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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MUSLAH ABDUL-HAFEEZ,  
Plaintiff,  
v.  
CITY OF SAN DIEGO, et al.,  
Defendants.

Case No.: 24-cv-1184-RSH-DDL  
**ORDER ON DEFENDANTS’  
MOTION TO DISMISS  
PLAINTIFF’S SECOND AMENDED  
COMPLAINT**  
[ECF No. 25]

Before the Court is a motion to dismiss, filed by defendants City of San Diego (“City”) and San Diego Police Department (“SDPD”) officer Dominic Lazaga (collectively “Defendants”). ECF No. 25. Pursuant to Local Civil Rule 7.1(d)(1), the Court finds the motion presented appropriate for resolution without oral argument. For the reasons below, the Court grants in part and denies in part Defendants’ motion.

**I. BACKGROUND**

**A. Plaintiff’s Allegations**

The instant civil rights action arises from Plaintiff’s arrest and detention. The Second Amended Complaint (“SAC”) alleges as follows.

1 Plaintiff Muslah Abdul-Hafeez is an African American male who routinely engages  
2 in “cop watch” duties on Saturday nights. SAC ¶¶ 14–15. Plaintiff is well known to SDPD  
3 officers, particularly to the SDPD’s bike team. *Id.* Plaintiff has encountered members of  
4 the team multiple times in the past. *Id.* Additionally, Plaintiff has demonstrated against  
5 SDPD officers and rendered assistance to individuals detained by the SDPD. *Id.* ¶¶ 22–23.

6 On or around July 9, 2023, Plaintiff was arrested and detained by defendant Lazaga  
7 and various Doe SDPD police officers (collectively “Officer Defendants”) at or near the  
8 parking lot of a Chase Bank branch in downtown San Diego. *Id.* ¶ 13. According to  
9 Plaintiff, he heard gunshots and went to retrieve his phone from his car to film responding  
10 officers. *Id.* ¶ 24. At the time, Plaintiff was wearing a neon green vest that read: “SESD 4th  
11 District First Response Team Copwatch Accountability Unit.” *Id.* ¶ 25.

12 Upon retrieving his phone, Plaintiff was confronted by an unidentified officer from  
13 the SDPD’s bike team. *Id.* ