UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER A. BALLEW, Plaintiff, v. CITY OF PASADENA, et al., Defendants.	Case No. CV 18-0712 FMO (ASx) **ORDER RE: MOTION TO DISMISS**

Having reviewed and considered all the briefing filed with respect to defendants' City of Pasadena ("City"), Pasadena Police Department ("PPD"), Chief Phillip Sanchez ("Sanchez"), Officer Zachary Lujan ("Lujan"), and Officer Lerry Esparza ("Esparza") (collectively, "defendants")[1] Motion to Dismiss Second Amended Complaint [] (Dkt. 32, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

Christopher A. Ballew ("plaintiff" or "Ballew") filed this action against defendants, asserting various causes of action arising out of his encounter with Lujan and Esparza on November 9, 2017. (See Dkt. 1, Complaint). Plaintiff filed his Second Amended Complaint ("SAC"), the operative complaint, on April 20, 2018. (See Dkt. 31, SAC at ¶¶ 69-90). Plaintiff has since

[1] City Manager Steve Mermell has since been dismissed. (See Dkt. 111, Plaintiff's Voluntary Dismissal [] of Steve Mermell and His Third Claim for Relief ("Voluntary Dismissal")).

dismissed defendant Steve Mermell and one of his claims, (see Dkt. 111, Voluntary Dismissal), such that the remaining claims are: (1) deprivation of civil rights under 42 U.S.C. § 1983 ("§ 1983"); (2) supervisory liability under § 1983; (3) civil rights violations under California Civil Code §§ 51.7 ("§ 51.7") and 52.1 ("§ 52.1"); (4) battery; and (5) false arrest and imprisonment. (See Dkt. 31, SAC at ¶¶ 69-90). Defendants now move to dismiss the remaining claims pursuant to Federal Rule of Civil Procedure 12(b)(6). (See Dkt. 32, Motion at 2).

PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that on November 9, 2017, at about 7:45 p.m., he was driving south on Fair Oaks Avenue in Altadena from the home he shares with his parents to his neighborhood gas station. (See Dkt. 31, SAC at ¶ 13). Lujan and Esparza (collectively, "officers" or "officer defendants"), who were performing "gang suppression" for the Pasadena Police Department's ("PPD") Special Enforcement Section ("SES"), (see id. at ¶ 10), were driving north on Fair Oaks. (See id. at ¶ 13). As directed by their supervisors, they were "cruis[ing] low-income and minority neighborhoods in Northwest Pasadena and neighboring Altadena," with the goal of "us[ing] various pretexts, for example commonplace vehicle equipment violations[,]" to detain, search, and catalogue African American youth as gang members or associates. (See id. at ¶ 10).

The officers, upon seeing Ballew, a 21-year-old African American man, made a U-turn to follow him into the gas station. (See Dkt. 31, SAC at ¶¶ 13-14). Before they had completed the turn, plaintiff had stopped at a pump, exited the car, and started walking towards the cashier. (See id. at ¶ 14). Lujan, who was driving the police car, stopped behind plaintiff's car and activated the police car's flashing red lights. (See id. at ¶ 16). Esparza exited the police car, "aggressively approach[ed]" plaintiff, and yelled, "Hey, come here, Man. Come here. Hold on, Man. You're being pulled over." (Id. at ¶¶ 17-18). Ballew asked "For what?" and Esparza responded, "tinted windows." (Id. at ¶ 18).

Without explaining what he wanted plaintiff to do or giving him an opportunity to comply, Esparza "put Mr. Ballew's left arm in a two-hand control hold and walked him back to the car." (Dkt. 31, SAC at ¶ 21). Esparza pushed plaintiff against his car, applying a pain compliance hold to plaintiff's left arm that caused plaintiff to wince in pain as he twisted counter-clockwise. (See

id. at ¶ 24). Lujan pushed plaintiff's head down with Lujan's right forearm, "jamm[ed]" his left arm behind plaintiff's back, and commanded plaintiff to "Give me your hand," referring to plaintiff's right hand, which was holding a cell phone. (See id. at ¶¶ 25-26). Plaintiff responded, "Alright" while setting his phone down on the car roof. (Id. at ¶ 26). Lujan took plaintiff's free hand, then let go of it. (Id. at ¶ 27). Both officers kicked at plaintiff's ankles as Esparza ordered plaintiff to "Separate [his] feet." (Id.). In spite of plaintiff's protestations that the officers were hurting him, the officers kicked plaintiff's feet out from under him, forcing him onto one knee. (Id. at ¶¶ 27-28). They then held plaintiff down, bending his head forward while pinning his left arm behind his back, ordering, "Don't get up, do not get up." (Id. at ¶ 29).

Esparza then ordered Ballew to put his right hand on his head, which he did, and then Esparza tried to pry the hand off Ballew's head with his (Esparza's) knee. (See Dkt. 31, SAC at ¶ 30). With Esparza holding plaintiff's left arm behind his back, and with plaintiff's right hand still behind his head, Lujan yelled, "Give me your hands!" (Id.). Plaintiff asked for their "commanding officer" and Lujan then screamed, "Shut the fuck up, you—." (Id. at ¶ 31). Lujan put Ballew's left wrist in a handcuff and removed Ballew's right hand from his head, moving it behind his back into handcuffing position. (Id. at ¶ 32). Lujan then yelled – falsely – that plaintiff was pulling away, and pushed plaintiff to the pavement while yelling, "He has the cuffs, he won't give me his hands[,]" so as to justify the use of additional force against plaintiff. (Id.). To further the officers' pretense that plaintiff was somehow resisting or not otherwise cooperating, Lujan broadcast on his radio, "We're in a fight." (Id. at ¶ 33).

