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

MELVIN BROWN, II, an individual,
Plaintiff,
v.
CITY OF SAN DIEGO, a municipal
corporation; et al.,
Defendants.

Case No.: 3:17-cv-00600-H-WVG

**ORDER DENYING DEFENDANTS’
MOTION FOR JUDGMENT ON THE
PLEADINGS**

On March 24, 2017, Plaintiff Melvin Brown, II (“Plaintiff”), filed a complaint against the City of San Diego (“Defendant City”), Officer George Smith, Officer Radford Pajita, and Officer Cassandra Heil (“Defendant Officers”) (collectively, “Defendants”), alleging various causes of action related to an incident with police that occurred on November 24, 2016. (Doc. No. 1.) Defendants filed their answer on April 19, 2017. (Doc. No. 4.) On July 21, 2017, Defendants moved for judgment on the pleadings and requested that the Court, without converting Defendants’ motion into a summary judgment motion, exercise its discretion to consider video of the underlying incident taken from Defendant Officers’ body-worn cameras. (Doc. No. 10.) On September 1, 2017, Plaintiff filed his response in opposition to the motion. (Doc. No. 16.) Defendants replied on September 11, 2017. (Doc. No. 18.)

1 On September 1, 2017, the parties filed a joint motion to dismiss certain parties and
2 claims. (Doc. No. 15.) Specifically, the parties jointly moved to dismiss Defendant City
3 and Defendant Officers Pajita and Heil, with prejudice, and to dismiss all causes of action
4 except the first cause of action against Defendant Officer Smith for excessive force
5 pursuant to 42 U.S.C. § 1983. (Doc. No. 15 at 2-3.) On September 5, 2017, the Court
6 granted the parties' joint motion to dismiss for good cause shown and stated that the only
7 remaining claim is the first cause of action against Defendant Officer Smith. (Doc. No. 17.)

8 **BACKGROUND**¹

9 Shortly after midnight on November 24, 2016, Plaintiff had an argument with his
10 fiancé and, after breaking a plate and putting some personal items in his backpack, left
11 their apartment. (Doc. No. 3 at 3.) Plaintiff's fiancé, Georgina Flores, called the San
12 Diego Police Department, which reported Ms. Flores's call as a 415 (disturbing the
13 peace). (Id.) Defendant Officers Smith, Pajita, and Heil were dispatched to the scene,
14 entered the apartment, and locked the door. (Id. at 4.) Each Defendant Officer was
15 wearing a body-worn camera at the time. (Id. at 6.) Plaintiff was still nearby and saw the
16 police cars arrive at the apartment. (Id. at 4.) Concerned, Plaintiff returned to the
17 apartment to check on Ms. Flores. (Id.)

18 Plaintiff knocked on the apartment door, and Defendant Officer Smith
19 "immediately drew a telescoping metal baton." (Id.) Defendant Officers Smith and Pajita
20 opened the door, and as Plaintiff started to comply with Officer Pajita's instruction to
21 remove his backpack, Officers Smith and Pajita grabbed Plaintiff and tried to wrestle him
22 to the ground. (Id.) Defendant Officer Smith started beating Plaintiff "viciously and
23 sadistically" with his metal telescoping baton. (Id.) Plaintiff was on the ground, "trying to
24 protect himself," but Defendant Officer Smith continued, hitting Plaintiff in the head,
25 arms and legs. (Id.) Plaintiff was bleeding on his shin and head, and was transported to
26 UCSD Medical Center for medical care. (Id.) He was later charged with assault with a
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28 ¹ The following factual allegations are found in Plaintiff's complaint. (Doc. No. 3)

1 deadly weapon (Cal. Penal Code § 245(a)(1)), threatening to kill Ms. Flores (Cal. Penal
2 Code § 422(a)), and resisting arrest (Cal. Penal Code § 148(a)(1)). (Id. at 5.)

3 4 DISCUSSION

5 **I. LEGAL STANDARDS**

6 **A. Motion for Judgment on the Pleadings**

7 Federal Rule of Civil Procedure 12(c) permits a party to move for judgment on the
8 pleadings “[a]fter the pleadings are closed—but early enough not to delay trial.” Fed. R.
9 Civ. P. 12(c). “Judgment on the pleadings is properly granted when there is no issue of
10 material fact in dispute, and the moving party is entitled to judgment as a matter of law.”
11 Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009). The Court applies the same standard
12 to a Rule 12(c) motion for judgment on the pleadings as it applies to a Rule 12(b)(6) motion
13 to dismiss. United States v. In re Seizure of One Blue Nissan Skyline Auto., 683 F. Supp.
14 2d 1087, 1089 (C.D. Cal. 2010). The Court “must accept all factual allegations in the
15 complaint as true and construe them in the light most favorable to the non-moving party.”
16 Fleming, 581 F.3d at 925.

17 When deciding a motion for judgment on the pleadings, the Court may consider
18 materials that weren’t “physically attached to the complaint” if “the [materials’]
19 authenticity is not contested and the plaintiff’s complaint necessarily relies on them.” See
20 Sams v. Yahoo! Inc., 713 F.3d 1175, 1179 (9th Cir. 2013).

21 **II. ANALYSIS**


22 As an initial matter, the Court declines to consider the body-worn camera video
23 evidence when deciding Defendants’ motion. Plaintiff asserts there is a “factual dispute as
24 to what is shown on the videos” and contests the video evidence’s authenticity, stating that
25 he does not, for example, know whether “this video is all the video in the case” or whether
26 the video has been edited. (Doc. No. 16 at 5-6.) Thus, Defendants’ reliance on Lihosit v.
27 Flam is misplaced. (Doc. No. 10-1 at 7.) In Lihosit, the court considered body-worn camera
28 video evidence when deciding a Rule 12(b)(6) motion to dismiss because the video

1 evidence was “essential to a full understanding of the events underlying” the complaint
2 and, importantly, the plaintiff did not dispute the video evidence’s authenticity. 2016 WL
3 2865870, at *3 (D. Ariz. May 17, 2016); see also Covert v. City of San Diego, 2017 WL
4 1094020, at *5 (S.D. Cal. Mar. 23, 2017) (same). If Defendants wish to file a motion for
5 summary judgment, they are free to do so after the record is more fully developed. At this
6 point, however, the Court will not consider the video evidence.

7 Accepting, as it must, all factual allegations in the complaint as true and construing
8 those allegations in the light most favorable to the non-moving party, the Court concludes
9 there is a material fact issue whether Defendant Officer Smith used unreasonable force
10 under the circumstances. See Graham v. Connor, 490 U.S. 386, 396 (1989). In his
11 complaint, Plaintiff alleged that Defendant Officer Smith used excessive force “by
12 administering holds, strikes, forcing [Plaintiff] to the ground, and multiple full-force baton
13 strikes to [Plaintiff’s] body and head with a telescoping metal baton, while [Plaintiff] was
14 defenseless, compliant, and not resisting, in response to a disturbing the peace call. The
15 force was used without warning, when [Plaintiff] was not an immediate threat to the safety
16 of the officers or others, while [Plaintiff] was not resisting nor attempting to evade arrest
17 by flight.” (Doc. No. 1 at 8.) Ruling on Defendants’ motion for judgment on the pleadings,
18 the Court takes these factual allegations as true. See Fleming, 581 F.3d at 925. Accordingly,
19 the Court denies Defendants’ motion, but the parties may bring a motion for summary
20 judgment when the record is more fully developed.

21 **IT IS SO ORDERED.**

22 DATED: September 11, 2017

23 
24 MARILYN L. HUFF, District Judge
25 UNITED STATES DISTRICT COURT
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