¶ 14). Mrs. Edwards resided at this
6 address at the time, but Mr. Edwards did not. (*Id.* ¶¶ 14, 17). The officers did not have a
7 warrant to search the home, and Mrs. Edwards was not home at the time. (*Id.* ¶¶ 15, 16).
8 Plaintiffs’ relatives were present when the officers arrived and did not consent to the
9 search. (*Id.* ¶ 16). While in Mrs. Edwards’s home, the officers damaged Mrs. Edwards’s
10 bed and dresser. (*Id.* ¶ 19.) She paid \$1,000 to repair the damaged items. (*Id.*)

11 On December 14, 2015, Mr. Edwards appeared in state court on his arrest. (Defs.’
12 RJN Ex. 5). He admitted a probation violation and his probation was formally revoked,
13 except his Fourth Amendment waiver remained in effect. (*Id.*) He was remanded to
14 custody without bail. (*Id.*) On December 15, 2015, while Mr. Edwards was still in
15 custody, a MiraCosta police officer “attempted to search” a dating application on Mr.
16 Edwards’s cell phone. (SAC ¶ 13c). Mr. Edwards next appeared in court on January 4,
17 2016. (Defs.’ RJN Ex. 6). He was released from custody and his Fourth Amendment
18 waiver was deleted. (*Id.*)

19 Dr. Robertson expunged Mr. Edwards’s suspension from his disciplinary record on
20 March 8, 2016. (SAC ¶ 9). On April 1, 2016 and May 2, 2016, MiraCosta’s Committee
21 on Exceptions granted Mr. Edwards’s petition to retroactively withdraw from the Fall
22 2015 term. (*Id.* ¶ 10). However, he was still charged for the term and the class
23 withdrawals have negatively affected his grade point average. (*Id.*) Mr. Edwards alleges
24 that the class withdrawals have resulted in him being placed on academic probation,
25 being ineligible for academic scholarships, and losing some of his post-9/11 GI Bill
26 benefits. (*Id.* ¶¶ 11-12, 24).

27 In April 2016, Plaintiffs filed a Complaint in federal court. (ECF No. 1). Before
28 Defendants responded, Plaintiffs amended their complaint. (ECF No. 4). Defendants

1 moved to dismiss the First Amended Complaint. (ECF No. 6). Before the Court ruled on
2 the motion to dismiss, Plaintiffs filed a motion to amend their First Amended Complaint.
3 (ECF No. 14). This Court granted Plaintiffs leave to file a second amended complaint
4 but explained that Plaintiffs “must make clear which claims are asserted against which
5 defendants,” must make clear “the type of relief sought on particular claims or as to
6 particular defendants,” and “must attempt to address the other pleading deficiencies
7 identified in the Motion to Dismiss.” (ECF No. 25).

8 Thereafter, Plaintiffs filed their Second Amended Complaint. (ECF No. 26). Mr.
9 Edwards sues Dr. Robertson and MiraCosta President Sunita Cooke for depriving him of
10 his due process protections by suspending him on insufficient grounds and failing to give
11 him an opportunity to be heard. On this claim, he seeks (1) a declaration that the
12 suspension was unconstitutional and against California law; (2) expungement of all
13 grades from the Fall 2015 term, relief which he seeks against President Cooke and Dr.
14 Robertson in their official capacities; (3) to be taken off academic probation and removed
15 from any record of having been on it, against Cooke and Robertson in their official
16 capacities; and (4) damages for all tuition, fees, and expenses from the Fall 2015 term, for
17 the constitutional violation, and for lost scholarship opportunities, against Cooke and
18 Robertson in their individual capacities.

19 Mr. Edwards’s second claim for relief alleges that campus police officers James
20 Beckman and Ubense Perez unreasonably searched his cellular phone three times, and
21 that campus police chief Robert Norcross knew or should have known about the searches
22 but failed to stop them. He seeks a declaration that the three searches were
23 unconstitutional and damages against Chief Norcross, Sergeant Perez, Sergeant Garcia,
24 Officer Beckman, and Officer Waldrop in their individual capacities.

