

1 Defendants have replied (ECF No. 33). For the reasons herein, the Court grants
2 Defendants’ motion to dismiss.

3 **I. BACKGROUND**

4 **A. Factual Background**

5 On May 27, 2016, then presidential candidate Donald Trump held a political
6 rally at the San Diego Convention Center, sparking large, day-long protests. (SAC
7 ¶¶64.) Scuffles between anti-Trump and pro-Trump demonstrators occurred—“a few
8 plastic water bottles were thrown back and forth, and people yelled at each other.”
9 (*Id.* ¶¶65.)

10 Allegedly, “[a]t some point,” Chief Zimmerman decided to declare the entire
11 assembly unlawful under California Penal Code Section 409. (*Id.* ¶¶66.) Thereafter,
12 “[h]undreds of police in riot gear [marched] in military formation” from the
13 Convention Center over the bridge into Barrio Logan, “arresting anyone in their path
14 who d[id] not move quickly enough.” (*Id.* ¶¶2, 67.) The officers “fir[ed] chemical
15 weapons at peaceful demonstrators” and “[a] San Diego Sheriff’s Department
16 helicopter also flew overhead ordering the demonstrators to disperse.” (*Id.* ¶2.)
17 Plaintiffs allege that they were arrested half a mile from the assembly “when only
18 30–40 individuals were peacefully demonstrating, and no demonstrator was breaking
19 any law.” (*Id.* ¶3.)

20 Sheriff Gore was allegedly “complicit in this unconstitutional action to shut
21 down all protests, as the Sheriff’s Department cooperated in making the arrests, and
22 set up an outdoor processing department and booking station complete with large
23 buses for holding anyone arrested, which was pre-planned and set up for this
24 purpose.” (*Id.* ¶68.) Plaintiffs allege that before the rally, the Sheriff’s Department
25 set up confinement centers to “imprison Plaintiffs after their false arrest at the hands
26

27 _____
28 17–19, 21–23.) Three plaintiffs were dismissed at the joint request of the parties.
(ECF No. 36.)

1 of SDPD” and “unlawfully imprisoned Plaintiffs at the pre-planned confinement
2 centers for hours.” (*Id.* ¶4.) Plaintiffs allege that some 49 Doe San Diego Sheriff’s
3 Deputies “actively detained Plaintiffs,” including “SDSO Mobile Booking Staff,
4 SDSO Prisoner Transportation Staff, and SDSO Command.” (*Id.* ¶61.) Another 99
5 Doe San Diego Sheriff’s Deputies “were present and failed to act to protect Plaintiffs’
6 constitutional rights” when they were falsely arrested by SDPD officers and/or
7 actively detained by Sheriff’s Deputies. (*Id.* ¶62.) Another 19 Doe Sheriff’s Deputies
8 “approved, directed and/or ratified the conduct” of Sheriff’s Deputies who allegedly
9 detained the Plaintiffs or failed to act. (*Id.* ¶63.)

10 Plaintiffs allege that all of this conduct reflects a “deliberate, orchestrated, and
11 pre-planned suspension of the First Amendment in downtown San Diego and Barrio
12 Logan by the San Diego Police Department and San Diego Sheriff’s Department.”
13 (*Id.* ¶¶1–2.) Plaintiffs further allege that Defendants have previously “arbitrarily
14 declare[d]” an assembly to be unlawful “to shut down the dissent during the 2011
15 Occupy protests.” (*Id.* ¶6.)

