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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARVAUNTI VICTORIA,

Plaintiff,

v.

CITY OF SAN DIEGO, DAVID
DUNHOFF, individually and in his
official capacity, et al.

Defendants.

Case No.: 17-CV-1837-AJB-NLS

ORDER:

(1) GRANTING DEFENDANTS CITY OF SAN DIEGO AND SHELLEY ZIMMERMAN’S MOTION TO DISMISS;

(2) GRANTING IN PART AND DENYING IN PART DAVID DUNHOFF’S MOTION TO DISMISS;

(3) GRANTING IN PART AND DENYING IN PART JUSTIN MONTOYA’S MOTION TO DISMISS;

(4) GRANTING IN PART AND DENYING IN PART J. JOHNSON’S MOTION TO DISMISS;

(5) GRANTING IN PART AND DENYING IN PART TIMOTHY COYLE’S MOTION TO DISMISS;

1 (6) GRANTING IN PART AND
2 DENYING IN PART ADAM
3 GEORGE’S MOTION TO DISMISS;
4 AND

5 (7) GRANTING DAVID WOLFF’S
6 MOTION TO DISMISS

7 (Doc. Nos. 50, 51, 52, 53, 54, 55, 56)

8 Pending before the Court are seven motions: (1) Defendants City of San Diego and
9 Shelley Zimmerman’s motion to dismiss; (2) Defendant Timothy Coyle’s motion to
10 dismiss; (3) Defendant David Dunhoff’s motion to dismiss; (4) Defendant Adam George’s
11 motion to dismiss; (5) Defendant J. Johnson’s motion to dismiss; (6) Defendant Justin
12 Montoya’s motion to dismiss; and (7) Defendant David Wolff’s motion to dismiss. (Doc.
13 Nos. 50, 51 52, 53, 54, 55, and 56.) Plaintiff filed oppositions to all the motions. (Doc. Nos.
14 61, 62, 63, 64, 65, 66, 67, and 68.) As will be explained in greater detail below, and based
15 on the arguments presented in the papers and presented at the February 13, 2019 hearing
16 on this motion, the Court **GRANTS** the City of San Diego and Shelley Zimmerman’s
17 motion to dismiss, **GRANTS** in part and **DENIES** in part David Dunhoff’s motion to
18 dismiss, **GRANTS** in part and **DENIES** in part Justin Montoya’s motion to dismiss,
19 **GRANTS** in part and **DENIES** in part J. Johnson’s motion to dismiss, **GRANTS** in part
20 and **DENIES** in part Timothy Coyle’s motion to dismiss, **GRANTS** in part and **DENIES**
21 in part Adam George’s motion to dismiss, and **GRANTS** David Wolff’s motion to dismiss.

22
23 **I. BACKGROUND¹**

24 The following allegations are taken from Plaintiff Arvaunti Victoria’s third amended
25 complaint (“TAC”). (Doc. No. 46.) This complaint arises out of a traffic stop on September
26 9, 2016. On September 9, 2016, Plaintiff was riding his motorcycle near Miramar and

27
28 ¹ The following allegations are taken from the TAC and are construed as true for the limited purpose of resolving this motion. See *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247 (9th Cir. 2013).

1 Kearney Mesa Roads. (Doc. No. 46 ¶ 16.) Despite not having a decibel meter, the officers
2 claimed they stopped Plaintiff for having loud pipes and no license plate. (*Id.*)

3 On September 9, 2016, Defendant Coyle and Officer Harper were surveilling the Off
4 Base Bar for an assault that occurred on September 4, 2016. (*Id.* ¶¶ 16, 17.) The officers
5 observed Plaintiff arrive on a motorcycle and don a vest containing the emblem of the
6 “Chosen Few.” (*Id.* ¶ 18.) When Plaintiff left the bar, the officers followed him. (*Id.* ¶ 19.)
7 Defendants George and Johnson pulled over Plaintiff. (*Id.*) Defendant George informed
8 Plaintiff that the reason for the stop was that Plaintiff had loud pipes. (*Id.*) Then either
9 Defendant George or Defendant Johnson noticed Plaintiff’s motorcycle did not have a
10 license plate or a registration tag. (*Id.*) Plaintiff explained to the officers that the pipes were
11 stock pipes and complied with all California emissions and volume standards. (*Id.* ¶ 20.)
12 None of the six defendant officers had a decibel meter or any type of device that would
13 measure the sound of the exhaust pipes. (*Id.* ¶ 21.)

14 After the initial stop, several more officers appeared. (*Id.* ¶ 22.) Defendant Montoya
15 conducted a search of Plaintiff’s saddlebags by stating the search could be done “the easy
16 way or the hard way.” (*Id.*) After that comment, Plaintiff consented to the search. (*Id.*)
17 Defendants Coyle and Johnson conducted the search. (*Id.*) One of the officers discovered
18 the vest for the “Chosen Few.” (*Id.*) Plaintiff was also wearing several large rings on his
19 hand. (*Id.* ¶ 23.) Plaintiff was then arrested and charged with possession of metal knuckles.
20 (*Id.*)

21 Plaintiff’s cell phone was also seized. (*Id.* ¶ 24.) Defendant Montoya demanded
22 Plaintiff provide him with the password for the phone. (*Id.*) Defendant Montoya told
23 Plaintiff that if he did not provide the cell phone password Defendant Montoya would order
24 Plaintiff’s motorcycle impounded. (*Id.*) After this statement, Plaintiff provided Defendant
25 Montoya with his cell phone password. (*Id.*) However, Defendant Montoya was unable to
26 unlock the phone and ordered the motorcycle to be impounded. (*Id.*)

27 Plaintiff was then placed in a police car to be transported to jail. (*Id.*) On the way to
28 jail, Defendant Dunhoff gave Plaintiff “a second chance” to unlock his phone. (*Id.*)

1 Defendant Dunhoff stated that if Plaintiff provided Defendant Dunhoff access to his phone,
2 someone could pick up the motorcycle instead of it being impounded. (*Id.*) Plaintiff
3 unlocked the phone himself this time. (*Id.*)

4 Defendant Wolff then signed a sworn affidavit to obtain a search warrant for
5 Plaintiff's cell phone. (*Id.* ¶ 41.) Defendant Wolff was not present at Plaintiff's arrest, but
6 the events in the affidavit were relayed to him by Defendant Coyle. (*Id.*)

7 After Plaintiff's arrest, he paid \$8,000 for bail as a result of the incident. (*Id.* ¶ 49.)
8 The charges against Plaintiff were ultimately dismissed. (*Id.* ¶ 55.) However, Plaintiff
9 claims he continues to suffer from mental and emotional distress from the incident. Thus,
10 Plaintiff alleges the following causes of action: (1) violations of 42 U.S.C. § 1983—
11 violation of his Fourth Amendment right—illegal detention against all individual
12 Defendants; (2) false arrest against all individual Defendants; (3) illegal search against
13 individual Defendants; (4) deliberate indifference against all Defendants; (5) deliberate
14 indifference in regards to the purported custom and policies of the San Diego Police
15 Department; (6) violation of the California Constitution Article I, § 13 against Defendants
16 Coyle, Montoya, Dunhoff, Johnson, and George; (7) violation of California Civil Code §
17 52.1 against Defendants Montoya and Dunhoff; (8) injunctive relief pursuant to the Bane
18 Act—California Civil Code § 52.1—against Defendants Montoya and Dunhoff; and (9)
19 infliction of emotional distress against all individual Officer Defendants. (*See generally*
20 *Doc. No. 46.*)

21 Plaintiff filed his complaint on September 11, 2017. (*Doc. No. 1.*) On September 21,
22 2017, Plaintiff amended his complaint. (*Doc. No. 3.*) On November 17, 2017, a joint
23 motion to amend/correct the complaint was filed, (*Doc. No. 15*), which was granted on
24 November 20, 2017, (*Doc. No. 16*). On January 5, 2018, the two motions to dismiss were
25 filed. (*Doc. Nos. 23, 24.*) On September 5, 2018, the Court granted the City Defendants'
26 motion to dismiss, granted in part and denied in part officer Defendants' motion to dismiss
27 and granted Plaintiff leave to amend. (*Doc. No. 44.*) On September 19, 2018, Plaintiff filed
28 his third amended complaint ("TAC"). (*Doc. No. 46.*) On October 30, 2018, the seven

1 motions to dismiss were filed. (Doc. Nos. 50, 51, 52, 53, 55, 56.)

