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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICKY FADARA LINCOLN and
KATHERINE I. FREDERICKS,
Plaintiffs,

Case No.: 22-cv-01569-WQH-BJC

ORDER

v.

CHULA VISTA POLICE
DEPARTMENT, CITY OF
CHULA VISTA, and DOES 1-
100,
Defendants.

HAYES, Judge:

The matter before the Court is the Motion to Dismiss Plaintiffs’ Third Amended Complaint and Claims Therein Under Rule 12(b)(6) (“Motion to Dismiss”) (ECF No. 33) filed by Defendants City of Chula Vista (“City”) and Chula Vista Police Department (“CVPD”).

I. BACKGROUND

On May 9, 2022, Plaintiffs Ricky Fadara Lincoln and Katherine I. Fredericks filed a Complaint against Defendants CVPD, City, and Does 1–100 in the Superior Court of California, County of San Diego. (*See* Exh. 1 to Notice of Removal, ECF No. 1-2.) On

1 October 12, 2022, Defendants removed the action to this Court pursuant to 28 U.S.C.
2 §§ 1331, 1441. (ECF No. 1 at 3.)

3 On November 1, 2022, Defendants filed a motion to dismiss. (ECF No. 5.) On March
4 28, 2023, the Court granted the motion to dismiss and dismissed the Complaint without
5 prejudice. (ECF No. 9.)

6 On June 15, 2023, the Court granted Plaintiffs leave to amend. (ECF No. 18.) On
7 June 22, 2023, Plaintiffs filed the Second Amended Complaint. (ECF No. 19.) On July 24,
8 2023, Defendants filed a motion to dismiss. (ECF No. 20.) On October 2, 2023, the Court
9 granted in part and denied in part the motion to dismiss, dismissing without prejudice the
10 federal claims and declining supplemental jurisdiction over the state law claims.

11 On January 2, 2024, the Court granted Plaintiffs leave to amend. (ECF No. 31.) On
12 January 16, 2024, Plaintiffs filed the Third Amended Complaint (“TAC”), the operative
13 complaint. (ECF No. 32.) On January 30, 2024, Defendants filed the Motion to Dismiss.
14 (ECF No. 33.) On February 15, 2024, Plaintiffs filed a Response in opposition to the
15 Motion to Dismiss. (ECF No. 34.) On February 23, 2024, Defendants filed a Reply in
16 support of the Motion to Dismiss. (ECF No. 35.)

17 **II. ALLEGATIONS IN THE THIRD AMENDED COMPLAINT**

18 On April 1, 2021, CVPD “police officers entered the plaintiffs’ home without a
19 search warrant claiming that the search warrant was sealed. [CVPD] police officers used
20 excessive force and unlawfully detained the plaintiffs. The [CVPD] police officers never
21 sent a copy of the search warrant to plaintiffs.” (ECF No. 32 at 8.) Specifically, Plaintiff
22 Katherine I. Fredericks was ordered out of the bathroom, where she was taking a bath, by
23 “Doe 1 in [a] bulletproof vest, hand on his gun holster, and camera on his chest.” *Id.* at 5.
24 Does 1–10 “ransacked the [P]laintiff[s]’ home” while Plaintiffs sat in the living room with
25 officers staring at them, and Plaintiffs were not permitted to eat, drink, or use the bathroom
26 while “Plaintiffs had to wait for many hours in panic and fear.” *Id.* at 5, 8. Plaintiffs “asked
27 for a search warrant and the police did not produce any [warrant].” *Id.* at 5. The CVPD
28 officers “destroyed locks to suitcases,” “emptied the freezer containing meats and other

1 food that was thrown on plaintiffs’ kitchen floor, while they took the freezer,” and the
2 officers “left the house in ruin and disaster.” *Id.* at 6. The CVPD officers “took all the
3 firearms” in the house and subsequently “refused to release those firearms to [Plaintiff]
4 Ricky [Lincoln] even after he had been given approval for the release of those firearms by
5 the Department of Justice.” *Id.* at 6-7. The CVPD “never sent a copy of the search warrant
6 to Plaintiffs, and to this date [Plaintiffs] do not know all the personal properties that Does
7 1 to 10 illegally took from their home.” *Id.* at 7.