25 Mrs. Edwards brings the third claim against Sergeant Perez, Sergeant Garcia,
26 Officer Waldrop, Officer Beckman, and Chief Norcross for the allegedly unreasonable
27 search of her home. She seeks a declaration that the search as unconstitutional and
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1 damages against the officers in their individual capacities.

2 **LEGAL STANDARD**

3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) must be
4 granted where the pleadings fail to state a claim upon which relief can be granted. When
5 considering a Rule 12(b)(6) motion, the court must “accept as true facts alleged and draw
6 inferences from them in the light most favorable to the plaintiff.” *Stacy v. Rederite Otto*
7 *Danielsen*, 609 F.3d 1033, 1035 (9th Cir. 2010). A plaintiff must not merely allege
8 conceivably unlawful conduct but must allege “enough facts to state a claim to relief that
9 is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim
10 is facially plausible ‘when the plaintiff pleads factual content that allows the court to
11 draw the reasonable inference that the defendant is liable for the misconduct alleged.’”
12 *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Ashcroft v. Iqbal*, 556
13 U.S. 662, 678 (2009)). “Threadbare recitals of the elements of a cause of action,
14 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

15 **DISCUSSION**

16 Defendants move to dismiss each claim for relief. The Court addresses each claim
17 in turn.

18 **I. Claim 1: Deprivation of Due Process**

19 Mr. Edwards claims that Defendants Robertson and Cooke violated his due process
20 rights by suspending him on December 7, 2015 for ten days without providing him with
21 an opportunity to be heard. Defendants counter that Plaintiff fails to plead a claim upon
22 which relief can be granted because Defendants’ actions were not the cause of this
23 alleged deprivation. Rather, they argue that Mr. Edwards’s own criminal conduct and
24 resulting incarceration throughout the exam period and into January 2016 caused him to
25 be unable to be heard, to miss his exams, and to suffer the additional consequences as a
26 result of the missed exams. Defendants also argue that the claim should be dismissed
27 because President Cooke and Dr. Robertson are entitled to Eleventh Amendment
28 immunity and the SAC fails to state facts to support a claim against them.

1 Plaintiff brings a Fourteenth Amendment procedural due process claim. “A
2 procedural due process claim has two elements: deprivation of a constitutionally
3 protected liberty or property interest and denial of adequate procedural protection.”
4 *Krainski v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, 616 F.3d 963,
5 970 (9th Cir. 2010) (internal citation omitted). “A liberty interest may arise from the
6 Constitution itself, by reason of guarantees implicit in the word ‘liberty,’ or it may arise
7 from an expectation or interest created by state laws or policies.” *Wilkinson v. Austin*,
8 545 U.S. 209, 221 (2005) (internal citations omitted). Protected property interests are not
9 created by the Constitution; rather, they are created and defined by independent sources
10 such as state statutes and rules entitling a citizen to certain benefits. *Goss v. Lopez*, 419
11 U.S. 565, 572-73 (1975) (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

12 The Supreme Court has held that where state statute provides for free education at
13 the elementary and secondary levels, a student has a constitutionally protected right to
14 that education. *See Goss*, 4119 U.S. at 573-74. However, “[t]here is a dearth of binding
15 case law addressing the issue of whether there is a constitutionally protected right to
16 continued enrollment in a state college or university.” *Hunger v. Lassner*, No. 12-00549,
17 2014 WL 12599630, at *9 (D. Haw. Aug. 30, 2014). Courts have often assumed, without
18 deciding, that students pursuing post-secondary education have a constitutionally
19 protected liberty or property interest in continued enrollment. *See, e.g., Bd. of Curators*
20 *of Univ. of Mo. v. Horowitz*, 435 U.S. 78 (1978) (“We need not decide, however, whether
21 respondent’s dismissal deprived her of a liberty interest in pursuing a medical career.
22 Nor need we decide whether respondent’s dismissal infringed any other interest
23 constitutionally protected against deprivation without procedural due process. Assuming
24 the existence of a liberty or property interest, respondent has been awarded at least as
25 much due process as the Fourteenth Amendment requires.”); *Regents of Univ. of Mich. v.*
26 *Ewing*, 474 U.S. 214, 222-23 (1985) (following *Horowitz* and “assum[ing] the existence
27 of a constitutionally protectible property right in [respondent’s] continued enrollment”);
28 *Hess v. Bd. of Trs. of S. Ill. Univ.*, 839 F.3d 668, 673 (7th Cir. 2016) (“We will assume