Esparza then struck Ballew twice with a baton, causing deep gashes on Ballew's shin. (Id. at ¶ 33). As the second blow landed, Ballew clung to the baton to protect himself from further injury. (See id.). When Esparza pulled away, Ballew stood up to keep a grip on the baton. (See id.). Lujan then struck Ballew from behind with a fist and pulled him back down as Esparza let go of the baton to draw his firearm. (See id.).

Ballew immediately tossed the baton to the ground, held out his palms, and tried to lie down and cover up in the fetal position, while Lujan struck him repeatedly with fists, yelling "Give me your hands!" (See Dkt. 31, SAC at ¶¶ 33-34). Esparza then aimed his firearm at Ballew with

his finger on the trigger. (See id. at ¶ 34). While one of his hands was pinned, Ballew raised the other hand in front of Lujan's face and yelled, "My hands are right here!" (Id.). Lujan rolled Ballew over, grabbed his head, and slammed the left side of Ballew's face into the asphalt, causing serious facial and ocular injuries. (See id.). As plaintiff lay prostrate, Esparza holstered his firearm, picked up the baton, and struck plaintiff three more times, once on his spine – in violation of PPD policy – and twice on his right leg, with such force so as to bend the baton and fracture Ballew's fibula. (See id. at ¶ 35). Moments before the officers closed the second handcuff on Ballew's right wrist, Lujan broadcast again that they were still fighting. (See id. at ¶ 36).

When Bundy, the field supervisor, arrived, plaintiff told him that the officers had assaulted him, but Bundy responded by telling plaintiff that he was under arrest for resisting arrest. (See Dkt. 31, SAC at ¶¶ 12 & 37). Eventually, the Los Angeles County Fire Department took Ballew to the hospital. (See id. at ¶ 38). Ballew was not treated until Bundy arrived at the hospital. (Id.). Upon his arrival, Bundy attempted to interview Ballew, who was medically distressed and obviously incapacitated, with serious head and facial injuries, a fractured fibula, and a broken leg. (See id. at ¶¶ 34 & 38). After the interview attempt, plaintiff was evaluated, given stopgap emergency treatment, instructed to get follow-up treatment, and released to the custody of the PPD. (See id. at ¶¶ 39-40). Bundy directed PPD officers to take Ballew from the hospital to the PPD station to be booked for violation of California Penal Code § 245(c), assaulting a police officer with a deadly weapon. (See id. at ¶ 40).

Plaintiff alleges that Esparza and Lujan deliberately wrote false and misleading reports about the incident, which were then used to book plaintiff for a serious felony, thereby resulting in a the setting of a higher bail. (See Dkt. 31, SAC at ¶¶ 41-44). According to plaintiff, although Bundy viewed the videos of the entire incident – recorded on vehicle and body-worn cameras, (see id. at ¶ 58) – in time to abort plaintiff's arrest, he failed to do so. (See id. at ¶ 45).

From the PPD station, plaintiff was transported to the Los Angeles County Jail's Inmate Reception Center ("IRC"), where he spent 24 hours waiting to be processed without medication or a proper bed. (See Dkt. 31, SAC at ¶ 40). Eventually, he was transferred to a medical housing module, where he received pain medication. (See id.). He was released on $50,000 bail at about

7:00 a.m. on November 11, 2017. (See id.). The District Attorney's office declined to file charges against him. (See id. at ¶ 46).

Defendant Sanchez, who hires and fires PPD officers, (see Dkt. 31, SAC at ¶ 61), knew immediately that this was a "major incident." (Id. at ¶ 48). However, in spite of viewing the video recordings shortly after the incident, Sanchez, the City, and PPD did not terminate, or discipline the officers. (See id. at ¶¶ 48 & 59-61). Instead, the City and PPD defended the officers in the media, (see id. at ¶ 48), allowed them to continue patrolling, (see id. at ¶ 59), and failed to conduct a timely investigation of the incident. (See id. at ¶ 60).

According to plaintiff, the City, PPD, and Sanchez "hired violent, racist officers laterally from the Los Angeles Sheriff's Department (LASD) and the Bakersfield Police Department (BPD)[,]" which both have reputations "for maintaining internal cultures that sanction misconduct, including excessive force, false arrests and frame-ups, and fabricated police reports, especially directed against African Americans." (Dkt. 31, SAC at ¶¶ 50, 51, 54-55) (describing United States Department of Justice investigations into LASD and BPD, and incidents demonstrating culture of misconduct). Before being hired by PPD, Lujan worked in LASD jails, (see id. at ¶ 51), and Esparza was a BPD officer, (see id. at ¶ 54), but the City, PPD, and Sanchez did not "undertak[e] adequate efforts to purge [their LASD jail/BPD] mentality" or provide "adequate supervision or the threat of real consequences for abusing members of the public[.]" (Id. at ¶ 53; see id. at ¶ 56).

Plaintiff alleges that "[a]s a direct and proximate result of the aforesaid acts, omissions, customs, practices, policies and decisions of the Defendants," plaintiff suffered various injuries, including violation of his civil rights, medical expenses, lost income, and emotional distress. (Dkt. 31, SAC at ¶ 64-67). Plaintiff further alleges that the acts and omissions of the individual defendants were "willful, wanton, malicious and oppressive[,]" (id. at ¶ 68), and that he is therefore entitled to general, compensatory, special, exemplary, punitive, and statutory damages, and costs of suit. (Id. at ¶¶ 64-68 & Prayer).