2 **II. LEGAL STANDARD**

3 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings
4 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state
5 a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
6 2001). The court may dismiss a complaint as a matter of law for: “(1) lack of a cognizable
7 legal theory or (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental*
8 *Grp. v. Delta Dental Plan of Cal., Inc.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted).
9 However, a complaint survives a motion to dismiss if it contains “enough facts to state a
10 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
11 (2007).

12 Notwithstanding this deference, the reviewing court need not accept legal
13 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for
14 the court to assume “the [plaintiff] can prove facts that [he or she] has not alleged”
15 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S.
16 519, 526 (1983). On the other hand, “[w]hen there are well-pleaded factual allegations, a
17 court should assume their veracity and then determine whether they plausibly give rise to
18 an entitlement to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the contents of the
19 complaint, accepting all factual allegations as true, and drawing all reasonable inferences
20 in favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

21 **III. DISCUSSION**

22 The Court will first address Defendants’ request for judicial notice. The Court will
23 then address each motion to dismiss in turn.

24 **A. Defendants’ Request for Judicial Notice**

25 Federal Rule of Evidence 201 states that a “court may judicially notice a fact that is
26 not subject to reasonable dispute because it: (1) is generally known within the trial court’s
27 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
28 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

1 Defendants City of San Diego and Defendant Zimmerman’s motion to dismiss
2 contained a request for judicial notice of thirteen exhibits: (1) *People of the State of*
3 *California v. Chosen Few, M.C., et al.* (“Chosen Few Case”); (2) “Judgment After Default
4 Against 9 Defendants” filed in the Chosen Few Case; (3) the declaration of Jenal filed in
5 the Chosen Few Case; (4) the warrant and affidavit in support of Victoria/Plaintiff; (5) the
6 police report at issue in this matter; (6) Police Magazine article; (7) California Highway
7 Patrol Information Bulletin; (8) Title 13 California Code of Regulations section 1036(d)(1);
8 (9) Plaintiff’s Second Amended Complaint; (10) San Diego Population of 3.3 million
9 people; (11) San Diego Police Street Gang Unit Mission; (12) Commission on Gang
10 Prevention and Intervention purpose statement; and (13) 2015 to 2020 Commission on
11 Gang Prevention and Intervention strategic action plan. (*See generally* Doc. No. 50-2.)
12 Plaintiff asserts no objections to Defendants’ request for judicial notice. (Doc. No. 61 at
13 10–11.)

14 As to Exhibits One through Three, as they are public records and documents from
15 the state court, judicial notice is appropriate. *See Gerritsen v. Warner Bros. Entm’t Inc.*,
16 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015) (“It is well established that a court can take
17 judicial notice of its own files and records under Rule 201 of the Federal Rules of
18 Evidence.”); *see also Molus v. Swan*, No. 05-CV-452-MMA (WVc), 2009 WL 160937, at
19 *2 (S.D. Cal. Jan. 22, 2009) (“Courts also may take judicial notice of their own records[.]”).
20 However, the Court may not take judicial notice of findings of facts from another case. *See*
21 *Walker v. Woodford*, 454 F. Supp. 2d 1007, 1022 (S.D. Cal. Sept. 12, 2006). Accordingly,
22 the Court **GRANTS** Defendants’ request for judicial notice of Exhibits One through Three
23 for this limited purpose.

24 As to the arrest warrant, the Court will only take judicial notice of the reasonably
25 undisputed facts such as the existence of the warrant, its filing date, and the date of the stop
26 and arrest at issue, among other things. Thus, for this limited purpose, the Court **GRANTS**
27 Defendants’ request for judicial notice of Exhibit Four. *See Bunkley v. Verber*, No. 17-CV-
28 05797-WHO, 2018 WL 1242168, at *2 (N.D. Cal. Mar. 9, 2018) (explaining that the court

1 could take judicial notice of the arrest warrant as it was not subject to reasonable dispute);
2 *see also Ferguson v. United States*, No. 15-CV-1253, 2016 WL 4793180, at *3 (S.D. Cal.
3 Sept. 14, 2016) (taking judicial notice of an arrest warrant because it was a “matter[] of
4 public record, and the parties [did] not dispute [its] authenticity.”).

5 In regard to the police report, despite the fact that some records of a state agency
6 may be proper subjects of judicial notice, a district court “may not take judicial notice of
7 documents filed with an administrative agency to prove the truth of the contents of the
8 documents.” *Zuccaro v. Martinez Unified School Dist.*, No. 16-CV-2709-EDL, 2016 WL
9 10807692, at *5 (N.D. Cal. Sept. 27, 2016); *see also Knighten v. City of Anderson*, No. 15-
10 CV-1751-TLN-CMK, 2016 WL 1268114, at *5 (E.D. Cal. Mar. 31, 2016) (refusing to take
11 judicial notice of police reports and facts contained in the report because they were subject
12 to reasonable dispute between the parties). Thus, the Court only **GRANTS** limited judicial
13 notice of Exhibit Five.

14 Exhibits Six, Seven, Eight, Eleven, Twelve, and Thirteen are all incorporated by
15 reference in the TAC, which the TAC necessarily relies on, and a document upon which
16 the TAC necessarily concerns. Accordingly, the Court may take judicial notice of these
17 documents. *See U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *Coto Settlement v.*
18 *Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). Thus, the Court **GRANTS** judicial notice
19 of Exhibits Six, Seven, Eight, Eleven, Twelve, and Thirteen.

20 Exhibit Nine is simply a copy of Plaintiff’s Second Amended Complaint, and thus
21 is appropriate for judicial notice. *See Gerritsen*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal.
22 2015) (“It is well established that a court can take judicial notice of its own files and records
23 under Rule 201 of the Federal Rules of Evidence.”). Accordingly, the Court **GRANTS**
24 judicial notice of Exhibit Nine.

25 Exhibit Ten is simply that the population of San Diego is 3.3 million people, and
26 thus is appropriate for judicial notice as it is public knowledge. Fed. R. Evid. 201(b); *see*
27 *Reyn’s v. Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).
28 Accordingly, the Court **GRANTS** judicial notice of Exhibit Ten.

1 In sum, the Court **GRANTS** the City Defendants’ request for judicial notice of these
2 thirteen documents. (Doc. No. 50-2.)

3 B. Defendants City of San Diego and Shelley Zimmerman’s Motion to Dismiss

4 City Defendants assert Plaintiff’s allegations are nothing more than legal
5 conclusions and should be dismissed under Rule 8. (*See generally* Doc. No. 50-1.) Worth
6 noting is that Plaintiff has agreed not to request that Chief Zimmerman remain in this case
7 in her official capacity. (Doc. No. 61 at 18.) Accordingly, the Court will not address any
8 claims against Chief Zimmerman in her official capacity and those claims are dismissed.

9 i. *First Through Third Causes of Action Against Zimmerman in her Individual*
10 *Capacity*

11 Plaintiff’s first through third causes of action allege violations of Plaintiff’s Fourth
12 Amendment right protecting against unreasonable search and seizure. (*See generally* Doc.
13 No. 46.)

14 42 U.S.C. § 1983 “provides a cause of action for the ‘deprivation of any rights,
15 privileges, or immunities secured by the Constitution and laws’ of the United States.”
16 *Wilder v. Virginia Hosp. Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
17 Section 1983 is not itself a source of substantive rights, but merely provides a method for
18 vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386, 393–94
19 (1989). Specifically, Section 1983 provides a cause of action for the violation of
20 constitutional or other federal rights by persons acting under color of state law. *Nurre v.*
21 *Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009).