16 **B. Procedural Background**

17 Ten plaintiffs initially filed suit on June 16, 2017 against Chief Zimmerman
18 (in her official capacity), Sheriff Gore (in his official capacity), the City, the County,
19 and numerous unidentified Doe officers. (ECF No. 1.) The Complaint alleged causes
20 of action under 42 U.S.C. §1983 (solely against the City of San Diego); the California
21 Civil Rights Act (the “Bane Act”), California Civil Code §§51 *et seq.*; false
22 imprisonment; assault and battery; negligence; and requested declaratory and
23 injunctive relief. (*Id.*) A First Amended Complaint (“FAC”) was filed on August 10,
24 2017, which, *inter alia*, amended the Section 1983 claim to include Sheriff Gore and
25 the County. (ECF No. 3 ¶¶39–41.) Sheriff Gore and the County moved to dismiss
26 the FAC. (ECF No. 6.) After full briefing on the motion (ECF Nos. 13, 14), the
27 Court permitted Plaintiffs to file the SAC to name additional defendant officers and
28 denied the pending motion to dismiss without prejudice. (ECF No. 24.) Plaintiffs

1 filed the SAC on January 19, 2018, naming some thirty SDPD officers as defendants.
2 (ECF No. 25.) The Sheriff and the County have moved once more to dismiss the
3 claims against them. (ECF No. 33-1.) The Court now turns to the merits of that
4 motion.

5 **II. LEGAL STANDARD**

6 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court may
7 dismiss a cause of action for “failure to state a claim upon which relief can be
8 granted.” FED. R. CIV. P. 12(b)(6). In considering a motion to dismiss pursuant to
9 Rule 12(b)(6), the court must accept as true the allegations of the complaint. *Erickson*
10 *v. Pardus*, 551 U.S. 89 (2007). A complaint must contain more than “naked
11 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a
12 cause of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007).
13 “[T]hreadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
15 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket assertion, of
16 entitlement to relief.” *Twombly*, 550 U.S. at 555 n.3 (internal citations and quotations
17 omitted). A pleading must contain “enough facts to state a claim to relief that is
18 plausible on its face.” *Id.* at 570. If the “plaintiffs . . . have not nudged their claims
19 across the line from conceivable to plausible, their complaint must be dismissed.” *Id.*

20 **III. DISCUSSION**

21 **A. Section 1983 Claims**

22 Sheriff Gore and the County seek to dismiss all Section 1983 claims asserted
23 against them. The Court agrees that, as pleaded, these claims are subject to dismissal.

24 **1. Monell Claim Against the County**

25 In relevant part, the SAC expressly asserts a Section 1983 claim against the
26 County under *Monell* based on Sheriff Gore’s conduct. (SAC ¶¶70–71, 73.) The
27 single allegation in Plaintiffs’ *Monell* claim implicating the County is that Sheriff
28 Gore “was aware of all facts and circumstances concerning the actions of the [SDPD]

1 and ordered his Sheriff’s Deputies to cooperate with San Diego Police in improperly
2 and illegally abrogating the First and Fourth Amendment rights of the protesters.”
3 (*Id.* ¶73.) Plaintiffs allege this “was done with the final policymaking authority of
4 Sheriff William Gore designed to violate Plaintiffs’ constitutional rights.” (*Id.*) The
5 County moves to dismiss on the ground that the claim lacks sufficient, non-
6 conclusory allegations to support municipal liability. (ECF No. 31-1 at 3.) Plaintiffs’
7 opposition to the motion to dismiss does not address the sufficiency of their Section
8 1983 *Monell* claims. The Court agrees that Plaintiffs’ *Monell* claims against the
9 County are insufficiently pleaded.

