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

RICHARD PEARSON,  Plaintiff,  v.  CITY OF SAN DIEGO; JASON DARBY; JAMES R. DUNAJ; SERGEANT PHILIP WORTHINGTON; and DOES 1-10,  Defendants.
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Case No.: 18cv56-MMA (JMA)

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS**

[Doc. No. 3]

Plaintiff Richard Pearson (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 1983 for a violation of his Fourth Amendment right to be free from unreasonable searches and seizures by Defendants City of San Diego, San Diego Police Department (“SDPD”) Officer Jason Darby, SDPD Officer James R. Dunaj, and SDPD Sergeant Philip Worthington (collectively, “Defendants”). Doc. No. 1 (“Compl.”). Presently before the Court is Defendants’ Federal Rule of Civil Procedure 12(b)(6) motion to dismiss Plaintiff’s Complaint for failure to state a claim upon which relief may be granted. Doc. No. 3 (“MTD”). Plaintiff opposes dismissal [Doc. No. 4 (“Oppo.”)] and Defendants reply [Doc. No. 7 (“Reply”)]. The Court found the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule

1 7.1.d.1. Doc. No. 8. For the reasons set forth below, the Court **DENIES** Defendants’  
2 motion.

3 **BACKGROUND**<sup>1</sup>

4 Plaintiff and the City of San Diego (“City”) “had a long-running dispute . . .  
5 regarding improvements to his home in Pacific Beach.” Compl., ¶ 10. Specifically, the  
6 City “had been requesting an inspection of Plaintiff’s home by Code Compliance.” *Id.*

7 At the request of Plaintiff’s employer,<sup>2</sup> Defendants Darby and Dunaj conducted a  
8 “welfare check” at Plaintiff’s home on January 8, 2016. Compl., ¶ 11. Plaintiff was not  
9 home during the check. *Id.* One of the Defendants looked into the mail slot at the front  
10 of the house and “noted that there was no smell, no mail piled up or any indication that  
11 there was a problem.” *Id.* “Ultimately, Defendant [Worthington] broke into the back of  
12 the house [without a warrant] by breaking Plaintiff’s door, and the other two officers  
13 joined him.” Compl., ¶¶ 12, 18. “[A]ll three officers had their guns drawn and continued  
14 to have their guns out majority of the time they were in the house.” *Id.* Plaintiff alleges  
15 that security footage confirms that Defendants were on the property for more than an  
16 hour. *Id.* According to Plaintiff, while the officers were in his house, they “searched  
17 through papers and shelves, conducting much more than what could reasonably be called  
18 a ‘welfare check.’” Compl., ¶ 13. Defendant Darby left a note for Plaintiff stating that  
19 “they were doing a welfare check at the request of Plaintiff’s employer.” Compl., ¶ 14.

20 Accordingly, Plaintiff raises a Fourth Amendment claim for violation of his right  
21 to be free from unlawful searches and seizures and a *Monell* claim, alleging Defendant’s  
22 conduct was “ordered and/or ratified by a person with final policymaking authority for  
23 the [City].” Compl., ¶¶ 17, 26.

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27 <sup>1</sup> Because this matter is before the Court on a 12(b)(6) motion to dismiss, the Court must accept as true  
28 the allegations set forth in the operative complaint. *See Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S.  
738, 740 (1976).

<sup>2</sup> Plaintiff alleges that he “had not been to the office for several months.” Compl., ¶ 14.

1 LEGAL STANDARD

2 A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the complaint.  
3 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short  
4 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.  
5 Civ. P. 8(a)(2). However, plaintiffs must also plead “enough facts to state a claim to  
6 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007);  
7 Fed. R. Civ. P. 12(b)(6). That is, the pleadings must contain factual allegations  
8 “plausibly suggesting (not merely consistent with)” a right to relief. *Twombly*, 550 U.S.  
9 at 557. The plausibility standard thus demands more than a formulaic recitation of the  
10 elements of a cause of action, or naked assertions devoid of further factual enhancement.  
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555, 557).  
12 Instead, the complaint “must contain sufficient allegations of underlying facts to give fair  
13 notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652  
14 F.3d 1202, 1216 (9th Cir. 2011).

15 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth  
16 of all factual allegations and must construe them in the light most favorable to the  
17 nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).  
18 The court need not take legal conclusions as true merely because they are cast in the form  
19 of factual allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).  
20 Similarly, “conclusory allegations of law and unwarranted inferences are not sufficient to  
21 defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

22 DISCUSSION

23 Defendants argue that both of Plaintiff’s causes of action fail to state a claim upon  
24 which relief may be granted. MTD at 3-7. Specifically, Defendants assert that the  
25 emergency aid exception to the warrant requirement negates Plaintiff’s Fourth  
26 Amendment claim and, therefore, Plaintiff’s *Monell* claim is unsupported by a  
27 constitutional violation. *Id.*

1 To maintain a *prima facie* case under § 1983, the plaintiff must establish that: (1)  
2 the conduct complained of was committed by a person acting under color of state law;  
3 and (2) the conduct violated a right secured by the Constitution of the laws of the United  
4 States. *West v. Atkins*, 487 U.S. 42, 48 (1988). The first requirement requires the  
5 plaintiff to prove that conduct was “fairly attributable to the State.” *Lugar v. Edmondson*  
6 *Oil Co., Inc.*, 457 U.S. 922, 937 (1982). Here, the Defendants were performing their  
7 duties as SDPD officers working for the City, and their conduct was therefore undertaken  
8 and carried out under color of law. *See id.* at 937. The second requirement under § 1983  
9 is met if Defendants’ acts deprived Plaintiff of privileges or immunities secured to him  
10 under the Constitution. The acts Plaintiff complains of are discussed below.

