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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH LEDESMA, an individual; and
JEANNIE LEDESMA, an individual,

Plaintiffs,

v.

CITY OF VALLEJO, a municipal
corporation, ROBERT DeMARCO,
individually and in his official capacity
as Police Officer for the CITY OF
VALLEJO; AMANDA BLAIN,
individually and in her official capacity
as Police Officer for the CITY OF
VALLEJO; and DOES 1-50, individually
and in their official capacities as Police
Officers for the CITY OF VALLEJO,
jointly and severally,

Defendants.

No. 2:17-cv-00106-MCE-CKD

MEMORANDUM AND ORDER

Through the present lawsuit, Plaintiffs Joseph Ledesma (“Joseph”) and Jeannie Ledesma (“Jeannie”) seek damages as a result of a beating Joseph claims he received after two City of Vallejo police officers, Defendants Robert DeMarco (“DeMarco”) and Amanda Blain (“Blain”), responded to a domestic violence altercation at the Ledesma home. Joseph asserts causes of action under 42 U.S.C. § 1983, and for violation of California’s Bane Act as codified at California Civil Code § 52.1, as well as state common law claims for negligence and battery. Jeannie, for her part, alleges claims for

1 negligence and negligent infliction of emotional distress, only. In addition to the above-
2 named officers, the City of Vallejo is also included as a Defendant.

3 Defendants now move for summary judgment pursuant to Federal Rule of Civil
4 Procedure 56,¹ or alternatively for partial summary judgment as to Plaintiffs' particular
5 causes of action. Defendants first assert that Plaintiffs' claims are precluded in their
6 entirety pursuant to the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477
7 (1994) (hereinafter referred to as "Heck"). Alternatively, even if the claims are not
8 foreclosed by Heck, Defendants DeMarco and Blain claim they are precluded by the
9 doctrine of qualified immunity in any event. Finally, to the extent Plaintiffs allege that
10 Defendant City of Vallejo is itself liable for having fostered a policy or practice that
11 abrogated Plaintiffs' constitutional rights, the City claims that no such policy or practice
12 has been identified. For the reasons set forth below, Defendants' Motion is DENIED.²

13 14 **BACKGROUND**

15
16 This case arises from an incident that occurred on December 8, 2015. Jeannie
17 allegedly asked a friend to call 911 because Jeannie's husband, Joseph, threw her keys
18 outside, was threatening her, and refused to leave. Officers DeMarco and Blain
19 responded to the call and went to the Ledesma residence located at 101 Tanglewood
20 Court in Vallejo.

21 Upon arrival, Blain went to speak with Jeannie. DeMarco, for his part, decided to
22 question Joseph, who was in the process of towing a trailer away from the house. At
23 this point the respective parties' version of just what occurred widely diverges. Joseph
24 claims that when he did not immediately exit his vehicle, DeMarco pointed his gun and
25 ordered him to do so. Joseph Dep., ECF No. 23-2, 29:6-24. Once Joseph was outside,

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27 ¹ All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless
otherwise noted.

28 ² Having determined that oral argument would not be of material assistance, the Court ordered this
matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

1 Plaintiffs' two pit bulls came running from behind the house through an open gate. Both
2 Plaintiffs indicate that both dogs were friendly and had never threatened or bitten
3 anyone. Id. at 33:9-11; 58:24-59:2, Jeannie Dep., ECF No. 23-3, 56:18-57:10. Despite
4 Jeannie's claim that the female dog, Bella, ran out with its tail wagging and never
5 exhibited any aggressive behavior (Jeannie Dep., 24:15-18), Jeannie testified that
6 DeMarco nonetheless repeatedly tased the animal. Id. at 25:17-25. DeMarco, for his
7 part, claims he only tased Bella once because he believed the dog was going to attack.
8 DeMarco Dep., ECF No. 23-5, 52:5-7. According to DeMarco, Joseph did not even get
9 out of his truck until after the dog was tased, and he then walked across the front yard
10 some 35-50 feet to where DeMarco was standing. See Police Report, Ex. G to Decl. of
11 Joni Brown, ECF No. 16-4, pp. 1-2; see also DeMarco Dep., 45:5-16; 53:2-17; 57:3-10.