10 A municipality like the County can be sued under Section 1983 where a
11 municipal policy or custom has caused an alleged violation of constitutional rights.
12 *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 690–91 (1978).
13 However, a municipality cannot be held liable under Section 1983 “*solely* because it
14 employs a tortfeasor — or, in other words, a municipality cannot be held liable under
15 §1983 on a *respondeat superior* theory.” *Id.* at 691 (emphasis original); *see also Bd.*
16 *of Cty. Comm’rs v. Brown*, 520 U.S. 397, 403 (1997) (“We have consistently refused
17 to hold municipalities liable under a theory of *respondeat superior*”). In a *Monell*
18 claim, there are three ways to show a municipal policy or custom: (1) by showing “a
19 longstanding practice or custom which constitutes the standard operating procedure
20 of the local government entity”; (2) “by showing that the decision-making official
21 was, as a matter of state law, a final policymaking authority whose edicts or acts may
22 fairly be said to represent official policy in the area of decision”; or (3) “by showing
23 that an official with final policymaking authority either delegated that authority to, or
24 ratified the decision of, a subordinate.” *See Villegas v. Gilroy Garlic Festival Ass’n*,
25 541 F.3d 950, 964 (9th Cir. 2008) (quoting *Ulrich v. City & Cty. of San Francisco*,
26 308 F.3d 968, 984–85 (9th Cir. 2002)); *Lopez v. Cty. of L.A.*, No. CV 15-01745 MMM
27 (MANx), 2015 WL 3913263, at *5–6 (C.D. Cal. June 25, 2015).

28 There is some dispute about what Plaintiffs are required to plead in order to

1 withstand dismissal of their claim. Relying on *Johnson v. City of Shelby*, 135 S. Ct.
2 346, 347 (2014), Plaintiffs argue that there is no heightened pleading standard for
3 Section 1983 claims. (ECF No. 32 at 3–4.) This reliance is misplaced. *Johnson*
4 concerned whether a plaintiff is required to expressly invoke Section 1983 in order
5 to state a claim under that section. 135 S. Ct. at 347 (“no heightened pleading rule
6 requires plaintiffs seeking damages for violations of constitutional rights to invoke
7 §1983 expressly in order to state a claim”). As *Johnson* itself recognized, the factual
8 sufficiency of the allegations is a distinct issue pertaining to a claim’s substantive
9 plausibility. *Id.* (citing *Twombly*, 550 U.S. 544; *Iqbal*, 556 U.S. 662). Here, the
10 County does not move to dismiss on the ground that Plaintiffs failed to expressly
11 invoke Section 1983, but rather the factual sufficiency of Plaintiffs’ claims.

12 To withstand a motion to dismiss, a *Monell* claim must consist of more than
13 mere “formulaic recitations of the existence of unlawful policies, conduct, or habits.”
14 *Valentine v. City of Crawford*, No. 16-cv-00279-MEJ, 2016 WL 2851661, at *5 (N.D.
15 Cal. May 16, 2016) (quoting *Bedford v. City of Hayward*, No. 3:12-cv-00294-JCS,
16 2012 WL 4901434, at *12 (N.D. Cal. Oct. 15, 2012)); *see also AE v. Cty. of Tulare*,
17 666 F.3d 631, 637 (9th Cir. 2012) (determining that *Iqbal*’s pleading requirements
18 apply to *Monell* claims). Accordingly, Plaintiffs’ “factual allegations ‘must plausibly
19 suggest an entitlement to relief, such that it is not unfair to require the opposing party
20 to be subjected to the expense of discovery and continued litigation.’” *Save CCSF*
21 *Coal. v. Lim*, No. 14-cv-05286-SI, 2015 WL 3409260, at *12 (N.D. Cal. May 27,
22 2015) (quoting *AE*, 666 F.3d at 637). Plaintiffs’ allegations fail to meet this standard.

23 First, the Court finds that the SAC merely recites a key element of a *Monell*
24 cause of action. Although the SAC alleges that Sheriff Gore acted “with final
25 policymaking authority,” (SAC ¶73), this allegation is a bare recitation of a legal
26 element of a *Monell* claim. The SAC does not advance any facts showing that Sheriff
27 Gore was such a policymaker for the County. This alone warrants dismissal of
28

1 Plaintiffs’ *Monell* claim.³ See *SAVE CCSF Coal.*, 2015 WL 3409260, at *13
2 (dismissing *Monell* claims against city of San Francisco where Plaintiff failed to
3 allege facts supporting assertion that an official possessed final policy-making
4 authority); cf. *San Diego Branch of NAACP v. Cty. of San Diego*, No. 16-cv-2575-
5 JLS (BGS), 2018 WL 1382807, at *4 (S.D. Cal. Mar. 19, 2018) (complaint
6 specifically alleged that “Sheriff Gore is responsible for ensuring the actions of
7 County law enforcement officials are consistent with the laws and Constitution”).

8 Second, the factual allegations underlying Plaintiffs’ *Monell* claim are
9 insufficient. Plaintiffs fail to allege facts supporting their claim that any
10 “cooperation” by the County was for the purpose of abrogating their First and Fourth
11 Amendment rights. Additionally, while the SAC contains allegations regarding
12 conduct undertaken by the Sheriff’s Department and Sheriff’s Deputies (SAC ¶¶4,
13 61–63), the SAC contains no factual allegations showing that this conduct is
14 attributable to an alleged municipal policy. A plaintiff asserting a *Monell* claim based
15 on a municipal policy must provide sufficient factual allegations showing that
16 municipal employees acted *pursuant to* a policy, which caused the alleged harm. See
17 *Lopez*, 2015 WL 3913263, at *8. Here, it is simply unclear from the SAC the
18 relationship between the alleged conduct of the Sheriff’s Department and Sheriff’s
19 Deputies and the alleged order by Sheriff Gore. Accordingly, the Court grants the
20 motion to dismiss the *Monell* claim against the County, with leave to amend.

21 2. Section 1983 Claims Against Sheriff Gore

22 The SAC alleges two direct Section 1983 claims based on alleged violations
23
24

25 ³ Moreover, the Court observes that SAC fails to even allege that the County
26 of San Diego is a “municipality” or that Sheriff Gore is a municipal actor for the
27 purposes of the *Monell* claim. This omission leaves much to question. Cf. *Lopez v.*
28 *Cty. of L.A.*, No. CV 15-01745 MMM (MANx), 2015 WL 3913263, at *5, n. 20
(C.D. Cal. June 25, 2015) (noting that there was no question the defendants were
“municipal actors” because it specifically alleged they were).

1 of the First and Fourth Amendments.⁴ (SAC ¶¶74–113 (Second Cause of Action-
2 First Amendment); *id.* ¶¶114–153 (Third Cause of Action-Fourth Amendment).)
3 Plaintiffs’ second cause of action alleges that “[a]ll Defendants conspired to and did
4 violate the First Amendment rights of all Plaintiffs by actively preventing Plaintiffs
5 from peacefully assembling anywhere in the vicinity of the San Diego Convention
6 Center . . . and arresting anyone who did not leave the area entirely.” (*Id.* ¶75.) Thus,
7 Plaintiffs’ second cause of action fairly invokes both a direct violation of civil rights
8 and a conspiracy claim under Section 1983. However, Plaintiffs’ third cause of action
9 alleges only specific acts for certain named Defendant SDPD officers and unnamed
10 Doe Sheriff’s Deputies. (*Id.* ¶¶115152.) The Court separately addresses the
11 sufficiency of Plaintiffs’ allegations of direct violations and a conspiracy by Sheriff
12 Gore.

13 **a. Claims for Direct Violations of Civil Rights**

14 Defendants move to dismiss the second and third causes of action against
15 Sheriff Gore on the ground that they are unsupported by sufficient factual allegations.
16 (ECF No. 31-1 at 7–9.) The Court agrees.

17 To state a claim under section 1983, a plaintiff must allege that: (1) defendant
18 was acting under color of state law at the time the complained of act was committed;
19 and (2) defendant’s conduct deprived plaintiff of rights, privileges or immunities
20 secured by the Constitution or laws of the United States. 42 U.S.C. §1983; *see West*
21 *v. Atkins*, 487 U.S. 42, 48 (1988). Under Section 1983, supervisory officials are not
22 liable for actions of subordinates through vicarious liability. *Hansen v. Black*, 885
23 F.2d 642, 646 (9th Cir. 1989). Further, “[a] supervisor will rarely be directly and
24

25
26 ⁴ Plaintiffs’ *Monell* claim against Sheriff Gore in his official capacity is
27 redundant of Plaintiffs’ claim against the County. The Court accordingly dismisses
28 this claim with prejudice as to Sheriff Gore. *See, e.g., Millender v. Cty. of Los*
Angeles, overruled on other grounds, Messerschmidt v. Millender, 565 U.S. 535
(2012).

1 personally involved in the same way as are the individual officers who are on the
2 scene inflicting constitutional injury. Yet, this does not prevent a supervisor from
3 being held liable in his individual capacity.” *Larez v. City of Los Angeles*, 946 F.2d
4 630, 645 (9th Cir. 1991). A defendant may be liable as a supervisor “if there exists
5 either (1) his or her personal involvement in the constitutional deprivation, or (2) a
6 sufficient causal connection between the supervisor’s wrongful conduct and the
7 constitutional violation.” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting
8 *Hansen*, 885 F.2d at 646). Thus, supervisory liability “exists even without overt
9 personal participation in the offensive act if supervisory officials implement a policy
10 so deficient that the policy itself is a repudiation of constitutional rights and is the
11 moving force of the constitutional violation.” *Hansen*, 885 F.2d at 646 (internal
12 quotation marks omitted).

13 Here, Plaintiffs baldly assert that “there is no denying that Sheriff Gore here
14 was directly involved in planning and overseeing containment of the Donald Trump
15 protests on May 26, 2017 in San Diego.” (ECF No. 32 at 6.) But Plaintiffs’ second
16 and third causes of action contain no specific allegations regarding Sheriff Gore.
17 Although Plaintiffs allege that they were arrested by SDPD officers and detained by
18 Sheriff’s Deputies (SAC ¶¶3–4, 68), they do not allege that Sheriff Gore personally
19 participated in this alleged conduct, nor do they allege facts showing that he
20 personally implemented any policy underlying the allegedly unconstitutional
21 conduct. Rather, Plaintiffs’ sole allegation is that Sheriff Gore was “complicit” in the
22 conduct because “the Sheriff’s Department cooperated in making the arrests, and set
23 up an outdoor processing department and booking station. . .” (*Id.* ¶68.) This is
24 insufficient to support a direct Section 1983 claim against Sheriff Gore. *See San*
25 *Diego Branch of NAACP*, 2018 WL 1382807, at *4. Plaintiffs’ Section 1983 claims
26 of direct violations of their constitutional rights by Sheriff Gore are therefore subject
27 to dismissal.
28

1 “conspired” is merely a legal conclusion which the Court need not take as true. *See*
2 *Seung v. Beardomo*, No. CV 15-06663-JAK (DTB), 2017 U.S. Dist. LEXIS 13297,
3 at *18 (C.D. Cal. Jan. 9, 2017), *report and recommendation adopted in relevant part*
4 *by* 2017 WL 427143 (C.D. Cal. Jan. 31, 2017). Accordingly, the Court grants
5 Defendants’ motion to dismiss as to Plaintiffs’ second cause of action to the extent it
6 seeks to state a conspiracy claim against Sheriff Gore.

7 Plaintiffs request leave to amend the SAC to more clearly allege a conspiracy.
8 (ECF No. 32 at 8.) Since the Court has not previously issued an order regarding
9 pleading deficiencies, the Court will grant Plaintiffs leave to amend the SAC to
10 provide sufficient factual allegations to support this claim. To the extent Plaintiffs
11 contend that there was a conspiracy to violate their Fourth Amendment rights in
12 violation of Section 1983, they must allege so in their third cause of action.