1 for present purposes that [plaintiff] did have such a [constitutionally protected] interest,
2 and that defendants therefore deprived him of this interest in removing [plaintiff] from
3 school.”); *Hill v. Univ. of Kentucky*, 978 F.2d 1258, *3 (6th Cir. 1993) (“[W]e need not
4 consider whether plaintiff has established the existence of a property interest in his
5 medical school career, because even assuming the existence of such an interest, plaintiff
6 has been accorded at least as much due process as the Fourteenth Amendment requires.”);
7 *Lachtman v. Regents of Univ. of Cal.*, 158 Cal. App. 4th 187, 199 (2007) (“No United
8 States or California Supreme Court opinion holds a student has a property or liberty
9 interest in continued enrollment in good standing in an academic program.”).

10 Plaintiff does not explain what protected liberty or property interest he seeks to
11 vindicate. And the Court is not aware of any California statutes creating a basis for
12 entitlement to post-secondary education. Nevertheless, taking all of Plaintiff’s
13 allegations as true and construing them in his favor, the Court finds that he has plausibly
14 alleged a constitutionally protected liberty interest sufficient to survive a motion to
15 dismiss. In *Goss*, the Supreme Court explained that “[w]here a person’s good name,
16 honor, or integrity is at stake because of what the government is doing to him, the
17 minimal requirements of the [Due Process] Clause must be satisfied.” 419 U.S. at 574.
18 School suspensions based on charges of misconduct “could seriously damage the
19 students’ standing with their fellow pupils and their teachers as well as interfere with later
20 opportunities for higher education and employment.” *Id.* at 575. In this case, Plaintiff
21 has alleged that the suspension has negatively affected his grade point average, resulted
22 in him being placed on academic probation, and caused him to be ineligible for academic
23 scholarships. A reasonable inference from these allegations is that Plaintiff’s “later
24 opportunities for higher education and employment” have been affected by the
25 suspension. Plaintiff has pled a plausible liberty interest.

26 Once a due process right is recognized, the Supreme Court has held that with a
27 suspension of 10 days or less, such as the one here, due process requires that the student
28 be given oral or written notice of the charges against him and, if he denies them, an

1 explanation of the evidence the authorities have and an opportunity to present his version.
2 *Goss*, 419 U.S. at 581. Generally, notice and hearing should precede the student’s
3 removal from school, but if prior notice and hearing are not feasible, as where the
4 student’s presence endangers persons or property or threatens the disruption of the
5 academic process, thus justifying immediate removal from school, “the necessary notice
6 and rudimentary hearing should follow as soon as practicable.” *Id.* at 582-83.

7 Here, Dr. Robertson notified Plaintiff on December 7, 2015 that he would be
8 immediately suspended. Plaintiff alleges that he was not provided any opportunity to be
9 heard and Dr. Robertson told him that he could not appeal. Although Plaintiff alleges the
10 college took some actions in March, April, and May 2016 to correct parts of his
11 disciplinary and academic record, the Court cannot conclude as a matter of law that these
12 events constituted the necessary hearing “as soon as practicable” after the suspension.
13 Plaintiff has sufficiently alleged denial of adequate procedural protections.