LEGAL STANDARD

A motion to dismiss for failure to state a claim should be granted if plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly

(Twombly), 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007); Ashcroft v. Iqbal (Iqbal), 550 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009); Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 550 U.S. at 678, 129 S.Ct. at 1949; Cook, 637 F.3d at 1004; Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010). Although the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do," Twombly, 550 U.S. at 555, 127 S.Ct. at 1965; Iqbal, 550 U.S. at 678, 129 S.Ct. at 1949; see also Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 973 (9th Cir. 2004), cert. denied, 544 U.S. 974 (2005) ("[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.") (citations and internal quotation marks omitted), "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200 (2007) (per curiam) (citations and internal quotation marks omitted); Twombly, 550 U.S. at 555, 127 S.Ct. at 1964.

In considering whether to dismiss a complaint, the court must accept the allegations of the complaint as true, Erickson, 551 U.S. at 93-94, 127 S.Ct. at 2200; Albright v. Oliver, 510 U.S. 266, 267, 114 S.Ct. 807, 810 (1994), construe the pleading in the light most favorable to the pleading party, and resolve all doubts in the pleader's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849 (1969); Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

DISCUSSION

I. SECTION 1983 CLAIMS AGAINST LUJAN AND ESPARZA.

A. Equal Protection: Unlawful Detention Based on Race.

To state a claim for racial profiling in violation of the Equal Protection Clause, "a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based on membership in a protected class." Thornton v. St. Helens, 425 F.3d 1158, 1166-67 (9th Cir. 2005) (internal quotation marks omitted).

Defendants contend that plaintiff's equal protection claim "suffers from an absence of concrete, particularized facts, and instead rests its laurels on conclusory allegations regarding false pretext." (Dkt. 32, Motion at 9). Citing Boone v. Los Angeles, 2013 WL 12136800, *7 (C.D. Cal. 2013), defendants contend that "the SAC supplies the Court, on its face, with the articulated basis for a stop," i.e., the vehicle equipment violations, "which are allegations th[at] confirm the existence of reasonable suspicion and/or probable cause." (Dkt. 32, Motion at 9-11; see Dkt. 36, Defendants' Reply to Opposition to Motion to Dismiss [] ("Reply") at 5). Moreover, defendants assert that "Plaintiff's citation to violation [sic] of the Fourteenth Amendment (equal protection) in this section 1983 case is legally wrong-headed and improper." (Dkt. 36, Reply at 4). Defendants' assertions are meritless.

First, defendants are incorrect that it is improper to bring a claim for selective enforcement of traffic laws based on race under the Fourteenth Amendment, and their insistence on that point, particularly in light of Supreme Court precedent to the contrary, is not well-taken. See Whren v. United States, 517 U.S. 806, 813, 116 S. Ct. 1769, 1774 (1996) ("We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment.");

see also Freeman v. Santa Ana, 68 F.3d 1180, 1187 (9th Cir. 1995) (describing how to make out equal protection claim on theory of selective prosecution); James v. Seattle, 2011 WL 6150567,*13 (W.D. Wash. 2011) ("Racial profiling can constitute a deprivation of a citizen's right to equal protection under the law."); Floyd v. N.Y.C., 959 F.Supp.2d 540, 667 (S.D.N.Y. 2013)

("The Equal Protection Clause's prohibition on selective enforcement means that suspicious blacks and Hispanics may not be treated differently by the police than equally suspicious whites.").

Second, regardless of whether the vehicle equipment violations establish a basis for the stop, that does not defeat plaintiff's equal protection claim. See Melendres v. Arpaio, 598 F.Supp.2d 1025, 1037 (D. Ariz. 2009) (denying motion to dismiss and stating, "a law enforcement officer's discriminatory motivations can give rise to a constitutional violation even where the unequal treatment occurred during an otherwise lawful criminal detention"). Whereas the claim in Boone was brought under the Fourth Amendment, see 2013 WL 12136800, at *7 ("Plaintiffs have failed to state a claim that the initial seizure, i.e. the traffic stop, was unreasonable under the Fourth Amendment.")[2] (emphasis added), here, plaintiff's claim was brought under the Fourteenth Amendment.[3] (See Dkt. 31, SAC at ¶ 69) (alleging that Lujan and Esparza "deprived Plaintiff of his civil rights . . . , including . . . the equal-protection right to be free from detentions based on racial identity").

Unlike Fourth Amendment unreasonable seizure claims, subjective intent is essential to claims "objecting to intentionally discriminatory application of laws" under the Fourteenth Amendment. Whren, 517 U.S. at 813, 116 S.Ct. at 1774. Thus, regardless of whether the stop was lawful, "if the plaintiffs can show that they were subjected to unequal treatment based upon their race or ethnicity during the course of an otherwise lawful traffic stop, that would be sufficient to demonstrate a violation of the Equal Protection Clause." Farm Labor Organizing Comm. v. Ohio State Highway Patrol, 308 F.3d 523, 533 (6th Cir. 2002); see Melendres, 598 F.Supp.2d at 1037.

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[2] The court notes that defense counsel excluded the underlined words – the key words – from the block quote set forth in defendants' Motion, without any indication that the quote had been altered. (See Dkt. 32, Motion at 10). Such misrepresentations only serve to undermine the credibility of counsel and any and all papers counsel submits to the court. The court warns defense counsel that such misrepresentations will not be tolerated, and expects that future filings will be thorough and accurate.

[3] The other case cited by defendants for this proposition, Cholerton v. Brown, 2014 WL 3818049 (C.D. Cal. 2014), (see Dkt. 32, Motion at 10), was likewise brought under the Fourth Amendment. See Cholerton, 2014 WL 3818049, at *4 n. 8 (construing pro se plaintiff's Fourteenth Amendment claim of "unreasonable seizure in the course of an investigatory stop" as being brought under the Fourth Amendment).