8 “[T]he abuse to which Plaintiffs were subjected was consistent with institutionalized
9 practices of the [City] and [CVPD], which was known to and ratified by the [D]efendants
10 ... [who were] unreasonably indifferent to the police officer’s misconduct.” *Id.* at 8. City
11 had “prior notice of the vicious propensities of the [D]efendants Does 1 to 10, but took no
12 steps to train them, correct their abuse of authority, or to discharge their unlawful use of
13 authority.” *Id.* at 9.

14 Plaintiffs bring claims pursuant to 42 U.S.C. § 1983 against Defendants, who
15 “deprived the Plaintiffs of rights secured to them by the constitution of the United States,
16 including, but not limited to, their First Amendment right to freedom of expression, [their]
17 Fifth and Fourteenth amendment rights to due process of law, including the right to be free
18 from unjustified and excessive force by police, and their Eight Amendment right to be free
19 from cruel and unusual punishment.” *Id.* at 10; *see also id.* at 4-5 (referencing the Fourth
20 Amendment); *id.* at 6-7 (referencing the Second Amendment). Plaintiffs seek damages,
21 costs, and attorney fees.

22 **III. MOTION TO DISMISS**

23 **A. Legal Standard**

24 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal for “failure
25 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In order to state
26 a claim for relief, a pleading “must contain ... a short and plain statement of the claim
27 showing that the pleader is entitled to relief.” *Id.* 8(a)(2). Dismissal under Rule 12(b)(6) “is
28 proper only where there is no cognizable legal theory or an absence of sufficient facts

1 alleged to support a cognizable legal theory.” *Shroyer v. New Cingular Wireless Servs.,*
2 *Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citation omitted).

3 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
4 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
5 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).
6 “A claim has facial plausibility when the plaintiff pleads factual content that allows the
7 court to draw the reasonable inference that the defendant is liable for the misconduct
8 alleged.” *Id.* (citation omitted). However, “a plaintiff’s obligation to provide the ‘grounds’
9 of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
10 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555
11 (alteration in original) (quoting Fed. R. Civ. P. 8(a)). A court is not “required to accept as
12 true allegations that are merely conclusory, unwarranted deductions of fact, or
13 unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
14 2001). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual
15 content, and reasonable inferences from that content, must be plausibly suggestive of a
16 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
17 2009) (citation omitted).

18 **B. Discussion**

19 Defendants move to dismiss Plaintiffs’ TAC on the following grounds: Plaintiffs fail
20 to properly allege a basis for municipal liability under 42 U.S.C. § 1983; Plaintiffs fail to
21 state a valid claim under § 1983 for First, Second, Fourth, Fifth, Eighth, and Fourteenth
22 Amendment violations; and Plaintiffs have not sufficiently asserted any claim against the
23 Doe Defendants in their individual capacity.

24 Plaintiffs contend in Response, as they allege in the TAC, that they “have a claim
25 for relief based upon municipal liability, because defendants executed and exercised
26 policies and customs which violated [P]laintiffs’ constitutional rights when they did not
27 properly train, supervise and discipline the unlawful actions or report the unlawful conduct
28 to the appropriate authorities, and failed to protect the Plaintiffs.” (ECF No. 34 at 2.)