12 There appears to be no dispute that Joseph was upset since he believed that
13 DeMarco had actually shot the dog. In response, however, DeMarco claims that Joseph
14 advanced on him in a threatening manner and appeared to assume a fighting posture.
15 DeMarco Dep 63:7-22. As a preemptive measure, DeMarco states he used an asp, or
16 collapsible metal baton, to establish distance between him and Joseph. He struck
17 Joseph in the left arm area. Police Report, p. 2; see also DeMarco Dep., 64:21-65:6.
18 When Joseph failed to comply with DeMarco's demand that he get to the ground,
19 DeMarco claims he struck Joseph with his baton two additional times, once to the right
20 leg and once to the left. Only after those additional blows were delivered did Joseph fall
21 to the ground. Because Joseph continued to resist and kicked DeMarco, DeMarco
22 states he delivered two more baton strikes to Joseph's lower leg area. Police Report,
23 p. 2.³

24 ///

25 ///

26 ³ DeMarco's testimony at deposition differed with regard to the baton blows he administered. He
27 estimated the first three blows, delivered while Joseph was still standing, were to Joseph's arms.
28 DeMarco Dep., 69:5-17. To the extent his testimony diverged from the information contained in the Police
Report, however, DeMarco conceded that the Report "would probably more accurately reflect what
happened" since it was prepared shortly after the incident. Id. at 100:1-7.

1 At this point, it appears that Blain deployed her taser in order to help get Joseph
2 under control. According to DeMarco, however, the initial taser strike still did not
3 incapacitate Joseph. DeMarco Dep., 75:6-9.

4 The supplemental statement attributed to Blain in the Police Report indicates that
5 she tased Joseph when she saw him attempt to kick DeMarco. Police Report, p. 3.
6 According to the Report, because this initial tase failed to have much effect, Blain
7 followed up with two additional shots in stun mode, once to the lower extremity and
8 finally to the upper shoulder before she and DeMarco were able to take Joseph into
9 custody. Id. Significantly, however, Blain's account of what transpired differs markedly
10 from DeMarco's since she believed Joseph "swung" at DeMarco before DeMarco initially
11 hit him with the baton. Blain Dep., 39:19-40:11.

12 Even more importantly, Joseph himself presents a version of events strikingly
13 different than that offered by either DeMarco or Blain. Joseph states that after getting
14 out of his vehicle at gunpoint, his dogs came running over and that DeMarco tased the
15 larger, female animal. While admittedly concerned because he thought the dog had
16 been shot, Joseph denies ever assuming a fighting posture, and states he was simply
17 scared for his dog. Joseph Dep., 138:15-2. Jeannie also denies ever seeing her
18 husband fighting with the Officer. Jeannie Dep., 31:9-12. When Joseph reached over to
19 try to retract the taser barbs from the dog's fur, he was suddenly tased from behind. See
20 Joseph Dep., 37:19-37. This immediately took Joseph to the ground, and he then
21 realized we was repeatedly being hit by DeMarco with the baton. Id. at 35:1-12. Joseph
22 denies swinging or lunging at DeMarco, claiming only that he reached over to pull the
23 taser prongs from his dog. Id. at 137:9-23; 53:3-9. Joseph estimated that some 20-30
24 blows were administered, causing him to curl up on his back into a fetal position where
25 he used his arms to protect his head from DeMarco's blows. See id. at 35:8-12; 36:7-15;
26 44:20-22; 76:4-6.

27 Although Jeannie did not apparently witness the entire scuffle (having walked
28 away to put Bella into her husband's truck), she observed at least twelve blows as

1 Joseph was covering his face: Jeannie Dep., 28:23-29:30. As a result, Officer
2 DeMarco's collapsible baton broke: it was bent to the extent it could no longer be
3 retracted. De Marco Dep., 125:19-23; Joseph Dep., 35:22. In addition, once Joseph
4 was taken to the hospital after being arrested and booked it was determined that both
5 arms had been broken in multiple places, and that one of shins had been fractured.
6 Joseph Dep., 35:10-12; Jeannie Dep., 33:25-34:6. While both officers were wearing
7 lapel cameras, it appears they turned those devices off after initially responding to the
8 call and did not reactivate them until after the altercation with Joseph had concluded.
9 See Blain Dep., 28:21-30:2.

10 Following his altercation with the police, Joseph was charged with a one-count
11 misdemeanor violation of California Penal Code § 69, resisting a peace officer by threat
12 or violence. During a plea agreement accepted by the court, Joseph pled no contest to
13 the addition of a second count, for disturbing the peace by unlawfully fighting in a public
14 place or challenging another person to fight, in violation of Penal Code § 415(1). As part
15 of that agreement, the first count of the original indictment was dismissed.

16 Plaintiffs filed the present lawsuit on January 17, 2017.

18 STANDARD

19
20 The Federal Rules of Civil Procedure provide for summary judgment when "the
21 movant shows that there is no genuine dispute as to any material fact and the movant is
22 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
23 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
24 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

25 Rule 56 also allows a court to grant summary judgment on part of a claim or
26 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) ("A party may
27 move for summary judgment, identifying each claim or defense—or the part of each
28 claim or defense—on which summary judgment is sought."); see also Allstate Ins. Co. v.

1 Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a
2 motion for partial summary judgment is the same as that which applies to a motion for
3 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep't of Toxic
4 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
5 judgment standard to motion for summary adjudication).

6 In a summary judgment motion, the moving party always bears the initial
7 responsibility of informing the court of the basis for the motion and identifying the
8 portions in the record “which it believes demonstrate the absence of a genuine issue of
9 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
10 responsibility, the burden then shifts to the opposing party to establish that a genuine
11 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith
12 Radio Corp., 475 U.S. 574, 586-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S.
13 253, 288-89 (1968).

14 In attempting to establish the existence or non-existence of a genuine factual
15 dispute, the party must support its assertion by “citing to particular parts of materials in
16 the record, including depositions, documents, electronically stored information,
17 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do
18 not establish the absence or presence of a genuine dispute, or that an adverse party
19 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
20 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
21 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,
22 Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
23 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also
24 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is
25 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
26 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
27 before the evidence is left to the jury of “not whether there is literally no evidence, but
28 whether there is any upon which a jury could properly proceed to find a verdict for the

1 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
2 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
3 As the Supreme Court explained, “[w]hen the moving party has carried its burden under
4 Rule [56(a)], its opponent must do more than simply show that there is some
5 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
6 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
7 nonmoving party, there is no ‘genuine issue for trial.’” Id. at 587.

8 In resolving a summary judgment motion, the evidence of the opposing party is to
9 be believed, and all reasonable inferences that may be drawn from the facts placed
10 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
11 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
12 obligation to produce a factual predicate from which the inference may be drawn.
13 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d,
14 810 F.2d 898 (9th Cir. 1987).

16 ANALYSIS

18 A. Whether Joseph’s Claims Are Foreclosed By Heck

19 Under the Supreme Court’s 1994 decision in Heck v. Humphrey, a plaintiff cannot
20 maintain a lawsuit seeking damages under 42 U.S.C. § 1983 if success in that lawsuit
21 would “necessarily imply” the invalidity of a related prior criminal conviction, Heck,
22 512 U.S. at 487. Thus, a claim is barred under Heck if the plaintiff “would have to negate
23 an element of the offense of which he has been convicted” (id. at 486 n. 6) or make
24 specific factual allegations inconsistent with his criminal conviction. Cunningham v.
25 Gates, 312 F.3d 1148, 1154 (9th Cir. 2002).

26 According to Defendants, Joseph’s claims predicated on excessive force are
27 precluded by his conviction, following a plea of nolo contendere, for disturbing the peace
28 under California Penal Code § 415(1). Defendants correctly point out that while a nolo

1 plea is not an admission of guilt, “for purposes of the Heck analysis, a plea of nolo
2 contendere in a California criminal action has the same effect as a guilty plea or jury
3 verdict of guilty.” Nuno v. County of San Bernardino, 58 F. Supp. 2d 1127, 1135 (C.D.
4 Cal. 1999); see also Szajer v. City of Los Angeles, 632 F.3d 607 (9th Cir. 2011) (no
5 contest plea to illegal possession of a firearm barred civil rights action premised on
6 illegal search).

7 Defendants argue that Joseph’s excessive force allegations hinge on a claim that
8 he did not approach Officer DeMarco in a fighting manner or offer any resistance during
9 the resulting altercation. Because Joseph pled no contest to the subsection of the
10 California’s disturbing the peace statute that prohibits “unlawfully fight[ing] in a public
11 place or challeng[ing] another person in a public place to fight,” Defendants assert that
12 the Heck bar applies. Defendants are incorrect.