Here, plaintiff alleges that: (1) he is African American, (see Dkt. 31, SAC at ¶ 3); (2) Lujan and Esparza were assigned to participate in a law enforcement operation targeting black gangs, (see id. at ¶ 10); (3) Lujan and Esparza were directed to conduct pretextual traffic stops to detain, search, and catalogue young African Americans as potential gang members or gang associates, (see id.); (4) Lujan and Esparza "were looking for black people they subjectively deemed 'suspicious,' . . . hoping to impress co-workers and supervisors with racially biased, proactive policing[,]" (id. at ¶ 13); (5) before detaining plaintiff, the officers saw plaintiff, a young black man driving in the opposite direction and deliberately made a U-turn, (see id. at ¶ 13); and (6) the officers' aggression was driven by their assumption that plaintiff "must be a gang member or associate because he is a young African-American in that geographic area." (See id. at ¶ 23). Such allegations are sufficient to state a claim of racial profiling in violation of the Equal Protection Clause.

B. Excessive Force.

Defendants contend that "Plaintiff's [excessive force] allegations are self-defeating and conclusory[,]" (Dkt. 32, Motion at 13), in that they "refer[] to every act as 'false' or 'misleading,' such that plaintiff concludes that force was unconstitutionally excessive." (Id. at 12). In addition, defendants assert that plaintiff "supplies the Court with facts that state Ballew's resistance." (Id.). Defendants' assertions are unpersuasive.

"The Fourth Amendment, which protects against excessive force in the course of an arrest, requires that we examine the objective reasonableness of a particular use of force to determine whether it was indeed excessive." Gravelet-Blondin v. Shelton, 728 F.3d 1086, 1090 (9th Cir. 2013), cert. denied, 571 U.S. 1199 (2014). To determine whether the force used was reasonable, the court balances "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing government interests at stake." Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871 (1989). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Id. at 396-97, 109 S.Ct. 1872; see Fisher v. City of San Jose, 558 F.3d 1069,

1081 (9th Cir. 2009) (en banc). Therefore, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, 490 U.S. at 396, 109 S.Ct. at 1872.

While earlier defense counsel omitted the key words of a quote from a case – words that completely foreclosed defendants' argument – here defense counsel simply ignores allegations in the SAC that assert a viable excessive force claim. (See, generally, Dkt. 32, Motion at 11-13). Instead, defendants cite portions of the SAC pertaining to plaintiff's fraud allegations, (see id.) (citing Dkt. 31, SAC at ¶¶ 13, 18, 32, 33 (only to describe plaintiff's resistance, without mentioning the force allegations)), which are irrelevant to plaintiff's excessive force claim. In any event, having reviewed the relevant allegations (most of which were ignored by defendants), the court finds that plaintiff has stated a viable excessive force claim. (See, e.g., Dkt. 31, SAC at ¶¶ 32-35).

C. False Arrest.

"An arrest without probable cause violates the fourth amendment and gives rise to a claim for damages under § 1983." Borunda v. Richmond, 885 F.2d 1384, 1391 (9th Cir. 1988). However, "[a]n officer who observes criminal conduct may arrest the offender without a warrant, even if the pertinent offense carries only a minor penalty." Tatum v. City & Cty. of S.F., 441 F.3d 1090,1094 (9th Cir. 2006); Atwater v. Lago Vista, 532 U.S. 318, 354, 121 S.Ct. 1536, 1557 (2001) ("[T]he standard of probable cause applies to all arrests, without the need to balance the interests and circumstances involved in particular situations.") (internal quotation marks omitted).

Here, because plaintiff alleges that he had violated the Vehicle Code, (see Dkt. 31, SAC at ¶ 32), the SAC does not appear to state a claim for false arrest. See Franklin, 745 F.2d at 1228-29 (claim may be dismissed for failure to state a claim when it discloses some fact or complete defense that will necessarily defeat the claim). However, plaintiff's arguments opposing defendants' Motion seem to support a Fourth Amendment unlawful seizure claim, (see Dkt. 34, Plaintiff's Opposition to Defendants' Motion to Dismiss ("Opp.") at 11) ("Here, the length of Mr. Ballew's detention for violation of Cal. Penal Code § 245(c) far exceeded what could be justified had Mr. Ballew been arrested for a minor vehicle code infraction."), which the SAC alludes to but does not plead. (See, e.g., Dkt. 31, SAC at ¶¶ 11 & 69); see also Rodriguez v. United States, 135

S.Ct. 1609, 1612 (2015) ("[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures."); United States v. Chan-Jimenez, 125 F.3d 1324, 1326 (9th Cir. 1997) (under Fourth Amendment, seizure occurs when government actors have, through coercion, physical force, or show of authority, restrained citizen's liberty). Accordingly, the court will dismiss the false arrest claim and allow plaintiff to amend the SAC to add an unlawful seizure claim.

D. Delay/Denial of Medical Care.

The Fourteenth Amendment protects a detainee who has not been charged or convicted of a crime from the denial, delay, or intentional interference with the detainee's receipt of adequate medical care. See Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002). "[E]ven though pretrial detainees [sic] claims arise under the due process clause [of the Fourteenth Amendment], the [E]ighth [A]mendment guarantees provide a minimum standard of care for determining rights as a pretrial detainee, including rights . . . to medical care." Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996), abrogated on other grounds by Castro v. Cty of Los Angeles, 833 F.3d 1060 (9th Cir. 2016) (en banc) (internal quotation marks omitted). "[C]laims for violations of the right to adequate medical care brought by pretrial detainees against individual defendants under the Fourteenth Amendment must be evaluated under an objective deliberate indifference standard." Gordon v. Cty. of Orange, 888 F.3d 1118, 1124-25 (9th Cir. 2018), cert. denied, 2019 WL 113108 (2019). "There is no separate inquiry into an officer's subjective state of mind." Horton by Horton v. Santa Maria, 915 F.3d 592, 602 (9th Cir. 2019).