1 **1. Municipal Liability Under 42 U.S.C. § 1983**

2 Section 1983 “creates a private right of action against individuals who, acting under
3 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*,
4 263 F.3d 1070, 1074 (9th Cir. 2001); *see* 42 U.S.C. § 1983 (providing a cause of action
5 against “[e]very person who, under color of any statute, ordinance, regulation, custom, or
6 usage, of any State ... subjects, or causes to be subjected, any citizen ... to the deprivation
7 of any rights, privileges, or immunities secured by the Constitution and laws....”). “The
8 purpose of § 1983 is to deter state actors from using the badge of their authority to deprive
9 individuals of their federally guaranteed rights and to provide relief to victims if such
10 deterrence fails.” *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). Section 1983 “is not itself a
11 source of substantive rights, but merely provides a method for vindicating federal rights
12 elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quotations and
13 citations omitted). A government entity may not be held vicariously liable for the
14 unconstitutional acts of its employees under a theory of respondeat superior in a § 1983
15 claim. *See AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012).
16 “A government entity may not be held liable under 42 U.S.C. § 1983, unless a policy,
17 practice, or custom of the entity can be shown to be a moving force behind a violation of
18 constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011)
19 (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978)). “Plaintiffs cannot allege
20 a widespread practice or custom based on ‘isolated or sporadic incidents; [liability] must
21 be founded upon practices of sufficient duration, frequency and consistency that the
22 conduct has become a traditional method of carrying out policy.’” *Sabra v. Maricopa Cnty.*
23 *Cnty. Coll. Dist.*, 44 F.4th 867, 884 (9th Cir. 2022) (quoting *Trevino v. Gates*, 99 F.3d 911,
24 918 (9th Cir. 1996)).

25 The TAC alleges claims against CVPD, City, and Doe Defendants. The allegations
26 in the TAC concerning a policy, practice, or custom are entirely conclusory. The
27 nonconclusory allegations in the TAC concern a single search of Plaintiffs’ house. The
28 TAC lacks nonconclusory allegations indicating that the alleged CVPD officer behaviors

1 during this event were part of a “policy, practice, or custom” that was “so ‘persistent and
2 widespread’ that it constitutes a ‘permanent and well settled city policy.’” *Trevino*, 99 F.3d
3 at 918 (citation omitted). A custom alleged to support a claim for *Monell* liability “must be
4 so ‘persistent’ that it constitutes ‘permanent and well settled city policy’” and liability
5 cannot be “predicated on isolated or sporadic incidents.” *Trevino*, 99 F.3d at 918 (quoting
6 *Monell*, 436 U.S. at 691). In considering Plaintiffs’ nonconclusory allegations, the TAC’s
7 factual allegations consist of no more than “isolated or sporadic incidents.” *Id.*

8 In “limited circumstances,” the failure to train municipal employees can serve as the
9 basis for *Monell* liability under § 1983. *Bd. of the Cty. Comm’rs v. Brown*, 520 U.S. 397,
10 407 (1997). The plaintiff must show that the city had a training policy that “amounts to
11 deliberate indifference” to the rights of the persons with whom the untrained employees
12 are likely to come into contact with and that the injury would have been avoided if the city
13 properly trained its employees. *Blankenhorn v. City of Orange*, 485 F.3d 463, 484 (9th Cir.
14 2007) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001)). Plaintiffs
15 have not adequately alleged in the TAC any training policy that “amounts to deliberate
16 indifference.” *Id.* Nor have Plaintiffs adequately alleged in the TAC that the individual
17 CVPD officers’ “conduct conformed to official policy, custom or practice.” *Lee*, 250 F.3d
18 at 682–83 (quotations and citation omitted). Plaintiffs fail to assert nonconclusory
19 allegations in the TAC that a CVPD and/or City policy, practice, or custom or failure to
20 train was the moving force behind Plaintiffs’ alleged constitutional injury. The TAC alleges
21 in conclusory fashion that the “Police Chief of the City of Chula Vista” was “responsible
22 for the conduct of the Defendants and for their failure to take corrective action with respect
23 to police personnel whose vicious actions and propensities were notorious, or failed to
24 implement meaningful procedures to discourage lawless official conduct.” (ECF No. 32 at
25 4.) These allegations are insufficient to plausibly allege that “a final policymaker had
26 knowledge (actual or constructive)” of the alleged constitutional violations by the
27 individual CVPD officers and “sanctioned” or ratified those actions. *Sabra*, 44 F.4th at
28 885.

1 The TAC's allegations are insufficient to adequately allege a § 1983 claim for
2 municipal liability against CVPD and City. The Motion to Dismiss the TAC's claims
3 against CVPD and City is granted.

4 **2. Individual Defendant Liability Under 42 U.S.C. § 1983**

5 To state a claim against an individual defendant under § 1983, a plaintiff must show
6 “(1) that a person acting under color of state law committed the conduct at issue, and
7 (2) that the conduct deprived the claimant of some right, privilege, or immunity protected
8 by the Constitution or laws of the United States.” *Leer v. Murphy*, 844 F.2d 628, 632–33
9 (9th Cir. 1988) (citation omitted). A plaintiff bringing an individual capacity claim under
10 § 1983 must demonstrate that each defendant personally participated in the deprivation of
11 his rights. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). “A person deprives
12 another ‘of a constitutional right, within the meaning of section 1983, if he does an
13 affirmative act, participates in another’s affirmative acts, or omits to perform an act which
14 he is legally required to do that causes the deprivation of which [the plaintiff complains].”
15 *Leer*, 844 F.2d at 633 (alteration in original) (emphasis omitted) (quoting *Johnson v. Duffy*,
16 588 F.2d 740, 743 (9th Cir. 1978)).

17 Plaintiffs allege § 1983 causes of action for violations of the First, Second, Fourth,
18 Fifth, and Fourteenth Amendments.

19 **a. Fourth Amendment Claim Against the Individual Defendants**

20 Plaintiffs bring their Fourth Amendment claim for “unlawful detention and
21 excessive force.” (ECF No. 32 at 4.) The Fourth Amendment prohibits unreasonable
22 searches and seizures. U.S. Const. Amend. IV. “A detention can be unreasonable ‘either
23 because the detention itself is improper or because it is carried out in an unreasonable
24 manner.’” *Davis v. United States*, 854 F.3d 594, 599 (9th Cir. 2017) (quoting *Franklin v.*
25 *Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994)). The court “must determine reasonableness
26 from the perspective of a reasonable officer on the scene.” *Id.* (quoting *Graham*, 490 U.S.
27 at 396). “Under the Fourth Amendment, ‘a warrant to search for contraband founded on
28 probable cause implicitly carries with it the limited authority to detain the occupants of the

1 premises while a proper search is conducted.” *Id.* (quoting *Michigan v. Summers*, 452 U.S.
2 692, 705 (1981)). However, “special circumstances, or possibly a prolonged detention,
3 might lead to a different conclusion in an unusual case.” *Id.* (quoting *Michigan*, 452 U.S.
4 at 705 n.1). For example, “search-related detentions that are ‘unnecessarily painful [or]
5 degrading’ and ‘lengthy detentions[] of the elderly, or of children, or of individuals
6 suffering from a serious illness or disability raise additional concerns.” *Id.* (quoting
7 *Foxworth*, 31 F.3d at 876) (alterations in original). A seizure must be “‘carefully tailored’
8 to the law enforcement interests that ... justify detention while a search warrant is being
9 executed.” *Id.* (quoting *Meredith v. Erath*, 342 F.3d 1057, 1062 (9th Cir. 2003)). “The
10 presence of a search warrant serves a high function..., and that high function is not
11 necessarily vindicated when some other document, somewhere says something about the
12 objects of the search, but the contents of that document are neither known to the person
13 whose home is being searched nor available for her inspection.” *Groh v. Ramirez*, 540 U.S.
14 551, 558 (2004) (quotations and citation omitted). “[T]he destruction of property during a
15 search does not necessarily violate the Fourth Amendment,” however, “unnecessarily
16 destructive behavior, beyond that necessary to execute a warrant effectively, violates the
17 Fourth Amendment.” *Mena v. City of Simi Valley*, 226 F.3d 1031, 1041 (9th Cir. 2000)
18 (citations and quotations omitted).

19 The TAC alleges that the CVPD officers who are alleged to be Doe Defendants
20 searched the Plaintiffs’ home on April 1, 2021. The TAC alleges that these officers engaged
21 in destructive behavior while conducting the search and detained Plaintiffs in their living
22 room “for many hours” without allowing them “to eat, drink, or use the bathroom.” (ECF
23 No. 32 at 5, 8.) The TAC alleges that the CVPD officers have retained Plaintiffs’ seized
24 firearms even after “approval for the release of those firearms” had been given “by the
25 Department of Justice.” *Id.* at 6-7. The TAC also alleges that Plaintiffs have never received
26 a copy of the warrant authorizing the search or a return indicating what items were seized.
27 It is an unresolved issue whether the Fourth Amendment requires a warrant to be served
28 on the person whose premises is being searched. *See United States v. Hector*, 474 F.3d

