

1 starting. (Id. ¶ 16.) As plaintiff went to open the door to the
2 bathroom, a City of Vallejo police officer who mistook plaintiff
3 for another person snatched his arm behind him and twisted it
4 behind his back. (Id. ¶¶ 17, 18.) Plaintiff is blind in one
5 eye. (Id. ¶ 18.) As plaintiff turned to see who was attacking
6 him, plaintiff was struck in the cheek and wrestled to the floor.
7 (Id. ¶ 18.) The officers were not wearing police uniforms. (Id.
8 ¶ 17.) Believing he was being robbed, Mr. Villalobos cried,
9 "What's going on? I'm in church! I don't have any money!" (Id.
10 ¶ 19.) Mr. Villalobos also stated that he had just had surgery
11 on his shoulder and that he was in church "to pray and relax."
12 (Id.) It was not until the officers had seated plaintiff in a
13 patrol car that they realized he was the wrong person. (Id. ¶
14 20.)

15 Plaintiff filed suit alleging the following four causes
16 of action: (1) deprivation of civil rights pursuant to 42 U.S.C.
17 § 1983; (2) battery and (3) negligence under California state
18 law; and (4) violation of California's Tom Bane Civil Rights Act
19 ("Tom Bane Act"), Cal. Civ. Code § 52.1. The City of Vallejo now
20 moves to dismiss only plaintiff's claim under the Tom Bane Act.

21 II. Legal Standard

22 On a Rule 12(b)(6) motion, the inquiry before the court
23 is whether, accepting the allegations in the complaint as true
24 and drawing all reasonable inferences in the plaintiff's favor,
25 the plaintiff has stated a claim to relief that is plausible on
26 its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "The
27 plausibility standard is not akin to a 'probability requirement,'
28 but it asks for more than a sheer possibility that a defendant

1 has acted unlawfully.” Id. “A claim has facial plausibility
2 when the plaintiff pleads factual content that allows the court
3 to draw the reasonable inference that the defendant is liable for
4 the misconduct alleged.” Id.

5 III. Discussion

6 To state a claim under the Tom Bane Act, plaintiff must
7 allege that the involved officers acted with specific intent to
8 deprive plaintiff of his constitutional rights. Reese v. Cty. of
9 Sacramento (Reese II), 888 F.3d 1030, 1043 (9th Cir. 2018). “[A]
10 mere intention to use force that the jury ultimately finds
11 unreasonable -- that is, general criminal intent -- is
12 insufficient.” Id. (citing United States v. Reese (Reese I), 2
13 F.3d 870, 885 (9th Cir. 1993)). “Rather, the jury must find that
14 the defendants ‘intended not only the force, but its
15 unreasonableness, its character as ‘more than necessary under the
16 circumstances.’” Id. (citing Reese I, 2 F.3d at 885). “[I]t is
17 not necessary for the defendants to have been ‘thinking in
18 constitutional or legal terms at the time of the incidents.’” Id.
19 at 1045 (quoting Reese I, 2 F.3d at 885). Instead, “‘a reckless
20 disregard for a person's constitutional rights is evidence of a
21 specific intent to deprive that person of those rights.’” Id.
22 (quoting Reese I, 2 F.3d at 885).

23 Defendant asks the court to infer that Mr. Villalobos
24 resisted arrest and that the force exerted was therefore
25 reasonable. (Mot. at 8 (“The Court may reasonably infer that
26 Plaintiff physically resisted the officers.”).) The court cannot
27 do so. At this stage, the court must make all inferences in
28 favor of plaintiff. Iqbal, 556 U.S. at 678. The complaint

1 alleges that plaintiff "turned to see who was attacking him."
2 (Compl. ¶ 18.) In response to plaintiff turning, the officer
3 struck plaintiff and wrestled him to the floor. (Id.) Because
4 the complaint alleges no other action by plaintiff, and because
5 the court may infer that plaintiff's movement was limited by both
6 his partial blindness and his shoulder injury, the officers'
7 response was plausibly "more than necessary under the
8 circumstances" and therefore unreasonable. See Reese II, 888
9 F.3d at 1043 (quoting Reese I, 2 F.3d at 885).

10 Further, because officers continued to exert that force
11 after plaintiff allegedly saw uninformed men, cried that he had
12 no money, and informed the officers of his injured shoulder, the
13 allegations in the complaint plausibly allege the officers
14 intended to exert that unreasonable force or at least acted with
15 a reckless disregard for plaintiff's fourth amendment right to be
16 free from excessive force. (See Compl. ¶¶ 17-20, 47; id.) The
17 complaint therefore plausibly states a claim under the Tom Bane
18 Act and the court will not dismiss this claim.

19 IT IS THEREFORE ORDERED that defendant's Motion to
20 Dismiss (Docket No. 5) be, and the same hereby is, DENIED.

21 Dated: March 31, 2020



22 **WILLIAM B. SHUBB**
23 **UNITED STATES DISTRICT JUDGE**
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