22 For supervisory liability for deliberate indifference, a plaintiff has been able to hold
23 supervisors individually liable under § 1983 suits when “culpable action, or inaction, is
24 directly attributed to them.” *Starr v. Baca*, 652 F.3d 1202, 1205 (9th Cir. 2011). In *Larez*
25 *v. City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991), the Ninth Circuit explained that to be
26 held liable, the supervisor need not be “directly and personally involved in the same way
27 as are the individual officers who are on the scene inflicting constitutional injury.” *Id.* at
28 645. Rather, the supervisor’s participation could include his or her “own culpable action or

1 inaction in the training, supervision, or control of his subordinates,” “his acquiescence in
2 the constitutional deprivations of which the complaint is made,” or “conduct that showed
3 a reckless or callous indifference to the rights of others.” *Id.* at 646 (internal citations,
4 quotation marks, and alterations omitted).

5 Thus, a defendant may be held liable as a supervisor under § 1983 “if there exists
6 either (1) his or her personal involvement in the constitutional deprivation, or (2) a
7 sufficient causal connection between the supervisor’s wrongful conduct and the violation.”
8 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989). “[A] plaintiff must show the supervisor
9 breached a duty to plaintiff which was the proximate cause of the injury. The law clearly
10 allows actions against supervisors under section 1983 as long as a sufficient causal
11 connection is present and the plaintiff was deprived under color of law of a federal secured
12 right.” *Redman v. Cty. of San Diego*, 942 F.2d 1435, 1447 (9th Cir. 1991). “The requisite
13 causal connection can be established . . . by setting in motion a series of acts by others . . .
14 or by knowingly refus[ing] to terminate a series of acts by others, which [the supervisor]
15 knew or reasonably should have known would cause others to inflict a constitutional
16 injury[.]” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

17 First, Plaintiff alleges Defendant Zimmerman knew of the violations of
18 constitutional rights and failed to act to prevent them. Second, Plaintiff alleges Defendant
19 Zimmerman promulgated or implemented a policy violating constitutional rights of
20 “motorcycle club” riders, and this policy was the moving force behind the violations. Here,
21 Plaintiff alleges there have been twenty complaints in a four-year period complaining of
22 suspicion-less stops. (Doc. No. 46 ¶ 39.) However, Plaintiff does not allege these
23 complaints were all made by “motorcycle club” riders. Further, twenty incidents over a
24 four-year period in a city of 3,000,000 people does not establish a policy based on a pattern.
25 *See Rizzo v. Goode*, 423 U.S. 362, 371 (1976). Plaintiff has simply failed to allege any
26 specific and non-conclusory allegations that Defendant Zimmerman personally
27 participated in Plaintiff’s alleged constitutional violation, implemented or promogulated
28

1 an unconstitutional policy, had knowledge of an unconstitutional policy, or failed to protect
2 Plaintiff.

3 *ii. Ninth Cause of Action Against Defendant Zimmerman in her Individual*
4 *Capacity*

5 Plaintiff alleges a claim of Intentional Infliction of Emotional Distress (“IIED”)
6 against Defendant Zimmerman in her own capacity. A claim for IIED requires a prima
7 facie showing of “(1) extreme and outrageous conduct by the defendant with the intention
8 of causing, or reckless disregard of the probability of causing, emotion distress; (2) the
9 plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate
10 causation of the emotional distress by defendant’s outrageous conduct.” *Sabow v. United*
11 *States*, 93 F.3d 1445, 1454 (9th Cir. 1996). Here, Plaintiff’s claim again fails to allege
12 sufficient facts to establish Defendant Zimmerman’s individual liability for a claim of
13 IIED. Defendant Zimmerman was not at the scene of the traffic stop nor did she implement
14 a policy that caused Plaintiff’s IIED.

15 Accordingly, Defendant Zimmerman in both her individual and official capacity is
16 dismissed.

17 *iii. The First Through Fifth Causes of Action Against the City*

18 “A municipality can be found liable under 42 U.S.C. § 1983 only where the
19 municipality itself causes the constitutional violation at issue; *respondeat superior* or
20 vicarious liability will not attach under section 1983.” *Buckheit v. Dennis*, 713 F. Supp. 2d
21 910, 920 (N.D. Cal. 2010) (citing *Monell v. New York Dep’t of Social Servs.*, 436 U.S. 658,
22 694–95 (1978)). Plaintiff must then allege that: (1) he was deprived of his constitutional
23 rights by the City of San Diego; (2) that the City of San Diego had customs or policies
24 “which amounted to deliberate indifference” to his constitutional rights; and (3) that these
25 policies were the “moving force behind the constitutional violations.” *Buckheit*, 713 F.
26 Supp. 2d at 920 (citation omitted).

27 Plaintiff first asserts that Defendant Zimmerman had a formal or de facto policy to
28 harass and suppress motorcycle clubs it considered to be gangs in the City of San Diego.

1 (Doc. No. 46 ¶ 10.) Plaintiff claims that a policy exists since twenty complaints were filed
2 in the period of four years claiming suspicion-less stops. As explained above, this does not
3 establish a pattern or policy.

4 During the hearing on this matter, Plaintiff claimed that Exhibit Eleven to
5 Defendants' motion established a written policy. Exhibit Eleven is the mission statement
6 of the Street Gang Unit as published on the City of San Diego's website. In pertinent part
7 the statement is as follows:

8 The collective mission of the Street Gang Unit is to reduce gang
9 related crimes and active gang membership in the City of San
10 Diego. This is accomplished through vigorous prosecution of
11 gang members involved in criminal activity by use of covert
12 surveillance and special operations, proactive field contacts and
13 arrests of gang members. These strategies reduce gang related
criminal activity in our communities and enhances the feeling of
safer neighborhoods for the residents of San Diego.

14 (Doc. No. 50-1, Ex. 11.) This statement simply does not plausibly establish a written policy
15 to harass and suppress motorcycle clubs. Plaintiff asserts that the pleading level for "a claim
16 of municipal liability under § 1983 is sufficient to withstand a motion to dismiss even if
17 the claim is based on nothing more than a bare allegation that the individual officers'
18 conduct conformed to an official policy or practice." (Doc. No. 61 at 15 (quoting *Butler v.*
19 *Los Angeles Cty.*, 617 F. Supp. 2d 994, 1000 (C.D. Cal. 2008)).) However, Plaintiff has
20 failed to even plausibly plead the first step, which is that a policy to harass and suppress
21 motorcycle clubs even exists. Plaintiff has simply failed to allege sufficient factual claims
22 to establish the plausible existence of a de facto policy, practice, or custom, or to establish
23 a policy based on the pattern of exhibited contacts and complaints. Accordingly, Plaintiff
24 simply has failed to allege a § 1983 claim for municipal liability.

25 Plaintiff next asserts a ratification theory of supervisory liability. To establish
26 municipal liability under a ratification theory, a plaintiff must allege facts that support the
27 finding that the municipality had knowledge of the alleged constitutional violations. *See*
28 *Garrison v. Burke*, 165 F.3d 565, 572, n.6 (7th Cir. 1999). However, Plaintiff's only

1 allegation that supports this theory is “this policy is approved, supported, ratified and
2 overseen at the highest level of the police force.” (Doc. No. 46 ¶ 38.) This conclusory
3 allegation is simply not enough to support a ratification theory of supervisorial liability.

4 Plaintiff then alleges a theory of liability based upon Defendants’ failure to train its
5 subordinates. To establish this theory, Plaintiff must allege facts supporting that (1)
6 Defendants have an inadequate training program, (2) there was deliberate indifference on
7 the part of Defendants inadequately training its law enforcement officers, and (3) that the
8 inadequate training “actually caused” a deprivation of Plaintiff’s constitutional rights. *See*
9 *Merritt v. Cnty. of Los Angeles*, 875 F.2d 765, 770 (9th Cir. 1989). Plaintiff asserts that the
10 failure to train allegations are supported by the policy itself. (Doc. No. 61 at 16.) However,
11 as the Court has concluded, Plaintiff has failed to allege any such policy. Accordingly,
12 Plaintiff has failed to establish a theory of liability based upon Defendants’ failure to train
13 its subordinates.