The "'mere lack of due care by a state official' does not deprive an individual of life, liberty, or property under the Fourteenth Amendment." Castro, 883 F.3d at 1071 (quoting Daniels v. Williams, 474 U.S. 327, 330-31, 106 S.Ct. at 664); Gordon, 888 F.3d at 1125 (same). "[T]he plaintiff must 'prove more than negligence but less than subjective intent – something akin to reckless disregard.'" Gordon, 888 F.3d at 1125 (quoting Castro, 833 F.3d at 1070); see Jett v. Penner, 439 F.3d 1091, 1095 (9th Cir. 2006) ("Indifference may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care.").

Plaintiff alleges that he sustained multiple serious injuries from the beating he endured, (see Dkt. 31, SAC at ¶¶ 35-39), and that defendants caused a number of delays in his treatment for those injuries. (See, e.g., id. at ¶ 36) ("Moments before the officers closed the second handcuff on [plaintiff's] right wrist, Officer Lujan broadcast that they were still fighting, which had the effect of unnecessarily prolonging other SES units' Code-3 responses."); id. at ¶ 38 (delay in treatment after plaintiff arrived at the hospital until Bundy's arrival, and further delay by Bundy's attempt to interview him); id. at ¶ 39 (delay of pain medication and follow-up treatment prescribed by hospital staff); id. at ¶ 40 (alleging that PPD officers took plaintiff from hospital – where he was evaluated and given "stopgap" treatment, with follow-up recommended – to the PPD station, where he was booked for a felony, "[r]ather than letting his family post bail so that Mr. Ballew could be released from the station to obtain timely medical treatment"). However, the SAC lacks sufficient allegations as to the duration of the various delays or the reckless disregard with which defendants denied, delayed, or interfered with plaintiff's medical treatment. See Gordon, 888 F.3d at 1125; see also, e.g., Lopez v. Swaney, 741 F.Appx. 486, 487 (9th Cir. 2018) ("The denial of medical care in the face of an obvious emergency constitutes deliberate indifference."). The court will grant defendants' Motion as to this claim and allow plaintiff leave to amend. See Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment); see also Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave [to amend] when justice so requires.").

E. Falsification of Reports.

Citing no authority other than Federal Rule of Civil Procedure 9(b), defendants contend that "[d]ue to the heightened pleading standard relative to allegations of falsity and fraud in civil rights cases, the SAC fails to state a claim." (Dkt. 32, Motion at 17). Given that the Ninth Circuit resolved this issue more than 15 years ago in Galbraith v. Cty. of Santa Clara, 307 F.3d 1119, 1123-26 (9th Cir. 2002) (overruling requirement of "heightened pleading of improper motive in constitutional tort cases where subjective intent was an element" as "inconsistent with our federal system of notice pleading"), a case that defendants failed to mention in their moving papers, (see,

generally Dkt. 32, Motion at 17), defendants' reliance on Rule 9 is not well-taken. In any event, the court finds that the SAC alleges sufficient facts that, when taken as true, state a plausible claim that the defendant officers falsified reports that interfered with plaintiff's rights. (See Dkt. 31, SAC at ¶¶ 41-42) (listing alleged false and misleading statements in Esparza's and Lujan's reports); Costanich v. Dep't of Soc. & Health Servs., 627 F.3d 1101, 1111 (9th Cir. 2010) (fabricated police reports violate due process). Defendants' Motion as to this claim is denied.

F. Excessive Bail.

Defendants move to dismiss plaintiff's § 1983 claim for violation of the Excessive Bail Clause of the Eighth Amendment. First, they contend that, "[b]ased upon the facts as pleaded in the four corners of the SAC itself, the officers reasonably could have construed Ballew's alleged behavior to constitute an assault ("unlawful attempt") against them[,]" (Dkt. 36, Reply at 12-13). Second, they argue that "plaintiff affirmatively alleges that he was 'released on $50,000 bail[.]'" (Id. at 13).

"[The Eighth Amendment's] Excessive Bail Clause prevents the imposition of bail conditions that are excessive in light of the valid interests the state seeks to protect by offering bail." Galen v. Cty. of L.A., 477 F.3d 652, 660 (9th Cir. 2007). In assessing excessive bail claims, courts "look to the valid state interests bail is intended to serve for a particular individual and judge whether bail conditions are excessive for the purpose of achieving those interests. The state may not set bail to achieve invalid interests, . . . nor in an amount that is excessive in relation to the valid interests it seeks to achieve." Id. "[A] police officer may be liable for violation of the Excessive Bail Clause for deliberately or recklessly misleading the judicial officer setting bail, or otherwise preventing the judicial officer from exercising his independent judgment." Morse v. Regents of Univ. of Cal., Berkeley, 821 F.Supp.2d 1112, 1116 (N.D. Cal. 2011) (internal quotation marks and footnote omitted); see Wagenmann v. Adams, 829 F.2d 196, 212 (1st Cir. 1987) (upholding plaintiff's jury verdict on excessive bail claim where "a jury could reasonably infer from th[e] evidence that the policeman did not merely arrest Wagenmann and then step aside, letting an independent judicial officer set bail").