13 First, Defendants assert that it is plain from the record that Joseph’s no contest
14 plea of disturbing the peace pertained to the interaction he had with the two officers.
15 The Court disagrees. Joseph himself appears to claim that the plea agreement he
16 entered into related to the verbal dispute he had with his wife that led Jeannie to call law
17 enforcement in the first place. See Pls.’ Opp., 9:17-18. In rejecting that argument,
18 Defendants point to the fact that the original Misdemeanor Complaint filed against
19 Joseph specifically referred to his acts in deterring and preventing DeMarco from
20 carrying out his duties on the day in question. Misdemeanor Complaint, Ex. H. to Decl.
21 of Katelyn Knight, ECF 16-3. The Complaint, however, included only a single count for
22 violation of California Penal Code § 69, resisting an officer. In the court proceedings in
23 which Joseph pled no contest, the prosecution amended the Complaint to add a
24 separate and second count, for disturbing the peace, and Joseph pled nolo to only that
25 second charge, with the first count for resisting an officer being specifically dismissed.
26 See March 10, 2017 hearing transcript, Ex. G. to the Knight Decl., 3:19-5:5. The factual
27 basis for the Second Count is not specified in the hearing transcript, so it remains less
28 than clear as to whom the disturbing the peace charge pertained. Given that

1 uncertainty, this Court cannot conclude as a matter of law that Joseph's no contest plea
2 even related to the officers, let alone triggered Heck.

3 Second, even if Joseph's plea did relate to his altercation with Officers DeMarco
4 and Blain, the fact that he now argues that the officers used excessive force in ultimately
5 bringing him into submission does not necessarily imply the invalidity of his conviction,
6 thereby invoking Heck. The officers themselves admit that the altercation did not even
7 begin until after they had determined that no underlying crime had been committed. See
8 DeMarco Dep., 50:9-22. The situation nonetheless ultimately escalated into a situation
9 where Joseph was clubbed and tased numerous times to the extent that he sustained
10 multiple fractures to both arms and to his shin. Joseph's claim that this level of force
11 was excessive under the circumstances, if successful, does not by definition negate the
12 validity of his conviction for having some role in causing the incident. Consequently,
13 Heck preclusion does not apply.

14 **B. Qualified Immunity**

15 Defendants DeMarco and Blain claim they are entitled to qualified immunity from
16 any liability under 42 U.S.C. § 1873 because their conduct did not violate any "clearly
17 established" constitutional or statutory right. Harlow v. Fitzgerald, 457 U.S. 800, 818
18 (1982). As the Supreme Court has explained, "[t]his exacting standard 'gives
19 government officials breathing room to make reasonable but mistaken judgments' by
20 'protect[ing] all but the plainly incompetent or those who knowingly violate the law.'"
21 City & County of San Francisco v. Sheehan, 135 S. Ct. 1765, 1774 (2015) (quoting
22 Ashcroft v. al-Kidd, 563 U.S. 731, 743 (2011)). Making a determination as to whether
23 immunity applies requires a two-prong inquiry into 1) whether the facts, taken in the light
24 most favorable to the non-moving party, demonstrate that the government officials in
25 question, here the two officers, violated a constitutional right; and 2) whether the right so
26 violated was clearly established at the time of the challenged conduct. Pearson v.
27 Callahan, 555 U.S. 223, 232 (2009). For a right to be clearly established, "existing

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1 precedent must have placed the statutory or constitutional question beyond debate.”
2 Kisela v. Hughes, 138 S. Ct. 1148, 1152 (2018).

3 Turning first to the predicate violation, Joseph alleges that DeMarco and Blain
4 violated his rights under the Fourth Amendment of the United States Constitution, as
5 applied to state actors under § 1983. The Fourth Amendment’s prohibition against
6 unreasonable seizures has been held to apply to claims of excessive force by peace
7 officers. Scott v. Harris, 440 U.S. 372, 381-82 (2007). Police use of force violates the
8 Fourth Amendment if it is objectively unreasonable under the circumstances. Graham v.
9 Connor, 490 U.S. 386, 388 (1989). Reasonableness in this regard is assessed by
10 balancing “the nature and quality of the intrusion on the individuals Fourth Amendment
11 interests against the countervailing governmental interests at stake.” Id. at 396.
12 Consequently, whether an officer’s conduct is reasonable entails a consideration of all
13 objective facts and circumstances confronting the officer on the scene (Smith v. City of
14 Hemet, 394 F.3d 689, 701 (9th Cir. 2005)), including whether the individual whose rights
15 were allegedly violated posed an immediate threat to the safety of either the officer or
16 others. S.B. v. County of San Diego, 864 F.3d 1010, 1013 (9th Cir. 2017).