1 1150, 1154 (9th Cir. 2007); *see also Sangster v. Los Angeles Sheriff's Dep't*, No.
2 2:21CV9573-DSF-JDE, 2022 WL 3701638, at *11 (C.D. Cal. July 11, 2022) (“[T]here
3 currently *might* be a Fourth Amendment right to be presented with a search warrant at the
4 time a home is searched.”) (quotation omitted) (collecting cases). Even if it is not a Fourth
5 Amendment violation to withhold the warrant and return indefinitely, in the absence of any
6 information about the contents of the search warrant and the purpose of the search, the
7 Court cannot find that the alleged destructive behavior, lengthy detention, and retention of
8 the seized firearms are reasonable as a matter of law.

9 Accordingly, the Court finds that the TAC adequately alleges § 1983 claims for
10 violation of the Fourth Amendment against the Doe Defendant police officers who
11 conducted the search. However, the TAC alleges that “John Doe 3 was the duly appointed
12 Chief of Police of the Chula Vista Police Department.” (ECF No. 32 at 2.) The TAC fails
13 to adequately allege that the Chief of the CVPD had any personal involvement in the search
14 or detention at issue. As discussed above, the TAC also fails to adequately allege that the
15 Chief of the CVPD ratified the conduct of the officers who were involved or otherwise is
16 plausibly liable under § 1983. Accordingly, the Motion to Dismiss Doe Defendant number
17 3, the Chief of the CVPD, is granted.

18 Defendants request that the Court dismiss all other Doe Defendants on the basis that
19 the TAC fails to identify the Doe Defendants or adequately allege the involvement of each
20 Doe Defendant. “Although ‘[a]s a general rule, the use of ‘John Doe’ to identify a
21 defendant is not favored,’ in circumstances ‘where the identity of alleged defendants will
22 not be known prior to the filing of a complaint ... the plaintiff should be given an
23 opportunity through discovery to identify the unknown defendants, unless it is clear that
24 discovery would not uncover the identities, or that the complaint would be dismissed on
25 other grounds.’” *Soo Park v. Thompson*, 851 F.3d 910, 928 n.21 (9th Cir. 2017) (quoting
26 *Gillespie v. Civiletti*, 629 F.2d 637, 642-43 (9th Cir. 1980)). Here, Plaintiffs have not yet
27 been afforded the opportunity to conduct discovery to identify the police officers who
28 conducted the search and took the actions alleged in the TAC. Accordingly, the Court finds

1 that dismissing the claims against all Doe Defendants on this basis would be premature at
2 this time. *See id.*; *cf. Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999)
3 (“*Gillespie* demonstrates that the district court erred in dismissing Wakefield’s complaint
4 against Doe simply because Wakefield was not aware of Doe’s identity at the time he filed
5 his complaint.”). However, Plaintiffs are cautioned that Plaintiffs are required to
6 expeditiously identify the Doe Defendants and move to amend the TAC to properly name
7 those Defendants and adequately allege the personal participation of each named
8 Defendant in the alleged Fourth Amendment violations. The Court orders CVPD and City,
9 and their counsel, to cooperate with all appropriate discovery requests from Plaintiffs
10 aimed at identifying the Doe Defendants who are alleged to have been employed by CVPD
11 and City.

12 The Motion to Dismiss the Fourth Amendment claim against Doe Defendant number
13 3, the Chief of the CVPD, is granted. The Motion to Dismiss the Fourth Amendment claim
14 against the other Doe Defendants is denied.

15 **b. Second Amendment Claim Against the Individual Defendants**

16 The Second and Fourteenth Amendments protect the right of “law-abiding,
17 responsible citizens” to possess a handgun inside and outside the home for the purpose of
18 “immediate self-defense.” *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *see*
19 *also New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 10 (2022). But “[l]ike
20 most rights, the right secured by the Second Amendment is not unlimited” and is “not a
21 right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever
22 purpose.” *Heller*, 554 U.S. at 626. For example, the Second Amendment allows
23 “prohibitions on the possession of firearms by felons and the mentally ill, or laws
24 forbidding the carrying of firearms in sensitive places such as schools and government
25 buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”
26 *Id.* at 627-28. “[S]everal federal courts have held that a plaintiff cannot pursue a Second
27 Amendment claim about guns seized by officers who are executing a facially valid
28 warrant.” *DeMaria v. Yolo Cnty. Sheriff’s Off.*, No. 2:23-CV-01798-KJM-CSK, 2024 WL