14 Accordingly, the City is dismissed.

15 C. Defendant David Dunhoff’s Motion to Dismiss

16 Defendant Dunhoff is sued in both his individual capacity and official capacity
17 arising from the event of Plaintiff’s traffic stop.

18 *i. First Through Third Causes of Action Against Defendant Dunhoff in his*
19 *Individual Capacity*

20 42 U.S.C. § 1983 states:

21 Every person who, under color of any statute, ordinance,
22 regulation, custom, or usage, of any State . . . , subjects, or causes
23 to be subjected, any citizen of the United States or other person
24 within the jurisdiction thereof to the deprivation of any rights,
25 privileges, or immunities secured by the Constitution and laws,
shall be liable to the party injured in an action at law, suit in
equity, or other proper proceeding for redress

26 Thus, to establish § 1983 liability, a plaintiff must show both (1) the deprivation of a right
27 secured by the Constitution and laws of the United States, and (2) that the deprivation was
28

1 caused by a person acting under color of state law. *Chudacoff v. Univ. Med. Ctr. of S. Nev.*,
2 649 F.3d 1143, 1149 (9th Cir. 2011). A person deprives another of a right “if he does an
3 affirmative act, participates in another’s affirmative acts, or omits to perform an act which
4 he is legally required to do so that it causes the deprivation of which complaint is made.”
5 *Johnson*, 588 F.2d at 743. “The inquiry into causation must be individualized and focus on
6 the duties and responsibilities of each individual defendant whose acts or omissions are
7 alleged to have caused Plaintiff’s constitutional deprivation.” *Leer v. Murphy*, 844 F.2d
8 628, 633 (9th Cir. 1988) (citing *Rizzo*, 423 U.S. at 370–71).

9 As to Plaintiff’s first cause of action, Plaintiff has not pled any facts expressing that
10 Defendant Dunhoff personally participated in Plaintiff’s illegal detention. Further, Plaintiff
11 does not dispute this fact in his opposition, but rather focuses on the arrest and search of
12 Plaintiff’s phone in relation to Defendant Dunhoff. Because Defendant Dunhoff did not
13 personally participate in Plaintiff’s detention and Plaintiff alleges no facts that he caused
14 Plaintiff to be detained, the first cause of action is dismissed as to Defendant Dunhoff.

15 Plaintiff’s second cause of action revolves around the false arrest of Plaintiff. The
16 absence of probable cause is a necessary element of a § 1983 false arrest claim. *See*
17 *Yousefian v. City of Glendale*, 779 F.3d 1010, 1014 (9th Cir. 2015). “[P]robable cause
18 exists when under the totality of circumstances known to the arresting officers, a prudent
19 person would have concluded that there was a fair probability that [the Plaintiff] had
20 committed a crime.” *Grant v. City of Long Beach*, 315 F.3d 1081, 1085 (9th Cir. 2003)
21 (citing *United States v. Smith*, 970 F.2d 789, 792 (9th Cir. 1986)). “When there has been
22 communications among [officers], probable cause can rest upon the investigating [officers]
23 ‘collective knowledge.’” *United States v. Del Vizo*, 918 F.2d 821, 826 (9th Cir. 1990).

24 Here, Plaintiff was arrested for having metal knuckles and conspiracy to commit a
25 felony for the benefit of a street gang in violation of California Penal Codes §§ 21810 and
26 186.22(b)(1). Under Cal. Penal Code § 16920 “metal knuckles” are defined as:

27 any device or instrument made wholly or partially of metal that
28 is worn for purposes of offense or defense in or on the hand and

1 that either protects the wearer's hand while striking a blow or
2 increases the force of impact from the blow or injury to the
3 individual receiving the blow. The metal contained in the device
4 may help support the hand or fist, provide shield to protect it, or
5 consist of projections or studs which would contact the
6 individual receiving a blow.

7 Defendant Dunhoff argues that Plaintiff has not alleged factual allegations
8 supporting Defendant Dunhoff's participation in the false arrest, however, Plaintiff has
9 alleged that Defendant Dunhoff was at the scene and that all the officers participated
10 together in deciding what charges to assert. *See Del Vizo*, 918 F.2d at 826. Accordingly,
11 Plaintiff has alleged sufficient allegations to show Defendant Dunhoff's participation in
12 the false arrest.

13 Defendant Dunhoff argues that Plaintiff's claim also fails as it is insufficient as a
14 matter of law. However, as pled, Plaintiff alleges that his rings were mere jewelry. Similar
15 rings to the ones he was wearing are sold in several stores. Furthermore, being a member
16 of a gang is not a crime. *People v. Rodriguez*, 55 Cal. 4th 1125, 1147 (2012). Accordingly,
17 Plaintiff has alleged factual allegations alleging that there was no probable cause to arrest
18 him.

19 Plaintiff's third cause of action alleges an illegal search. "[I]f the search and seizure
20 without a warrant are made upon probable cause, that is, upon a belief, reasonably arising
21 out of circumstances known to the seizing officer, that an automobile or other vehicle
22 contains that which by law is subject to seizure and destruction, the search and seizure are
23 valid." *Carroll v. United States*, 267 U.S. 132, 149 (1925); *see also United States v. Hartz*,
24 458 F.3d 1011, 1017 (9th Cir. 2006). Here, Plaintiff has alleged sufficient factual
25 allegations to show that the officers did not have sufficient probable cause and reasonable
26 suspicion to pull Plaintiff over, search his motorcycle for weapons and arrest him.
27 Defendant Dunhoff argues that Plaintiff has failed to allege his personal participation in
28 the search. However, Plaintiff specifically alleges that Defendant Dunhoff illegally

1 searched his phone on the drive to the police station. (Doc. No. 46 ¶ 24.) Accordingly,
2 Plaintiff has alleged a claim against Defendant Dunhoff for the third cause of action.

3 *ii. Fourth Cause of Action Against Defendant Dunhoff in his Individual Capacity*

4 Plaintiff's fourth cause of action against Defendant Dunhoff is for deliberate
5 indifference of Plaintiff's right to be free from arbitrary detainment, traffic stops, search
6 and arrest without probable cause or reasonable suspicion. "Deliberate indifference is a
7 stringent standard of fault, requiring proof that a municipal actor disregarded a known or
8 obvious consequence of his action." *Board of Cnty. Comm'rs of Bryan Cnty., Okl. v.*
9 *Brown*, 520 U.S. 397, 410 (1997). Here, since Plaintiff has pled sufficient facts that
10 Defendant Dunhoff participated in his illegal arrest and search of his phone, Plaintiff has
11 alleged sufficient factual allegations for the basis of a deliberate indifference claim for his
12 right to be free from arbitrary detainment, traffic stops, search and arrest without probable
13 cause or reasonable suspicion.

14 *iii. Fifth Cause of Action Against Defendant Dunhoff in his Individual Capacity*

15 Plaintiff's fifth cause of action against Defendant Dunhoff is for deliberate
16 indifference under a failure to train legal theory. A municipality may be held liable under
17 a theory of omission for failure to adequately train. *See Cloutheir v. Cnty. of Contra Cost*,
18 591 F.3d 1232, 1249 (9th Cir. 2010), *overruled on other grounds by, Castro v. Cnty. of Los*
19 *Angeles*, 833 F.3d 1060 (9th Cir. 2016). Here, Plaintiff has pled this action against
20 Defendants Zimmerman and the City of San Diego. Defendant Dunhoff is an agent of the
21 City and the City would be the municipality for which liability would attach. Plaintiff has
22 not alleged that Defendant Dunhoff is the supervisor who would be in charge of training.
23 The suit against Defendant Dunhoff in his individual capacity is redundant and improperly
24 pled. Further, the Court has already discussed above that Plaintiff has failed to allege
25 sufficient factual allegations to state a claim for deliberate indifference on the basis of
26 failure to train against the City. Accordingly, Plaintiff's fifth cause of action against
27 Defendant Dunhoff is dismissed.