17 In the present matter we have sharply differing versions of events offered by
18 Plaintiffs, on the one hand, and the Officer Defendants on the other, virtually from the
19 very onset of the events underlying this lawsuit. Significantly, because the disagreement
20 between Joseph and Jeannie that led to the police being summoned in the first place
21 appears to have largely resolved by the time the officers arrived, with both officers
22 concluding that no crime had been committed, it appears that no ongoing disturbance
23 was present. What triggered the subsequent altercation between the officers and
24 Joseph appears to relate to Plaintiffs’ two pit bulls, which both Plaintiffs testified were
25 friendly and non-menacing as they came running out of the yard despite the officers’
26 claim that one of the dogs started to growl as it came towards them. Police Report, p. 1.
27 The dispute as to that dog’s involvement continues as Plaintiffs claim the animal was
28 tased multiple times, whereas DeMarco claims he stunned the dog only once.

1 The factual discrepancies further multiply as the parties' description of events
2 continued to unfold. Joseph states that after being ordered out of his truck at gunpoint
3 by DeMarco, he simply reached over to remove taser prongs from his dog's fur before
4 being tased from behind and immediately hitting the ground. At that point, Joseph
5 claims he was clubbed up to 20-30 times by DeMarco's baton despite offering no
6 resistance. Although Jeannie did not witness the entire incident, she indicates she did
7 not see her husband fighting either DeMarco or Blain as the altercation continued.
8 Nevertheless, Joseph was not only struck multiple times by DeMarco but the blows were
9 hard enough not only to break both arms in multiple places, and fracture Joseph's shin,
10 but also to break DeMarco's baton itself.

11 The Court recognizes that the officers present a starkly different account of what
12 happened. Even they, however, do not agree on what precipitated the use of force.
13 DeMarco claims that Joseph assumed a "fighting stance", apparently because he was
14 upset about his dog, before DeMarco began to wield his baton. Blain, however, claims
15 that Joseph actually threw a punch before the melee ensued. Importantly, too,
16 Defendants' version of just what force was used is inconsistent. DeMarco believed he
17 hit Joseph only five times, with most of the blows landing on his lower body area,
18 although his account at deposition differed from what he claimed took place in the Police
19 Report. In any event, DeMarco's claims appear to be at odds with the multiple fractures
20 sustained by Joseph.

21 Giving Joseph's version of events the benefit of the doubt by resolving all
22 inferences in his favor as the nonmoving party,⁴ as we must in construing whether a
23 constitutional or statutory violation occurred for purposes of qualified immunity, the Court
24 must conclude that a violation occurred, at least for qualified immunity purposes.

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26 ⁴ The Court recognizes that Plaintiffs failed to submit a formal response to Defendants' Statement
27 of Undisputed Facts in this matter, as required by E.D. Local Rule 260(b). Nonetheless, in determining
28 whether summary judgment should be granted, the Court must independently determine the propriety of
such relief and it has done so by reviewing the deposition testimony and evidence cited and produced by
both parties.

1 We next look to the second prong of the requisite qualified immunity analysis;
2 namely, whether assuming a violation did occur that violation ran afoul of clearly
3 established law. “Qualified immunity attaches when an official’s conduct does not violate
4 clearly established statutory or constitutional rights of which a reasonable person would
5 have known.” White v. Pauly, 137 S. Ct. 548, 551 (2018). As indicated above, for a right
6 to be clearly established, “existing precedent must have placed the statutory or
7 constitutional question beyond debate.” Kisela v. Hughes, 138 S. Ct. at 1152.

8 Here, Defendants claim that because “there is no precedent holding that an officer
9 violates clearly established law by using a baton to subdue an individual who is
10 advancing on him to fight,” not to mention when that individual fails to comply with lawful
11 commands, Defendants’ use of force here cannot run afoul of clearly established legal
12 rights. While that proposition is correct in the abstract, it assumes that Defendants’
13 version of events must necessarily be accepted. For the same reasons already set forth
14 above, the chasm that exists between the parties’ respective version of events precludes
15 this Court from finding that their conduct failed to violate clearly established rights of
16 which they should have been aware. Therefore, the second prong for establishing
17 Defendants’ entitlement to qualified immunity cannot be satisfied either.