14 Thus, Plaintiff has adequately pled the elements of a procedural due process
15 violation. Defendants’ arguments about causation speak to damages. Plaintiff may not
16 be able to recover damages or other relief for the alleged injuries that flowed from the
17 alleged deprivation—the missed exams and resultant effects on his academic record—
18 because his arrest and detention may be the proximate cause of those injuries. Indeed,
19 Plaintiff may only be entitled to nominal damages. *Carey v. Piphus*, 435 U.S. 247, 266
20 (1978) (holding that the denial of procedural due process, even if student’s suspension
21 was justified, is actionable for nominal damages without proof of actual injury). Plaintiff
22 will have to prove his damages. Plaintiff’s burden of proof, however, does not disturb the
23 Court’s present finding that he has sufficiently alleged a claim.

24 Defendants’ arguments about Eleventh Amendment immunity fare no better. State
25 officials sued in their official capacity for damages are entitled to Eleventh Amendment
26 immunity. *Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007). However, official
27 capacity suits for prospective injunctive relief are not barred by the Eleventh
28 Amendment. *Id.* The Ninth Circuit has held that a student seeks prospective injunctive

1 relief when he seeks an injunction to expunge his disciplinary record of past violations.
2 *Id.* The appellate court explained that the “injunctions sought are not limited merely to
3 past violations: they serve the purpose of preventing present and future harm to” the
4 student. *Id.* Similarly here, Mr. Edwards seeks injunctive relief to expunge his Fall 2015
5 grades and be removed from academic probation. Although these alleged injuries
6 occurred in the past, they have continued to have an effect on his academic standing at
7 MiraCosta. Therefore, the requested relief “cannot be characterized solely as retroactive
8 injunctive relief” and is not barred by the Eleventh Amendment. *Id.*

9 While Defendants’ first two arguments fail, their argument about the sufficiency of
10 the allegations against President Cooke is well taken. A defendant cannot be held liable
11 under section 1983 for unlawful conduct that he did not actively engage in. *See Taylor v.*
12 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (“There is no respondeat superior liability
13 under section 1983.”). Plaintiff sues President Cooke for her supervisory role over Dr.
14 Robertson, rather than her direct participation in some violation of the law. (SAC ¶ 20).
15 The SAC pleads only conclusory allegations that President Cooke “knew or should have
16 known about Dr. Robertson’s actions.” (*Id.*) Conclusory allegations are insufficient to
17 plausibly plead a claim. *Iqbal*, 556 U.S. at 678.

18 Therefore, Defendants’ motion is **DENIED IN PART** and **GRANTED IN PART**.
19 The procedural due process claim against Dr. Robertson survives, but President Cooke is
20 **DISMISSED**.

21 **II. Claim 2: Unreasonable Searches of Mr. Edwards’s Phone**

22 Mr. Edwards alleges that Officer Beckman and Sergeant Perez unreasonably
23 searched his cellular phone on three occasions, and that Chief Norcross knew or should
24 have known about the searches. Those searches occurred on November 23, 2015, when
25 “Officer Beckman attempted to search Mr. Edwards’s Facebook account,” on December
26 2, 2015, when Sergeant “Perez attempted to search Mr. Edwards’s photo Gallery,” and on
27 December 15, 2015, when “Officer Beckman attempted to search Mr. Edwards’s Plenty
28 of Fish application, which is a dating application.” Mr. Edwards alleges that he was “in

1 custody” for all three searches. Defendants move to dismiss on the grounds that Mr.
2 Edwards consented to the searches by accepting the terms of his probation agreement,
3 thereby waiving his Fourth Amendment rights.⁴

4 Defendants’ argument is unavailing at this stage of the proceedings. “A Fourth
5 Amendment search waiver cannot provide a justification for a search of a probationer
6 where the officers were unaware of the waiver before they undertook the search.” *United*
7 *States v. Job*, 851 F.3d 889, 896 (9th Cir. 2017). Plaintiff has not alleged any facts about
8 Defendants’ knowledge of his waiver before the search. Therefore, the Court cannot
9 conclude that the searches were reasonable as a matter of law solely on the basis of Mr.
10 Edwards’s Fourth Amendment search waiver.