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1 iv. *Sixth Cause of Action Against Defendant Dunhoff in his Individual Capacity*

2 Plaintiff’s sixth cause of action against Defendant Dunhoff is for violation of
3 California Constitution Art. 1 Section 13. As explained above, the Court has held that
4 Plaintiff has not sufficiently pled a policy that officers conduct suspicion-less stops to
5 harass motorcycle riders. The policy would be the basis for which Plaintiff states there is
6 violation of Article 1 of Section 13 of the California Constitution. Accordingly, this cause
7 of action is dismissed.

8 v. *Seventh and Eighth Causes of Action Against Defendant Dunhoff in his*
9 *Individual Capacity*

10 Plaintiff’s seventh and eighth causes of action allege violations of California’s Bane
11 Act. The Bane Act, California Civil Code § 52.1, provides for a claim against anyone who:
12 “interferes by threats, intimidation, or coercion, or attempts to interfere by threats,
13 intimidation, or coercion, with the exercise or enjoyment by any individual or individuals
14 of rights secured by the Constitution or laws of the United States, or of the rights secured
15 by the Constitution or laws of this state ...” The Bane Act does not require that a “threat,
16 intimidation or coercion” to be “independent” from the threats, intimidation, or coercion
17 inherent in the underlying constitutional violation. *See Cornell v. City & Cnty. of San*
18 *Francisco*, 17 Cal. App. 5th 766, 800 (2017); *see also Craig v. Cty. of Santa Clara*, No.
19 17-CV-02115-LHK, 2018 WL 3777363, at *19 (N.D. Cal. Aug. 9, 2018). Here, Plaintiff
20 has sufficiently alleged that Defendant Dunhoff stated he would give Plaintiff a “second
21 chance” and that if he unlocked the phone, Defendant Dunhoff would call someone to have
22 the motorcycle picked up rather than impounded. (Doc. No. 46 ¶ 24.) Accordingly, Plaintiff
23 has sufficiently plead the seventh and eighth causes of action against Defendant Dunhoff.

24 vi. *Ninth Cause of Action Against Defendant Dunhoff in his Individual Capacity*

25 Plaintiff’s ninth cause of action against Defendant Dunhoff is intentional infliction
26 of emotional distress (“IIED”). To establish a claim for IIED, a plaintiff must show: (1)
27 extreme and outrageous conduct by the defendant with the intention of causing, or reckless
28 disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffers severe

1 or extreme emotional distress; and (3) actual and proximate causation of the emotional
2 distress by the defendant's outrageous conduct. *Jaramillo v. City of San Mateo*, 76 F. Supp.
3 3d 905, 925–26 (N.D. Cal. 2014)(citing *Christensen v. Super Ct.*, 54 Cal. 3d 868, 903
4 (1991)). For the conduct to be considered outrageous, it “must be so extreme as to exceed
5 all bounds of that usually tolerated in a civilized community.” *Cervantez v. J.C. Penny Co.*,
6 24 Cal. 3d 579, 593 (1979), *overturned on other grounds by legislative action*, Cal. Penal
7 Code § 243.

8 Here, Plaintiff has failed to allege any conduct on behalf of Defendant Dunhoff that
9 is so extreme to exceed all bounds of that which is usually tolerated in a traffic stop.
10 Plaintiff alleges in a conclusory fashion that he suffered mental and emotional distress as
11 result of the City's policy and by his arrest, booking, processing and lock-up. This is simply
12 insufficient. *See Landucci v. State Farm Ins. Co.*, 65 F. Supp. 3d 694, 712 (N.D. Cal. 2014)
13 (granting motion to dismiss because Plaintiff's IIED claim conclusory alleged that
14 Defendants “caused her mental anguish, anxiety, and distress” and she “felt extremely
15 emotionally distressed and pained, fearing for her job and livelihood.”) Accordingly,
16 Plaintiff's ninth cause of action is dismissed.

17 D. Defendant Justin Montoya's Motion to Dismiss

18 Defendant Montoya is sued in both his individual capacity and official capacity
19 arising from the event of Plaintiff's traffic stop.

20 *i. First Through Third Causes of Action Against Defendant Montoya in his*
21 *Individual Capacity*

22 As to Plaintiff's first cause of action, Plaintiff has not pled any facts expressing that
23 Defendant Montoya personally participated in Plaintiff's illegal detention. Further,
24 Plaintiff does not dispute this fact in his opposition, but rather focuses on the arrest and
25 search of Plaintiff's saddlebags in relation to Defendant Montoya. Because Defendant
26 Montoya did not personally participate in Plaintiff's detention and Plaintiff alleges no facts
27 that he caused Plaintiff to be detained, the first cause of action is dismissed as to Defendant
28 Montoya.

1 Defendant Montoya argues that Plaintiff has not alleged factual allegations
2 supporting Defendant Montoya's participation in the false arrest, however, Plaintiff has
3 alleged that Defendant Montoya was at the scene and that all the officers participated
4 together in deciding on what charges to assert. *See Del Vizo*, 918 F.2d at 826. Accordingly,
5 Plaintiff has alleged sufficient allegations to show Defendant Montoya's participation in
6 the false arrest and that there was a lack of probable cause for the arrest.

7 Plaintiff has alleged sufficient factual allegations to show that the officers did not
8 have sufficient probable cause and reasonable suspicion to pull Plaintiff over, search his
9 motorcycle for weapons and arrest him. Defendant Montoya argues that Plaintiff has failed
10 to allege his personal participation in the search. The Court agrees that Defendant Montoya
11 did not actively participate in the search of Plaintiff's saddlebags or phone. Accordingly,
12 Plaintiff has failed to allege a claim against Defendant Montoya for the third cause of
13 action.

14 *ii. Fourth Cause of Action Against Defendant Montoya in his Individual*
15 *Capacity*

16 Plaintiff's fourth cause of action against Defendant Montoya is for deliberate
17 indifference of Plaintiff's right to be free from arbitrary detainment, traffic stops, search
18 and arrest without probable cause or reasonable suspicion. Here, since Plaintiff has pled
19 sufficient facts that Defendant Montoya participated in his illegal arrest, Plaintiff has
20 alleged sufficient factual allegations for the basis of a deliberate indifference claim for his
21 right to be free from arbitrary detainment, traffic stops, search and arrest without probable
22 cause or reasonable suspicion.

23 *iii. Fifth Cause of Action Against Defendant Montoya in his Individual Capacity*

24 Plaintiff's fifth cause of action against Defendant Montoya is for deliberate
25 indifference under a failure to train legal theory. Here, Plaintiff has pled this action against
26 Defendants Zimmerman and the City of San Diego. Defendant Montoya is an agent of the
27 City and the City would be the municipality for which liability would attach. Plaintiff has
28 not alleged that Defendant Montoya is the supervisor that would be in charge of training.

1 The suit against Defendant Montoya in his individual capacity is redundant and improperly
2 pled. Further, the Court has already discussed above that Plaintiff has failed to allege
3 sufficient factual allegations to state a claim for deliberate indifference on the basis of
4 failure to train against the City. Accordingly, Plaintiff's fifth cause of action against
5 Defendant Montoya is dismissed.

6 *iv. Sixth Cause of Action Against Defendant Montoya in his Individual Capacity*

7 Plaintiff's sixth cause of action against Defendant Montoya is for violation of
8 California Constitution Art. 1 Section 13. As explained above, the Court has held that
9 Plaintiff has not sufficiently pled a policy that officers conduct suspicion-less stops to
10 harass motorcycle riders. The policy would be the basis for which Plaintiff states there is
11 violation of Article 1 of Section 13 of the California Constitution. Accordingly, this cause
12 of action is dismissed.