Plaintiff alleges that the officer defendants "deliberately wrote false and misleading reports

concerning their beating and arrest of [plaintiff,]" which "were used to book [plaintiff] for a serious felony[,]" (Dkt. 31, SAC at ¶¶ 42 & 44), which led to plaintiff being detained over night without bail, and when he was released – approximately 36 hours later – it was subject to a "high bail" of $50,000. (See id. at ¶ 40). That plaintiff was released on $50,000 bail does not, contrary to defendants' assertions, defeat plaintiff's claim, which is that his bail was enhanced for unlawful purposes. See Galen, 477 F.3d at 661 (explaining that plaintiff can prevail on claim that California state court bail enhancement violated the Excessive Bail Clause if he can show that his bail was enhanced "for purposes unauthorized by . . . law"). In other words, "plaintiff argues that defendants deliberately misled the judicial officer by bringing what essentially amounted to . . . false charges against plaintiff in order to persuade the judicial officer to increase bail. Plaintiff has alleged sufficient facts to support his theory." Morse, 821 F.Supp.2d at 1117-18 (denying motion to dismiss excessive bail claim); see Baker v. Rodriguez, 2012 WL 137461, *4 (C.D. Cal. 2012) (denying motion to dismiss excessive bail claim where plaintiff's allegations – that officers omitted material facts from police report, police report known to include exculpatory evidence was excluded, defendant officer made declaration in support of bail increase, and defendant made false statements during arraignment and trial – supported a "reasonable inference . . . that [defendants] intentionally withheld the exculpatory evidence to keep Plaintiff in custody as long as possible.").

II. SECTION 1983 ENTITY AND SUPERVISORY LIABILITY.

A. Monell Liability.

"While local governments may be sued under § 1983, they cannot be held vicariously liable for their employees' constitutional violations." Gravelet-Blondin v. Shelton, 728 F.3d 1086, 1096 (9th Cir. 2013), cert. denied, 571 U.S. 1199 (2014); see Velazquez v. City of Long Beach, 793 F.3d 1010, 1027 (9th Cir. 2015) ("[A municipality] cannot be held liable . . . on a respondeat superior theory.") (internal quotation marks omitted). "Under Monell, a local government body can be held liable under § 1983 for policies of inaction as well as policies of action." Jackson v. Barnes, 749 F.3d 755, 763 (9th Cir. 2014), cert. denied, 135 S.Ct. 980 (2015); see Gibson v. Cty. of Washoe, 290 F.3d 1175, 1185 (9th Cir. 2002), overruled on other grounds by Castro v. Cty. of

Los Angeles, 833 F.3d 1060, 1076 (9th Cir. 2016) (en banc) (setting forth two paths that "can lead to the conclusion that a municipality has inflicted a constitutional injury"). "A policy of action is one in which the government body itself violates someone's constitutional rights, or instructs its employees to do so; a policy of inaction is based on a government body's 'failure to implement procedural safeguards to prevent constitutional violations.'" Jackson, 749 F.3d at 763 (quoting Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1143 (9th Cir. 2012); see Waggy v. Spokane Cty., 594 F.3d 707, 713 (9th Cir. 2010) (noting that for purposes of Monell liability, "a policy can be one of action or inaction" and in order to state a claim based on inaction, "a plaintiff can allege that through its omissions the municipality is responsible for a constitutional violation committed by one of its employees") (internal quotation and alteration marks omitted).

To challenge a policy of action, a plaintiff must "identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." Bd. of Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 403, 117 S.Ct. 1382, 1388 (1997). The policy must be an "official policy" – i.e., an "act[] which the municipality has officially sanctioned or ordered" – in other words, a "deliberate choice to follow a course of action . . . made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur v. Cincinnati, 475 U.S. 469, 480 & 483, 106 S.Ct. 1292, 1298 & 1300 (1986); see Castro, 833 F.3d at 1075 (same). Under this approach, "[t]he existence of a constitutional injury . . . is not dependent on the lawfulness of [the officer's] conduct, but instead turns on the reasonableness of the city's general policy[.]" Chew v. Gates, 27 F.3d 1432, 1440 (9th Cir. 1994), cert. denied 513 U.S. 1148 (1995); see, e.g., id. at 1445 ("[M]unicipal liability need not be predicated on an 'unreasonable' action on [the officer's] part. A jury could conceivably decide . . . that although the officer's on-the-scene decision to use canine force was reasonable under the circumstances, the city was nevertheless at fault for providing its officers with dogs trained to bite and seize all concealed suspects regardless of their efforts to surrender."); Gibson, 290 F.3d at 1185 (describing and

listing examples of this "direct path to municipal liability").[4]

In inaction cases, "the plaintiff must show, first, that the policy amounts to deliberate indifference to the plaintiff's constitutional right. This requires showing that the defendant was on actual or constructive notice that its omission would likely result in a constitutional violation." Jackson, 749 F.3d at 763 (internal quotation marks, citations, and alterations omitted); Tsao, 698 F.3d at 1145 (same). Second, the plaintiff must show that the policy caused the violation in the sense that the municipality could have prevented the violation with an appropriate policy." Jackson, 749 F.3d at 763 (internal quotation marks, citations, and alterations omitted); Tsao, 698 F.3d at 1143 (same).

Defendants contend that "the SAC offers boilerplate, conclusory allegations in support of a Monell claim." (Dkt. 32, Motion at 19). The court disagrees. Here, plaintiff brings his claim for municipal liability under both paths, alleging that the municipal defendants have "practices and customs" of "encouraging officers to engage in racially discriminatory stops, searches and seizures based on racial profiling" and "failing to properly hire, train, supervise, monitor, discipline, counsel, transfer, and control police officers[.]" (Dkt. 31, SAC at ¶¶ 72-73). Such allegations "give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson, 551 U.S. at 93, 127 S.Ct. at 2200 (internal quotation marks omitted). In any event, the court will not dismiss this claim until discovery has been completed. Discovery may reveal, for example, whether complaints of excessive force and other misconduct have previously been filed, lodged, or submitted against Esparza and Lujan, and whether the City and PPD have customs or policies that amount to deliberate indifference, particularly in light of the allegations that Esparza and Lujan received no discipline following the underlying incident or any of the other complaints (both departmental and civil) that were filed against them. See Gibson, 290 F.3d at 1194-95 ("Whether a local government has displayed a policy of deliberate indifference to the constitutional rights of its citizens is generally a jury question."). Also, discovery may reveal whether the City's policies

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[4] Examples of this "direct path to municipal liability" include a facially unconstitutional city policy discriminating against pregnant women, and a policy that policymakers knew would violate a detainee's right to personal security. See Gibson, 290 F.3d at 1185-86.

were the moving force behind defendants' actions, i.e., whether any constitutional violation would have occurred had the officer defendants been appropriately disciplined and/or trained following any previous complaints or allegations asserted against the officer defendants.