11 Plaintiff’s Fourth Amendment claims can be dismissed for a more straightforward
12 reason, however. He fails to allege sufficient facts to state a claim for an unreasonable
13 search. First, the SAC alleges that the campus police officers “attempted to search” Mr.
14 Edwards’s phone—not that they did, indeed, search the phone. Second, the SAC lacks
15 facts to suggest that the attempted searches were unreasonable. For instance, Plaintiff
16 does not allege that the searches were warrantless or without consent or exigency.

17 The second claim for relief is **DISMISSED**.

18 **III. Claim 3: Unreasonable Search of Mrs. Edwards’s Home**

19 Mrs. Edwards alleges that her Fourth Amendment rights were violated when her
20 home was searched without a warrant, probable cause, consent, or exigent circumstances.
21 Defendants move to dismiss on the grounds that Mr. Edwards consented to the search by
22 agreeing to a Fourth Amendment waiver as a term of probation. As discussed above, the
23 Court rejects this argument.⁵

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26 ⁴ Defendants also argue that Mr. Edwards provided verbal consent to search his cellular
27 phone. The Court does not address this ground because Defendants base their argument
28 on facts of which this Court has not taken judicial notice.

⁵ Defendants also argue that Mr. Edwards provided Defendants with Mrs. Edwards’s
address prior to the search and verbally consented to the search. As with Mr. Edwards’s

1 Defendants also argue that Mrs. Edwards has not plead a Fourth Amendment
2 violation because her allegations about the destruction to her home are insufficient to
3 state a claim. Defendants’ argument again goes to proof of damages, not pleading
4 sufficiency. It is true that “destruction of property during a search does not necessarily
5 violate the Fourth Amendment. Rather, only unnecessarily destructive behavior, beyond
6 that necessary to execute a warrant effectively, violates the Fourth Amendment.” *Mena*
7 *v. City of Simi Valley*, 226 F.3d 1031, 1041 (9th Cir. 2000) (internal citations and
8 quotations omitted). Plaintiff will have to prove the damages she claims to recover them,
9 but she has pled a plausible Fourth Amendment claim. *See Brigham City, Utah v. Stuart*,
10 547 U.S. 398, 403 (2006) (“It is a basic principle of Fourth Amendment law that searches
11 and seizures inside a home without a warrant are presumptively unreasonable.”).

12 The motion to dismiss the third claim is **DENIED**.

13 CONCLUSION

14 Defendants’ motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**.
15 (ECF No. 27). The motion to dismiss Claim 1 is **DENIED** as to Dr. Robertson, but
16 **GRANTED** as to President Cooke. President Cooke is **DISMISSED**. The motion to
17 dismiss Claim 2 is **GRANTED** and this claim is **DISMISSED**. The motion to dismiss
18 Claim 3 is **DENIED**.

19 Plaintiff’s motion to clarify the record is **DENIED**. (ECF No. 37).

20 The Court must consider whether to grant Plaintiffs leave to amend. Leave to
21 amend under Rule 15(a)(2) should be “freely give[n] . . . when justice so requires.”
22 Although Plaintiffs have filed three versions of their complaint, and leave to amend
23 would give them a fourth try, this Order is the first time that the Court has addressed the
24 merits of Plaintiffs’ allegations. Moreover, it appears that some of the deficiencies noted
25 by the Court may be corrected, thus amendment is not futile. The Court grants Plaintiffs
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28 second claim, the Court has not taken judicial notice of this extrinsic evidence and does
not consider this argument.

1 leave to file a third amended complaint. Plaintiffs may file a third amended complaint
2 within seven (7) days of the signature date of this Order.

3 **IT IS SO ORDERED.**

4 Dated: June 20, 2017

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6 Hon. Roger T. Benitez
7 United States District Judge
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