13 *v. Seventh and Eighth Causes of Action Against Defendant Montoya in his*
14 *Individual Capacity*

15 Here, Plaintiff has sufficiently alleged that Defendant Montoya stated he could
16 search Plaintiff's saddlebags "the easy way or the hard way." (Doc. No. 46 ¶ 22.) Further,
17 Defendant Montoya demanded that Plaintiff provide a password for his phone and if
18 Plaintiff failed to Defendant Montoya would have his motorcycle impounded. (*Id.* ¶ 24.)
19 Accordingly, Plaintiff has sufficiently plead the seventh and eighth causes of action against
20 Defendant Montoya.

21 *vi. Ninth Cause of Action Against Defendant Montoya in his Individual Capacity*

22 Here, Plaintiff has failed to allege any conduct on behalf of Defendant Montoya that
23 is so extreme to exceed all bounds of that which is usually tolerated in a traffic stop.
24 Plaintiff alleges in a conclusory fashion that he suffered mental and emotional distress as
25 result of the City's policy and by his arrest, booking, processing and lock-up. This is simply
26 insufficient. *See Landucci*, 65 F. Supp. 3d at 712 (granting motion to dismiss because
27 Plaintiff's IIED claim conclusory alleged that Defendants "caused her mental anguish,
28

1 anxiety, and distress” and she “felt extremely emotionally distressed and pained, fearing
2 for her job and livelihood.”) Accordingly, Plaintiff’s ninth cause of action is dismissed.

3 E. Defendant J. Johnson’s Motion to Dismiss

4 Defendant Johnson is sued in both his individual capacity and official capacity
5 arising from the event of Plaintiff’s traffic stop.

6 i. *First Through Third Causes of Action Against Defendant Johnson in his*
7 *Individual Capacity*

8 Plaintiff’s first cause of action involves the illegal detention of Plaintiff against
9 Defendant Johnson. The Fourth Amendment requires that a detention be supported by facts
10 and inferences that demonstrate a reasonable suspicion that the person detained may be
11 involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). The Fourth Amendment
12 requires only reasonable suspicion in the context of investigative traffic stops. *United*
13 *States v. Lopez–Soto*, 205 F.3d 1101, 1104–05 (9th Cir.2000). To satisfy the Fourth
14 Amendment’s reasonableness requirement, an officer must have “specific, articulable facts
15 which, together with objective and reasonable inferences, form the basis for suspecting that
16 the particular person detained is engaged in criminal activity.” *Id.* (quoting *United States*
17 *v. Michael R.*, 90 F.3d 340, 346 (9th Cir.1996)).

18 A traffic stop is reasonable at its inception if the detaining officer, at the very least,
19 reasonably suspects the driver has violated the law. An investigative stop is not subject to
20 strict time limitations as long as the officer is pursuing the investigation in a diligent and
21 reasonable manner. *United States v. Sharpe*, 470 U.S. 675, 686–87 (1985). The period of
22 detention may be permissibly extended if new grounds for suspicion of criminal activity
23 continue to unfold. *United States v. Mayo*, 394 F.3d 1271, 1275 (9th Cir. 2005).

24 Defendant Johnson attempts to argue that police officers have reasonable suspicion
25 to stop a vehicle for violation of vehicular licensing laws where the officer saw neither
26 license plates nor a temporary permit before he made the stop. *See Brocato v. Perez*, No.
27 17-CV-0053-RJC, 2017 WL 603304, at *4 (C.D. Cal. Oct. 4, 2017). While this may be
28 true, Plaintiff states that neither Defendant Johnson nor Defendant George noticed that

1 Plaintiff's motorcycle did not have a license plate or registration tag displayed until after
2 the stop. A traffic stop must be reasonable at its inception. Plaintiff alleges that Defendant
3 George specifically stated that the stop was for loud pipes. (Doc. No. 46 ¶ 19.) Since the
4 Court must accept Plaintiff's factual allegations as true at this point, the lack of license
5 plate and registration tag may not serve as the reasonable suspicion for the traffic stop.

6 Here, Plaintiff was stopped on the basis that his pipes were loud. Plaintiff asserts
7 that he told Defendants that the pipes were stock pipes, the exhaust pipes were installed at
8 the factory and comply with all California emissions and volume standards and
9 specifications. (Doc. No. 46 ¶ 20.) Further, Defendants did not make any attempt to
10 measure the decibel level of the pipes. (*Id.* ¶ 21.) In fact, Defendants did not mention the
11 loud pipes again after Defendant George's comment to Plaintiff. Based on Plaintiff's
12 pleadings, loud pipes may not serve as reasonable suspicion for the stop at this stage of the
13 litigation. Accordingly, Plaintiff has sufficiently alleged facts that there was no reasonable
14 suspicion for the traffic stop and thus, resulted in an illegal detention.

15 Defendant Johnson argues that Plaintiff has not alleged factual allegations
16 supporting Defendant Johnson's participation in the false arrest, however, Plaintiff has
17 alleged that Defendant Johnson was at the scene and that all the officers participated
18 together in deciding on what charges to assert. *See Del Vizo*, 918 F.2d at 826. Accordingly,
19 Plaintiff has alleged sufficient allegations to show Defendant Johnson's participation in the
20 false arrest and there was a lack of probable cause for the arrest.

21 Plaintiff's third cause of action alleges an illegal search. Here, Plaintiff has alleged
22 sufficient factual allegations to show that the officers did not have sufficient probable cause
23 and reasonable suspicion to pull Plaintiff over, search his motorcycle for weapons and
24 arrest him. Defendant Johnson argues that Plaintiff has failed to allege his personal
25 participation in the search. However, Plaintiff specifically alleges that Defendant Johnson
26 illegally searched his saddlebags. (Doc. No. 46 ¶ 22.) Accordingly, Plaintiff has alleged a
27 claim against Defendant Johnson for the third cause of action.

28 ///

1 *ii. Fourth Cause of Action Against Defendant Johnson in his Individual Capacity*

2 Plaintiff's fourth cause of action against Defendant Johnson is for deliberate
3 indifference of Plaintiff's right to be free from arbitrary detainment, traffic stops, search
4 and arrest without probable cause or reasonable suspicion. Here, since Plaintiff has pled
5 sufficient facts that Defendant Johnson participated in his illegal arrest, Plaintiff has alleged
6 sufficient factual allegations for the basis of a deliberate indifference claim for his right to
7 be free from arbitrary detainment, traffic stops, search and arrest without probable cause
8 or reasonable suspicion.

9 *iii. Fifth Cause of Action Against Defendant Johnson in his Individual Capacity*

10 Plaintiff's fifth cause of action against Defendant Johnson is for deliberate
11 indifference under a failure to train legal theory. Here, Plaintiff has pled this action against
12 Defendants Zimmerman and the City of San Diego. Defendant Johnson is an agent of the
13 City and the City would be the municipality for which liability would attach. Plaintiff has
14 not alleged that Defendant Johnson is the supervisor that would be in charge of training.
15 The suit against Defendant Johnson in his individual capacity is redundant and improperly
16 pled. Further, the Court has already discussed above that Plaintiff has failed to allege
17 sufficient factual allegations to state a claim for deliberate indifference on the basis of
18 failure to train against the City. Accordingly, Plaintiff's fifth cause of action against
19 Defendant Johnson is dismissed.

20 *iv. Sixth Cause of Action Against Defendant Johnson in his Individual Capacity*

21 Plaintiff's sixth cause of action against Defendant Johnson is for violation of
22 California Constitution Art. 1 Section 13. As explained above, the Court has held that
23 Plaintiff has not sufficiently pled a policy that officers conduct suspicion-less stops to
24 harass motorcycle riders. The policy would be the basis for which Plaintiff states there is
25 violation of Article 1 of Section 13 of the California Constitution. Accordingly, this cause
26 of action is dismissed.