13 **B. The State Law Claims Against Sheriff Gore and the County Are**
14 **Subject to Dismissal With Prejudice**

15 The SAC alleges that Plaintiffs complied with the California Tort Claims Act
16 (“TCA”)’s filing requirements to assert their state law claims. (SAC ¶69.) Plaintiffs
17 allege that their claims were denied and they timely brought suit. (*Id.*) Defendants
18 move to dismiss with prejudice the four state law claims Plaintiffs raise on the ground
19 that Plaintiffs failed to comply with the TCA. Plaintiffs’ state law claims are the
20 California Bane Act, false imprisonment, assault and battery, and negligence. (ECF
21 No. 31-1 at 9; SAC ¶¶39–83.) Defendants contend that Plaintiffs failed to file their
22 complaint within six months after receiving a notice of rejection of their claims from
23 the County. The Court agrees that all Plaintiffs’ state law claims must be dismissed
24 based on the statute of limitations.

25 Subject to limited exemptions, the TCA requires that any claim against a
26 government entity for money damages must be filed with the applicable government
27 agency before a lawsuit may be filed in court. CAL. GOV. CODE §905. If the entity
28 provides written notice to the individual regarding the claims, the individual is

1 required to file suit not later than six months after the date the notice is personally
2 delivered or deposited in the mail. CAL. GOV. CODE §945.6(a)(1). The six-month
3 period is unequivocally “mandatory and must be strictly complied with.” *Kenney v.*
4 *City of San Diego*, No. 13cv248–WQH–DHB, 2013 WL 5346813, at *8 (S.D. Cal.
5 Sept. 20, 2013).). Failure to comply with the TCA requires dismissal of the claims
6 within its scope. *See Davis v. Kissinger*, No. 2:04-CV-0878-TLN-DAD, 2014 WL
7 5486525, at *1 (E.D. Cal. Oct. 29, 2014); *J.J. v. Cnty. of San Diego*, 167 Cal. Rptr.
8 3d 861 (Cal. Ct. App. 2014). Moreover, “[t]he [Tort Claims Act] claims procedures
9 applicable to actions against public entities are the same for actions against public
10 employees.” *Arres v. City of Fresno*, CV F 10–1628 LJO SMS, 2011 WL 284971, at
11 *20 (E.D. Cal. Jan.26, 2011). Thus, an individual is required to comply with the
12 TCA’s requirements in actions against public employees.

13 Here, none of Plaintiffs’ state law claims are exempt from the TCA’s
14 requirements. *See* CAL. CIV. CODE §905 (listing exemptions); *see also Davis*, 2014
15 WL 5486525, at *3 (determining that TCA applies to Bane Act claims). Plaintiffs
16 were therefore required to bring suit on their state law claims within six-months of
17 any rejection of those claims by the County. Defendants submit evidence regarding
18 Plaintiffs’ presentment of their claims to the County and the County’s notices of
19 rejection sent to the Plaintiffs. (ECF No. 31-2, Exs. A, B.)⁵ The County deposited
20 notices of rejections of Plaintiffs’ claims on December 9, 2016. (ECF No. 31-2 Ex.
21 B.) The initial complaint in this action was filed on June 16, 2017, (ECF No. 1), a
22

23
24 ⁵ The Court grants Defendants’ request to take judicial notice of these
25 documents. (ECF No. 31-3.) Whether a claim has properly been presented to a
26 public entity under the TCA and the entity’s response to any presented claims is
27 subject to judicial notice. *See Clarke v. Upton*, 703 F. Supp. 2d 1037, 1042 (E.D.
28 Cal. 2010) (taking judicial notice of the filing date and content of the Tort Claims
and their rejection by the County, on the grounds that the “documents are matters of
public record and sets forth facts ‘capable of accurate and ready determination by
resort to sources whose accuracy cannot be reasonably questioned”).

1 week after the statutory limitation. Plaintiffs do not dispute these facts, which show
2 that their claims are barred. Accordingly, the Court grants with prejudice Sheriff
3 Gore and the County’s motion to dismiss the SAC’s fourth through seventh causes of
4 action.