11 **A. Fourth Amendment Claim**

12 Plaintiff claims that Defendants violated his Fourth Amendment right against  
13 unreasonable searches and seizures under 42 U.S.C. § 1983 when they entered his home  
14 without a warrant. Compl., ¶¶ 15-23. Defendants assert their warrantless entry is  
15 justified by the emergency aid exception to the warrant requirement. MTD at 4.

16 The Fourth Amendment protects individuals “against unreasonable searches and  
17 seizures.” *United States v. Struckman*, 603 F.3d 731, 737-38 (9th Cir. 2010) (quoting  
18 U.S. Const. amend. IV). “Searches and seizures inside a home without a warrant are  
19 presumptively unreasonable.” *Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211,  
20 1221 (9th Cir. 2014), *rev’d in part on other grounds, cert. dismissed in part*, 135 S. Ct.  
21 1765 (2015). However, “a warrantless search or seizure is permitted to render emergency  
22 aid or address exigent circumstances.” *Id.* The emergency aid exception “applies when:  
23 ‘(1) considering the totality of the circumstances, law enforcement had an objectively  
24 reasonable basis for concluding that there was an immediate need to protect others or  
25 themselves from serious harm; and (2) the search’s scope and manner were reasonable to  
26 meet the need.’” *Id.* (quoting *United States v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008)).  
27 It is a defendant’s burden to justify a warrantless search or seizure. *See e.g., California v.*  
28 *Acevedo*, 500 U.S. 565 n.5 (1991) (“Because each exception to the warrant requirement

1 invariably impinges to some extent on the protective purpose of the Fourth Amendment,  
2 the few situations in which a search may be conducted in the absence of a warrant have  
3 been carefully delineated and ‘the burden is on those seeking the exemption to show the  
4 need for it.’”) (quoting *United States v. Jeffers*, 342 U.S. 48, 51 (1951)).

5 Defendants argue dismissal is appropriate because they had reasonable grounds to  
6 believe that there was an immediate need for assistance based on the welfare check  
7 request even though they were not confronted with a bad smell, a pile of mail, or other  
8 indications of a problem. MTD at 4-6; *see also* Compl., ¶¶ 11, 14.

9 The reasonableness of the officers’ conduct is an issue of fact. *See McKenzie v.*  
10 *Lamb*, 738 F.2d 1005, 1008 (9th Cir. 1984) (the judgment of reasonableness in § 1983  
11 actions against police which are predicated on Fourth Amendment violations is a question  
12 of fact for the jury); *Walker v. City of Fresno*, No. 1:09-cv-1667-OWW-SKO, 2010 WL  
13 3341861, at \*4 (E.D. Cal. Aug. 23, 2010). Defendants’ argument pertains to the merits of  
14 Plaintiff’s claim and not the sufficiency of his Complaint. *See* Oppo. at 4-7. “The  
15 substantive merit of the Complaint or cause of action is not a relevant inquiry in the  
16 context of a Rule 12(b)(6).” *Walker*, 2010 WL 3341861, at \*4; *see Navarro*, 250 F.3d at  
17 732 (motion to dismiss is concerned with a claim’s sufficiency rather than its substantive  
18 merits).

19 Plaintiff has alleged that Defendants entered his home without a warrant or  
20 consent and that the search was unreasonable. Compl., ¶¶ 11-14, 18, 20. This is  
21 sufficient to survive Defendants’ motion to dismiss. Accordingly, the Court **DENIES**  
22 Defendants’ motion to dismiss Plaintiff’s claim for a Fourth Amendment violation.

### 23 ***B. Monell Claim***

24 In his Complaint, Plaintiff asserts a cause of action against the City under *Monell*  
25 *v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978). Compl., ¶¶ 24-26. A municipality may be  
26 held liable under § 1983 when government officials with final policy-making authority  
27 ratified the unconstitutional conduct of a subordinate. *Clouthier v. Cnty. of Contra*  
28 *Costa*, 591 F.3d 1232, 1250 (9th Cir. 2010), *overruled in part on other grounds by*

1 *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). The plaintiff must also  
2 show that the challenged municipal conduct was both the cause in fact and the proximate  
3 cause of the constitutional deprivation. *Harper v. City of Los Angeles*, 533 F.3d 1010,  
4 1026 (9th Cir. 2008); *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

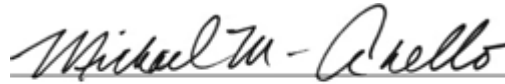
5 Defendants contend Plaintiff's *Monell* claim fails because Plaintiff's Fourth  
6 Amendment claim fails. MTD at 7. As discussed above, Plaintiff's Fourth Amendment  
7 claim survives Defendants' motion to dismiss. Accordingly, the Court **DENIES**  
8 Defendants' motion to dismiss Plaintiff's *Monell* claim.

9 **CONCLUSION**

10 Based on the foregoing, the Court **DENIES** Defendants' motion to dismiss  
11 Plaintiff's Complaint. Defendants must file an answer to the Complaint within fourteen  
12 (14) days from the date this Order is filed. *See* Fed. R. Civ. P. 12(a)(4)(A).

13 **IT IS SO ORDERED.**

14 Dated: April 30, 2018

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16 Hon. Michael M. Anello  
17 United States District Judge  
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