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1 v. *Ninth Cause of Action Against Defendant Johnson in his Individual Capacity*

2 Here, Plaintiff has failed to allege any conduct on behalf of Defendant Johnson that
3 is so extreme to exceed all bounds of that is usually tolerated in a traffic stop. Plaintiff
4 alleges in a conclusory fashion that he suffered mental and emotional distress as result of
5 the City's policy and by his arrest, booking, processing and lock-up. This is simply
6 insufficient. *See Landucci*, 65 F. Supp. 3d at 712 (granting motion to dismiss because
7 Plaintiff's IIED claim conclusory alleged that Defendants "caused her mental anguish,
8 anxiety, and distress" and she "felt extremely emotionally distressed and pained, fearing
9 for her job and livelihood.") Accordingly, Plaintiff's ninth cause of action is dismissed.

10 F. Defendant Timothy Coyle's Motion to Dismiss

11 Defendant Coyle is sued in both his individual capacity and official capacity arising
12 from the event of Plaintiff's traffic stop.

13 i. *First Through Third Causes of Action Against Defendant Coyle in his*
14 *Individual Capacity*

15 As to Plaintiff's first cause of action, Plaintiff has not pled any facts expressing that
16 Defendant Coyle personally participated in Plaintiff's illegal detention. Further, Plaintiff
17 does not dispute this fact in his opposition, but rather focuses on the arrest and search of
18 Plaintiff's saddlebags in relation to Defendant Coyle. Because Defendant Coyle did not
19 personally participate in Plaintiff's detention and Plaintiff alleges no facts that he caused
20 Plaintiff to be detained, the first cause of action is dismissed as to Defendant Coyle.

21 Defendant Coyle argues that Plaintiff has not alleged factual allegations supporting
22 Coyle's participation in the false arrest, however, Plaintiff has alleged that Defendant
23 Coyle was at the scene and that all the officers participated together in deciding on what
24 charges to assert. *See Del Vizo*, 918 F.2d at 826. Accordingly, Plaintiff has alleged
25 sufficient allegations to show Defendant Coyle's participation in the false arrest and that
26 there was a lack of probable cause for the arrest.

27 Plaintiff's third cause of action alleges an illegal search. Here, Plaintiff has alleged
28 sufficient factual allegations to show that the officers did not have sufficient probable cause

1 and reasonable suspicion to pull Plaintiff over, search his motorcycle for weapons and
2 arrest him. Defendant Coyle argues that Plaintiff has failed to allege his personal
3 participation in the search. However, Plaintiff specifically alleges that Defendant Coyle
4 illegally searched his saddlebags. (Doc. No. 46 ¶ 22.) Accordingly, Plaintiff has alleged a
5 claim against Defendant Coyle for the third cause of action.

6 *ii. Fourth Cause of Action Against Defendant Coyle in his Individual Capacity*

7 Plaintiff's fourth cause of action against Defendant Coyle is for deliberate
8 indifference of Plaintiff's right to be free from arbitrary detainment, traffic stops, search
9 and arrest without probable cause or reasonable suspicion. Here, since Plaintiff has pled
10 sufficient facts that Defendant Coyle participated in his illegal arrest, Plaintiff has alleged
11 sufficient factual allegations for the basis of a deliberate indifference claim for his right to
12 be free from arbitrary detainment, traffic stops, search and arrest without probable cause
13 or reasonable suspicion.

14 *iii. Fifth Cause of Action Against Defendant Coyle in his Individual Capacity*

15 Plaintiff's fifth cause of action against Defendant Coyle is for deliberate indifference
16 under a failure to train legal theory. Here, Plaintiff has pled this action against Defendants
17 Zimmerman and the City of San Diego. Defendant Coyle is an agent of the City and the
18 City would be the municipality for which liability who would attach. Plaintiff has not
19 alleged that Defendant Coyle is the supervisor would be in charge of training. The suit
20 against Defendant Coyle in his individual capacity is redundant and improperly pled.
21 Further, the Court has already discussed above that Plaintiff has failed to allege sufficient
22 factual allegations to state a claim for deliberate indifference on the basis of failure to train
23 against the City. Accordingly, Plaintiff's fifth cause of action against Defendant Coyle is
24 dismissed.

25 *iv. Sixth Cause of Action Against Defendant Coyle in his Individual Capacity*

26 Plaintiff's sixth cause of action against Defendant Coyle is for violation of California
27 Constitution Art. 1 Section 13. As explained above, the Court has held that Plaintiff has
28 not sufficiently pled a policy that officers conduct suspicion-less stops to harass motorcycle

1 riders. The policy would be the basis for which Plaintiff states there is violation of Article
2 1 of Section 13 of the California Constitution. Accordingly, this cause of action is
3 dismissed.

4 v. *Ninth Cause of Action Against Defendant Coyle in his Individual Capacity*

5 Here, Plaintiff has failed to allege any conduct on behalf of Defendant Coyle that is
6 so extreme to exceed all bounds of that which is usually tolerated in a traffic stop. Plaintiff
7 alleges in a conclusory fashion that he suffered mental and emotional distress as result of
8 the City's policy and by his arrest, booking, processing and lock-up. This is simply
9 insufficient. *See Landucci*, 65 F. Supp. 3d at 712 (granting motion to dismiss because
10 Plaintiff's IIED claim conclusory alleged that Defendants "caused her mental anguish,
11 anxiety, and distress" and she "felt extremely emotionally distressed and pained, fearing
12 for her job and livelihood.") Accordingly, Plaintiff's ninth cause of action is dismissed.

13 G. Defendant Adam George's Motion to Dismiss

14 Defendant George is sued in both his individual capacity and official capacity arising
15 from the event of Plaintiff's traffic stop.

16 i. *First Through Third Causes of Action Against Defendant George in his*
17 *Individual Capacity*

18 Plaintiff's first cause of action involves the illegal detention of Plaintiff against
19 Defendant George. Similar to Defendant Johnson, Defendant George attempts to argue that
20 police officers have reasonable suspicion to stop a vehicle for violation of vehicular
21 licensing laws where the officer saw neither license plates nor a temporary permit before
22 he made the stop. *See Brocato*, 2017 WL 603304, at *4. While this may be true, Plaintiff
23 states that neither Defendant Johnson nor Defendant George noticed that Plaintiff's
24 motorcycle did not have a license plate or a registration tag displayed until after the stop.
25 A traffic stop must be reasonable at its inception. Plaintiff alleges that Defendant George
26 specifically stated that the stop was for loud pipes. (Doc. No. 46 ¶ 19.) Since the Court
27 must accept Plaintiff's factual allegations as true at this point, the lack of license plate and
28 registration tag may not serve as the reasonable suspicion for the traffic stop.

1 Here, Plaintiff was stopped on the basis that his pipes were loud. Plaintiff asserts
2 that he told Defendants that the pipes were stock pipes, the exhaust pipes were installed at
3 the factory and comply with all California emissions and volume standards and
4 specifications. (Doc. No. 46 ¶ 20.) Further, Defendants did not make any attempt to
5 measure the decibel level of the pipes. (*Id.* ¶ 21.) In fact, Defendants did not mention the
6 loud pipes again after Defendant George's comment to Plaintiff. Based on Plaintiff's
7 pleadings, loud pipes may not serve as reasonable suspicion for the stop at this stage of the
8 litigation. Accordingly, Plaintiff has sufficiently alleged facts that there was no reasonable
9 suspicion for the traffic stop and thus, resulted in an illegal detention.

10 Defendant George argues that Plaintiff has not alleged factual allegations supporting
11 Defendant George's participation in the false arrest, however, Plaintiff has alleged that
12 Defendant George was at the scene and that all the officers participated together in deciding
13 on what charges to assert. *See Del Vizo*, 918 F.2d at 826. Accordingly, Plaintiff has alleged
14 sufficient allegations to show Defendant George's participation in the false arrest and that
15 there was a lack of probable cause for the arrest.

16 Plaintiff has alleged sufficient factual allegations to show that the officers did not
17 have sufficient probable cause and reasonable suspicion to pull Plaintiff over, search his
18 motorcycle for weapons and arrest him. Defendant George argues that Plaintiff has failed
19 to allege his personal participation in the search. The Court agrees that Defendant George
20 did not actively participate in any search of Plaintiff's belongings. Accordingly, Plaintiff
21 has failed to allege a claim against Defendant George for the third cause of action.