B. Supervisory Liability.

A plaintiff states "a claim against a supervisor for deliberate indifference based upon the supervisor's knowledge of and acquiescence in unconstitutional conduct by his or her subordinates." Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (reversing Rule 12(b)(6) dismissal). A supervisor can be held liable if the evidence establishes that he or she "set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he kn[e]w or reasonably should [have] know[n], would cause others to inflict the constitutional injury." Larez v. Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991).

Defendants contend that plaintiff's supervisory liability claims against Sanchez and Bundy should be dismissed because "Plaintiff has not drawn a sufficient connection to [these defendants], other than conclusions asserted at Paragraph 78, largely in the form of aspersions regarding post-incident conduct." (Dkt. 32, Motion at 20). However, defendants again overlook and/or ignore allegations in the SAC that are sufficient to state a claim for supervisory liability against defendants Sanchez and Bundy. (See, e.g., Dkt. 31, SAC at ¶¶ 10, 38, 45, 57) (alleging that PPD supervisors "dispatched Officers Lujan and Esparza . . . to participate in an operation of the . . . SES . . . [and] directed Officers Lujan and Esparza to cruise low-income and minority neighborhoods . . . and to use various pretexts . . . for traffic stops [with the purpose of] . . . det[aining], searching and cataloguing [] young African Americans"; that Bundy "interfered with [plaintiff's] medical treatment" by attempting to interview him at the hospital; and that Bundy "viewed the videos [of the incident] [with] plenty of time to abort Plaintiff's arrest and get him released from custody," but failed to do so).

III. CALIFORNIA CIVIL CODE SECTIONS 51.7 AND 52.1.

A. Ralph Act Claim.

The Ralph Act, California Civil Code § 51.7, provides, in relevant part, that, "[a]ll persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by

threat of violence, committed against their persons or property because of their race[.]" Cal. Civ. C. § 51.7(a).

Defendants contend that plaintiff's claim under § 51.7 "is in the form of conclusions, assumptions, and inflammatory rhetoric – not facts." (See Dkt. 32, Motion at 22). However, as discussed above, the SAC sufficiently alleges the existence of racial animus and its causal connection to plaintiff's claims. See supra at § I.A. As such, plaintiff's § 51.7 claim is sufficient.

B. Bane Act Claim.

The Bane Act, California Civil Code § 52.1, authorizes a claim for relief against any "person or persons, whether or not acting under color of law, [who] interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state[.]" Cal. Civ. C. § 52.1(a)-(b). "The elements of a section 52.1 excessive force claim are essentially identical to those of a § 1983 excessive force claim." Knapps v. City of Oakland, 647 F.Supp.2d 1129, 1168 (N.D. Cal. 2009); Gomez v. City of Fremont, 730 F.Supp.2d 1056, 1068 (N.D. Cal. 2010) (same).

Relying on Shoyoye v. County of Los Angeles, 203 Cal.App.4th 947, 959 (2012), and Lyall v. Los Angeles, 807 F.3d 1178 (9th Cir. 2015), defendants assert that plaintiff's Bane Act, Cal. Civ. C. § 52, claim should be dismissed because "the only acts of 'threats, intimidation or coercion' alleged by plaintiff are that which is [sic] inherent in the detention itself" and "plaintiff cannot merely allege that a defendant violated his rights under state or federal law; rather, such a claim requires 'threats, intimidation or coercion' that are separate and distinct from an underlying constitutional violation." (Dkt. 32, Motion at 23) (emphasis omitted).

In light of the California Court of Appeal's decision in Cornell v. City and County of San Francisco, 17 Cal.App.5th 766 (2017), defendants' reliance on Shoyoye and Lyall is misplaced. As the Ninth Circuit recently noted, Cornell held that "the Bane Act does not require the 'threat, intimidation or coercion' element of the claim to be transactionally independent from the constitutional violation alleged." Reese v. Cty. of Sacramento, 888 F.3d 1030, 1043 (9th Cir. 2018) (internal citations omitted) (citing and adopting Cornell) (emphasis added); see Cornell, 17

Cal. App. 5th at 799 & n. 28 (listing the Ninth Circuit's opinion in Lyall, the Ninth Circuit authority on which defendants rely, as one of several federal cases that "misread" the Bane Act); see also Bender v. Cty. of L.A., 217 Cal.App.4th 968, 978 (2013) ("[When] an arrest is unlawful and excessive force is applied in making the arrest, there has been coercion 'independent from the coercion inherent in the wrongful detention itself' – a violation of the Bane Act.") (emphasis in original and internal citation omitted); Chaudhry v. Los Angeles, 751 F.3d 1096, 1105 (9th Cir.), cert. denied, 135 S.Ct. 295 (2014) ("[A] successful claim for excessive force under the Fourth Amendment provides the basis for a successful claim under § 52.1.").

For the reasons set forth above and because defendants concede that plaintiff alleges "acts of threats, intimidation or coercion . . . inherent in the detention itself," (Dkt. 32, Motion at 23), the court finds that plaintiff has adequately pled his Bane Act claim. See Bailey v. Cty. of San Joaquin, 671 F.Supp.2d 1167, 1179 (E.D. Cal. 2009) ("California courts have held that Section 52.1 claims are viable when plaintiff has a claim for excessive force by a law enforcement officer.").