18 **C. City of Vallejo’s Monell Liability**

19 Defendant the City of Vallejo correctly points out that, as a municipality, it is
20 generally not subject to liability under 42 U.S.C. § 1983 for the alleged unconstitutional
21 acts of an employee under the doctrine established by the Supreme Court in Monell v.
22 Dep’t of Soc. Servs., 436 U.S. 658, 691 (1978). Monell nonetheless recognizes an
23 exception where the alleged constitutional violation was caused by “a policy, practice, or
24 custom of the entity”, or was the result of an order by a policy-making officer.
25 Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011); Gibson v. County of
26 Washoe, 290 F.3d 1175, 1186 (9th Cir. 2002).

27 The City of Vallejo claims that Joseph has identified no such policy, practice or
28 custom giving rise to liability on its part. Joseph nonetheless alleges that police reports

1 as produced by the City are “in stark contrast with the photographic and medical
2 evidence and Mr. Ledesma’s injuries” (Pls.’ Opp. 20:3-4), and that supervisory personnel
3 who approved Plaintiffs’ report failed to note “the obvious discrepancies between the
4 officers’ version of events and the Plaintiff’s injuries.” *Id.* at 20:6-8.⁵ Plaintiffs further
5 assert that neither officer activated their lapel cameras at the time of the altercation, but
6 were “not disciplined or retrained on the importance of utilizing the tools available to
7 document citizen contact, justify force, and/or secure criminal convictions.” *Id.* at 20:8-
8 12). While it is true that a single incident normally does not suffice for purposes of
9 asserting a Monell claim, the Court believes that Joseph’s allegations, particularly when
10 considered together, preclude summary judgment and mandate that the issue of the
11 City’s liability be determined by the trier of fact.

12 **D. Plaintiffs’ Common Law State Claims**

13 As indicated above, in addition to Joseph’s claim under 42 U.S.C. § 1983 he also
14 asserts common law state claims for negligence and for battery, and Jeannie asserts a
15 claim for negligent infliction of emotional distress as a result of witnessing the injuries
16 inflicted on her husband. Defendants assert that a finding that DeMarco and Blain did
17 not use unreasonable force in taking Joseph into custody precludes these tort causes of
18 action. Because, for the reasons outlined above, the Court cannot make that
19 determination on the record before it, Defendants’ challenge to those claims necessarily
20 fails.

21 **E. Liability under California’s Bane Act**

22 In addition to his federal civil rights claim and the common law state causes of
23 action discussed above, Plaintiffs also assert a cause of action under the California’s
24 Bane Act as codified at Civil Code § 52.1. The Bane Act establishes redress for the
25 interference of rights guaranteed by the Constitution of laws of the United States by a
26 person or person who interferes with those rights “by threat, intimidation, or coercion.”

27 ⁵ DeMarco conceded at his deposition that he had no conversation with his supervisors or anyone
28 at the Police Department with respect to whether his report was consistent with Mr. Ledesma’s injuries.
DeMarco Dep., 118:20-119:2.

1 Cal. Civ. Code § 52.1. The Ninth Circuit has recently recognized that the Bane Act can
2 extend to claims based on alleged excessive force, and that a plaintiff need not show
3 “coercion” separately from the coercion inherent in the use of such force, so long as “the
4 circumstances indicate the arresting officer had a specific intent to violate the arrestee’s
5 right to freedom from unreasonable seizure.” Reese v. City of Sacramento, 888 F.3d
6 1030, 1043 (9th Cir. 2018). Defendants argue that because the circumstances here do
7 not lend themselves to any such conclusion, no liability under the Bane Act may be had.
8 Again, because of the diametrically opposed version of events offered by the parties, the
9 Court disagrees. Resolving all inferences in Plaintiffs’ favor, as the Court must do on
10 summary judgment, precludes the Court from finding that the officers’ use of force was
11 reasonable, or that they did not specifically intend to violate Joseph’s rights. Therefore,
12 judgment cannot be rendered in Defendants’ favor on the Bane Act claim.

13
14 **CONCLUSION**

15
16 For all the foregoing reasons, Defendants’ Motion for Summary Judgment, or in
17 the Alternative Partial Summary Judgment (ECF No. 16) is DENIED in its entirety.

18 IT IS SO ORDERED.

19 Dated: February 25, 2019

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21 
22 MORRISON C. ENGLAND, JR.
23 UNITED STATES DISTRICT JUDGE
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