22 *ii. Fourth Cause of Action Against Defendant George in his Individual Capacity*

23 Plaintiff's fourth cause of action against Defendant George is for deliberate
24 indifference of Plaintiff's right to be free from arbitrary detainment, traffic stops, search
25 and arrest without probable cause or reasonable suspicion. Here, since Plaintiff has pled
26 sufficient facts that Defendant George participated in his illegal arrest, Plaintiff has alleged
27 sufficient factual allegations for the basis of a deliberate indifference claim for his right to
28

1 be free from arbitrary detainment, traffic stops, search and arrest without probable cause
2 or reasonable suspicion.

3 *iii. Fifth Cause of Action Against Defendant George in his Individual Capacity*

4 Plaintiff's fifth cause of action against Defendant George is for deliberate
5 indifference under a failure to train legal theory. Here, Plaintiff has pled this action against
6 Defendants Zimmerman and the City of San Diego. Defendant George is an agent of the
7 City and the City would be the municipality for which liability would attach. Plaintiff has
8 not alleged that Defendant George is the supervisor that would be in charge of training.
9 The suit against Defendant George in his individual capacity is redundant and improperly
10 pled. Further, the Court has already discussed above that Plaintiff has failed to allege
11 sufficient factual allegations to state a claim for deliberate indifference on the basis of
12 failure to train against the City. Accordingly, Plaintiff's fifth cause of action against
13 Defendant George is dismissed.

14 *iv. Sixth Cause of Action Against Defendant George in his Individual Capacity*

15 Plaintiff's sixth cause of action against Defendant George is for violation of
16 California Constitution Art. 1 Section 13. As explained above, the Court has held that
17 Plaintiff has not sufficiently pled a policy that officers conduct suspicion-less stops to
18 harass motorcycle riders. The policy would be the basis for which Plaintiff states there is
19 violation of Article 1 of Section 13 of the California Constitution. Accordingly, this cause
20 of action is dismissed.

21 *v. Ninth Cause of Action Against Defendant George in his Individual Capacity*

22 Here, Plaintiff has failed to allege any conduct on behalf of Defendant George that
23 is so extreme to exceed all bounds of that which is usually tolerated in a traffic stop.
24 Plaintiff alleges in a conclusory fashion that he suffered mental and emotional distress as
25 result of the City's policy and by his arrest, booking, processing and lock-up. This is simply
26 insufficient. *See Landucci*, 65 F. Supp. 3d at 712 (granting motion to dismiss because
27 Plaintiff's IIED claim conclusory alleged that Defendants "caused her mental anguish,
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1 anxiety, and distress” and she “felt extremely emotionally distressed and pained, fearing
2 for her job and livelihood.”) Accordingly, Plaintiff’s ninth cause of action is dismissed.

3 H. Defendant David Wolff’s Motion to Dismiss

4 Based on Plaintiff’s TAC and Plaintiff’s counsel’s comments at the hearing on this
5 motion, Defendant Wolff was not present during the traffic stop or arrest. Plaintiff does
6 state that Defendant Wolff arrived at or near the point of the saddlebag search in his TAC.
7 (Doc. No. 46 ¶ 22.) However, Defendant Wolff is not mentioned again in regard to the
8 traffic stop incident. Later in the TAC, Plaintiff states Defendant Wolff was not present at
9 the arrest of Plaintiff and his affidavit for the warrant was based on events described to him
10 by Defendant Coyle. (*Id.* ¶ 41.) Plaintiff does not address this discrepancy in his opposition.
11 Further, Plaintiff’s counsel at the February 14, 2019 hearing on this instant motion stated
12 that Defendant Wolff’s role was obtaining the search warrant. Accordingly, the Court will
13 dismiss the first, second, fourth and ninth causes of action as to Defendant Wolff without
14 prejudice as it does not appear he was present during the traffic stop and arrest.

15 Plaintiff alleges that Defendant Wolff obtained a search warrant for Plaintiff’s phone
16 based on information received from Defendant Coyle. While, the TAC alleges that a
17 warrant was obtained based on a false affidavit, Plaintiff fails to allege that the warrant was
18 ever actually executed. The warrant was obtained after the stop and arrest. The only search
19 Plaintiff actually alleges is the search of his saddlebags during the stop and arrest and he
20 unlocks his phone while in the police car on the way to the station. Accordingly, if the
21 warrant was not executed, Defendant Wolff did not participate in an illegal search. Thus,
22 the Court will dismiss the third cause action as to Defendant Wolff.

23 Plaintiff’s fifth cause of action against Defendant Wolff is for deliberate indifference
24 under a failure to train legal theory. Here, Plaintiff has pled this action against Defendants
25 Zimmerman and the City. Defendant George is an agent of the City and the City would be
26 the municipality for which liability would attach. Plaintiff has not alleged that Defendant
27 Wolff is the supervisor that would be in charge of training. The suit against Defendant
28 Wolff in his individual capacity is redundant and improperly pled. Further, the Court has

1 already discussed above that Plaintiff has failed to allege sufficient factual allegations to
2 state a claim for deliberate indifference on the basis of failure to train. Accordingly,
3 Plaintiff's fifth cause of action against Defendant Wolff is dismissed.

4 I. Officer Defendants in Their Official Capacity

5 Official-capacity suits "generally represent only another way of pleading an action
6 against an entity of which an officer is an agent." *Monell*, 436 U.S. at 690 n.55. In *Kentucky*
7 *v. Graham*, the Supreme Court noted that plaintiffs in § 1983 actions "no longer . . . need
8 to bring official-capacity actions against local government officials, ...[because] under
9 *Monell*, ... local government units can be sued directly for damages and injunctive or
10 declaratory relief." 473 U.S. 159, 167 n.14 (1985). "District courts in this circuit have
11 followed the above reasoning when deciding whether to dismiss claims against official
12 capacity officers when the local government entity is also a named defendant." *Mendez v.*
13 *Baca*, 11-CV-4771-JHN-PJWx, 2011 WL 13147363, at *3 (C.D. Cal. Oct. 12, 2011).

14 Here, Plaintiff's opposition does not address this contention that the claims against
15 the Defendant Officers and against the City are redundant. Accordingly, the Court finds
16 the causes of action in the Defendant Officers' official-capacity redundant and dismisses
17 all claims against the Defendant Officers in their official-capacity.


18 **IV. CONCLUSION**

19 As explained in greater detail above, the Court **GRANTS** the City of San Diego and
20 Shelley Zimmerman's motion to dismiss **WITHOUT LEAVE TO AMEND, GRANTS**
21 in part and **DENIES** in part David Dunhoff's motion to dismiss **WITHOUT LEAVE TO**
22 **AMEND, GRANTS** in part and **DENIES** in part Justin Montoya's motion to dismiss
23 **WITHOUT LEAVE TO AMEND, GRANTS** in part and **DENIES** in part J. Johnson's
24 motion to dismiss **WITHOUT LEAVE TO AMEND, GRANTS** in part and **DENIES** in
25 part Timothy Coyle's motion to dismiss **WITHOUT LEAVE TO AMEND, GRANTS** in
26 part and **DENIES** in part Adam George's motion to dismiss **WITHOUT LEAVE TO**
27 **AMEND**, and **GRANTS** David Wolff's motion to dismiss **WITHOUT LEAVE TO**
28 **AMEND**.

1 Further, the Court summarizes what causes of action remain against which
2 Defendants. The City of San Diego, Shelley Zimmerman, and David Wolff are dismissed
3 from this action. Against David Dunhoff, the second, third, fourth, seventh and eighth
4 causes of action remain. Against Justin Montoya, the second, fourth, seventh and eighth
5 causes of action remain. Against J. Johnson, the first, second, third, and fourth causes of
6 action remain. Against Timothy Coyle, the second, third, and fourth causes of action
7 remain. Against Adam George, the first, second, and fourth causes of action remain.

8
9 **IT IS SO ORDERED.**

10 Dated: September 23, 2019


11 _____
12 Hon. Anthony J. Battaglia
13 United States District Judge
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