5 **C. Request for Declaratory Relief**

6 Lastly, Defendants seek dismissal of the SAC’s eighth cause of action for
7 declaratory relief under California Code of Civil Procedure §1060. (ECF No. 31-1 at
8 10–14.) When a plaintiff fails to adequately plead any substantive claims, a
9 declaratory relief claim also fails. *See Javaheri v. JPMorgan Chase Bank, N.A.*, No.
10 2:10-cv-08185-ODW (FFMx), 2012 U.S. Dist. LEXIS 175743, 2012 WL 6140962,
11 *8 (C.D. Cal. Dec. 11, 2012) (“Declaratory and injunctive relief do not lie where all
12 other claims have been dismissed. Javaheri is therefore not entitled to declaratory or
13 injunctive relief without a viable underlying claim”); *Shaterian v. Wells Fargo Bank,*
14 *N.A.*, 829 F.Supp.2d 873, 888 (N.D. Cal. Nov. 7, 2011) (“Shaterian’s tenth claim
15 seeks a declaration concerning the rights and duties of the parties with respect to his
16 first nine claims. This claim is ultimately a request for relief, and Shaterian is not
17 entitled to such relief absent a viable underlying claim.”) (dismissing declaratory
18 relief claim); *Ngoc Nguyen v. Wells Fargo Bank, N.A.*, 749 F.Supp.2d 1022, 1038
19 (N.D. Cal. 2010) (“Plaintiff has failed to state any claims, so there is no actual and
20 present controversy”). Because the Court has dismissed all substantive claims against
21 Sheriff Gore and the County in the SAC, there is no viable underlying claims against
22 them. Accordingly, the Court dismisses Plaintiffs’ declaratory relief claim without
23 prejudice.

24 **IV. CONCLUSION & ORDER**

25 For the foregoing reasons, the Court **GRANTS** the motion to dismiss (ECF
26 No. 31) the claims in the SAC against Defendants Sheriff Gore and the County of
27 San Diego as follows:

- 28 1. Plaintiffs’ first through third causes of action under Section 1983 against

1 Sheriff Gore and the County are **DISMISSED WITHOUT PREJUDICE**.

2 2. Plaintiffs' state law claims (claim 4 - Bane Act, claim 5 - false
3 imprisonment; claim 6 - assault and battery; claim 7 - negligence) against Sheriff
4 Gore and the County are **DISMISSED WITH PREJUDICE** as barred by the statute
5 of limitations under the California Tort Claims Act.

6 3. Plaintiffs' claim for declaratory relief (claim 8) against Sheriff Gore and
7 the County is **DISMISSED WITHOUT PREJUDICE**.


8 4. Plaintiffs are **GRANTED LEAVE TO AMEND** their Section 1983 and
9 declaratory relief claims in the SAC *with respect to Sheriff Gore and the County of*
10 *San Diego*. Plaintiffs may file any Third Amended Complaint consistent with this
11 Order **no later than May 7, 2018. No extensions of this deadline will be granted.**

12 If Plaintiffs file a Third Amended Complaint, they should file a redlined version
13 consistent with Local Rule 15.1 to show any changes between the SAC and the
14 amended pleadings.

15 If Plaintiffs do not file a Third Amended Complaint, the case will proceed
16 solely as to the City of San Diego and the Defendant SDPD officers, who have filed
17 answers to the pleadings. **The Court advises Plaintiffs that this will be their last**
18 **opportunity to amend the pleadings as to Sheriff Gore and the County.** Any
19 amended pleadings shown to be deficient on a motion to dismiss will be dismissed
20 with prejudice.

21 **IT IS SO ORDERED.**

22
23 **DATED: April 17, 2018**


Hon. Cynthia Bashant
United States District Judge

24

25

26

27

28