IV. BATTERY AND FALSE ARREST/IMPRISONMENT.

Defendants contend that plaintiff's state law battery and false arrest/imprisonment claims should be dismissed because they "are defective per the California Tort Claims Act" for "fail[ing] to articulate a statutory basis for liability, as is required by Government Code § 815(a) and Searcy v. Hemet Unified Sch. Dist., 177 Cal.App.3d 792, 802 (1986)[,]" and for the same reasons defendants moved to dismiss plaintiff's § 1983 claims for excessive force and false arrest. (See Dkt. 32, Motion at 23).

As for defendants' first argument, the pleading requirements in this case are governed by the Federal Rules of Civil Procedure, not by state law. See Santana v. Holiday Inns. Inc., 686 F.2d 736, 740 (9th Cir. 1982) ("[I]f there is a federal rule of procedure covering a particular point of practice or pleading . . . , such rule governs in a federal diversity action"). Under the Federal Rules, a "complaint need not identify the statutory or constitutional source of the claim raised in order to survive a motion to dismiss." Alvarez v. Hill, 518 F.3d 1152, 1157 (9th Cir. 2008); see Sagana v. Tenorio, 384 F.3d 731, 737 (9th Cir. 2004), cert. denied, 543 U.S. 1149 (2005) ("We

long ago rejected the argument that a specific statute must be named, describing it as an 'attempt to evoke wholly out-moded technical pleading rules.'"); Nunn v. Cty. of Orange, 2006 WL 8427287,*2 (C.D. Cal. 2006) (ignoring Searcy).

As for defendants' second argument, the same standards apply to both state law assault and false arrest claims and § 1983 claims premised on constitutionally excessive force and false arrest. See Fletcher v. W. Nat'l Life Ins. Co., 10 Cal.App.3d 376, 394 (1970); Brown v. Ransweiler, 171 Cal.App.4th 516, 527 (2009) ("A state law battery claim is a counterpart to a federal claim of excessive use of force. In both, a plaintiff must prove that the peace officer's use of force was unreasonable."). Accordingly, for the reasons articulated above, see supra at §§ I.B. & I.C., the court finds that plaintiff has adequately pled his state law battery claim and inadequately pled his state law false arrest/imprisonment claim.

V. PUNITIVE DAMAGES AGAINST INDIVIDUAL DEFENDANTS.

Punitive damages are available in a § 1983 action when a defendant's conduct "is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640 (1983); see Dang v. Cross, 422 F.3d 800, 807 (9th Cir. 2005) (same).

Defendants' entire argument as to why the court should dismiss plaintiff's claim for punitive damages consists of the following:

> Plaintiff alleges that all actions were done in a "thuggish" and "malicious" manner. Yet, these are just buzz words and inflammatory rhetoric. The SAC is couched in generalities and histrionic interpretations about various defendants' state of mind regarding pretexts, corruption, animus and invidious discrimination. Plaintiff has failed to state any claim for punitive damages, as they are all based upon deficient and hollowed conclusions.

(Dkt. 32, Motion at 25). Besides lacking a single citation to the SAC or case law, (see, generally, id.), defendants' argument fails to mention a number of allegations in the SAC that state a plausible claim for punitive damages. (See, e.g., Dkt. 31, SAC at ¶¶ 33-35 (beating without provocation); id. at ¶¶ 41-43 (misrepresented facts in police reports); id. at ¶¶ 10, 38, 45, 57

(racially targeted operation of using pretextual traffic stops to detain, search, interrogate, and catalogue young African American men)). In any event, plaintiff's allegations are sufficient to state a claim for punitive damages.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Defendants' Motion to Dismiss **(Document No. 32)** is **granted** in part and **denied** in part, as set forth below. Plaintiff's federal and state false arrest claims are dismissed with prejudice. Plaintiff's denial of medical care is dismissed with leave to amend. The Motion is denied in all other respects.

2. If plaintiff wishes to pursue an unlawful seizure claim and/or denial of medical care claim, he shall, no later than **April 15, 2019**, file a third amended complaint. The third amended complaint must be labeled "Third Amended Complaint," filed in compliance with Local Rule 3-2 and contain the case number assigned to the case, i.e., Case No. CV 18-0712 FMO (ASx). In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make his Third Amended Complaint complete. Local Rule 15-2 requires that an amended pleading be complete in and of itself without reference to any prior pleading. This is because, as a general rule, an amended pleading supersedes the original pleading. See Ramirez v. Cty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("It is well-established in our circuit that an amended complaint supersedes the original, the latter being treated thereafter as non-existent. In other words, 'the original pleading no longer performs any function[.]'") (citations and internal quotation marks omitted).

3. Defendants shall file their Answer to the Third Amended Complaint or a motion pursuant to Fed. R. Civ. P. 12 no later than **April 29, 2019**. In the event defendants choose to file another Rule 12 motion, the motion shall be limited to challenging only the denial of medical care and unlawful seizure claims.

4. In the event defendants wish to file another motion to dismiss, then counsel for the

parties shall, on **April 22, 2019, at 10:00 a.m.**,[5] meet and confer in person at an agreed upon location within the Central District of California to discuss defendants' motion to dismiss. Defendants' motion must include copies of all meet and confer letters as well as a declaration that sets forth, in detail, the entire meet and confer process (i.e., when and where it took place, how long it lasted and the position of each attorney with respect to each disputed issue that will be the subject of the motion). Failure to include such a declaration will result in the motion being denied.

Dated this 29th day of March, 2019.

/s/
Fernando M. Olguin
United States District Judge

[5] Counsel may agree to meet and confer at another time and place without seeking court approval for such an agreement.