1 3821876, at *8 (E.D. Cal. Aug. 14, 2024) (collecting cases). However, at this stage in the
2 proceedings, the Court has no basis for determining that the CVPD officers at issue were
3 executing a facially valid search warrant during the events described in the TAC or whether
4 that warrant authorized the seizure of firearms.¹ Accordingly, at this stage in the
5 proceedings, Defendant has failed to state an adequate basis for dismissing the Second
6 Amendment claim against the Doe Defendants who allegedly seized Plaintiffs’ firearms
7 and refused to return them even after “approval for the release of those firearms” had been
8 given “by the Department of Justice.” (ECF No. 32 at 6-7.) The Motion to Dismiss the
9 Second Amendment claims against the Doe Defendants who personally participated in the
10 seizure and retention of Plaintiffs’ firearms is denied.

11 **c. First Amendment Claim**

12 The TAC contains a single conclusory reference to Defendants depriving Plaintiffs
13 of “their First Amendment right to freedom of expression.” (ECF No. 32 at 10.) The TAC
14 offers no allegations explaining the speech or other constitutionally protected activity at
15 issue, no allegations that the Defendants’ actions would chill such speech or protected
16 activity in an ordinary person, and no allegations that Plaintiffs’ protected activity was a
17 motivating factor in Defendants’ conduct. *Cf. Capp v. County of San Diego*, 940 F.3d 1046,
18 1053 (9th Cir. 2019) (“To state a First Amendment retaliation claim, a plaintiff must
19 plausibly allege that (1) he was engaged in a constitutionally protected activity, (2) the
20 defendant’s actions would chill a person of ordinary firmness from continuing to engage
21 in the protected activity and (3) the protected activity was a substantial or motivating factor
22 in the defendant’s conduct.”); *Mendocino Env’t Ctr. v. Mendocino County*, 192 F.3d 1283,
23 1300 (9th Cir. 1999) (“In order to demonstrate a First Amendment violation, a plaintiff
24 must provide evidence showing that by his actions the defendant deterred or chilled the
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26
27 ¹ Defendants request that the Court take judicial notice of an “Electronic Search Warrant Log” maintained
28 by the San Diego County Superior Court. (*See* ECF No. 33-4.) However, this document contains no
information about the contents of any search warrant.

1 plaintiff's political speech and such deterrence was a substantial or motivating factor in the
2 defendant's conduct."). The Motion to Dismiss the First Amendment claim is granted.

3 **d. Fifth Amendment Claim**

4 Plaintiffs assert their Fifth Amendment claim pursuant to § 1983. Section 1983 is a
5 statutory vehicle that allows plaintiffs to assert claims against state actors. By contrast, the
6 Fifth Amendment is not a proper constitutional amendment through which to assert a due
7 process claim against state actors. *See Lee*, 250 F.3d at 687 ("The Due Process Clause of
8 the Fifth Amendment and the equal protection component thereof apply only to actions of
9 the federal government—not to those of state or local governments."); *see also Bingue v.*
10 *Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008) (holding that the defendant "is a local law
11 enforcement official, and the Fifth Amendment's due process clause only applies to the
12 federal government"). Accordingly, the Motion to Dismiss the Fifth Amendment claim is
13 granted.

14 **e. Eighth Amendment Claim**

15 The TAC contains two references to the Eighth Amendment, alleging in clonclutory
16 fashion that Defendants violated Plaintiffs' "Eight[h] Amendment right to be free from
17 cruel and unusual punishment." (ECF No. 32 at 10; *see also id.* at 5.) To the extent the
18 TAC purports to assert a § 1983 claim for violation of the Eighth Amendment against any
19 Defendant, "an Eighth Amendment claim ... is reserved for 'those convicted of crimes'
20 and therefore would not apply to pre-trial detainees." *Hawkins v. Comparet-Cassani*, 251
21 F.3d 1230, 1238 (9th Cir. 2001) (quoting *Whitley v. Albers*, 475 U.S. 312, 318 (1986)).
22 Plaintiffs have not alleged that they were prisoners convicted of a crime at the time of the
23 alleged actions that form the basis of Plaintiffs' § 1983 claims. Accordingly, the Motion to
24 Dismiss the Eighth Amendment claim is granted.

25 **f. Fourteenth Amendment Claim**

26 The Fourteenth Amendment to the U.S. Constitution states:

27 No State shall make or enforce any law which shall abridge the privileges or
28 immunities of citizens of the United States; nor shall any State deprive any

1 person of life, liberty, or property, without due process of law; nor deny to
2 any person within its jurisdiction the equal protection of the laws.

3 The TAC alleges that “[t]he herein above-described actions and omissions, Police Officers
4 were engaged in under color of state authority by the Defendants, ... deprived the Plaintiffs
5 of ... their Fourteenth Amendment rights to due process of law, including the right to be
6 free from unjustified and excessive force by police.” (ECF No. 32 at 3.)

7 “Where a particular Amendment provides an explicit textual source of constitutional
8 protection against a particular sort of government behavior, that Amendment, not the more
9 generalized notion of substantive due process, must be the guide for analyzing these
10 claims.” *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (quotation omitted).
11 “Because the Fourth Amendment provides an explicit textual source of constitutional
12 protection against this sort of physically intrusive governmental conduct, that Amendment,
13 not the more generalized notion of ‘substantive due process,’ must be the guide for
14 analyzing these claims.” *Graham*, 490 U.S. at 395. As discussed above, the TAC states a
15 plausible claim under the Fourth Amendment against the Doe Defendants who participated
16 in the challenged searches and seizures. Likewise, Defendants have failed to state an
17 adequate basis for dismissing the Second Amendment claim against the Doe Defendants
18 who seized and retained Plaintiffs’ firearms. Because Plaintiffs’ claim “is ‘covered by’ the
19 Fourth Amendment” and the Second Amendment, an additional “[s]ubstantive due process
20 analysis is therefore inappropriate.” *Lewis*, 523 U.S. at 843. For this reason, the Motion to
21 Dismiss the Fourteenth Amendment claim is granted.

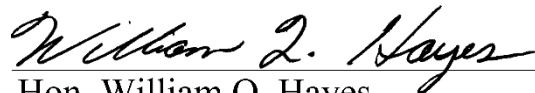
22 **IV. CONCLUSION**

23 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 33) is granted in
24 part and denied in part. Plaintiffs’ claims against CVPD and City are dismissed without
25 prejudice. Plaintiffs’ § 1983 claims against the Doe Defendants for violations of the First,
26 Fifth, Eighth, and Fourteenth Amendments are dismissed without prejudice. Plaintiffs’ §
27 1983 claims against Doe Defendant number 3, who is alleged to be the Chief of the CVPD,
28

1 is dismissed without prejudice. The Motion to Dismiss the Fourth Amendment and Second
2 Amendment claims against the other Doe Defendants is denied.

3 Plaintiffs shall expeditiously identify the Doe Defendants and move to amend the
4 TAC to properly name those Defendants and adequately allege the personal participation
5 of each named Defendant in the alleged Fourth Amendment and Second Amendment
6 violations. CVPD and City, and their counsel, shall cooperate with all appropriate
7 discovery requests from Plaintiffs aimed at identifying the Doe Defendants who are alleged
8 to have been employed by CVPD and City. Plaintiffs are cautioned that if, after an
9 opportunity to conduct discovery, Plaintiffs continue to fail to identify the Doe Defendants
10 and adequately allege the personal participation of each named Defendant in the alleged
11 legal violations, the TAC will be dismissed in its entirety. No later than sixty (60) days
12 after the date this Order is filed, Plaintiffs shall either (a) file a motion for leave to amend
13 the TAC, accompanied by a proposed amended complaint identifying the Doe Defendants,
14 or (b) file a status report showing cause why Plaintiffs have failed to file a motion for leave
15 to amend the TAC.

16 Dated: September 25, 2024


17 Hon. William Q. Hayes
18 United States District Court
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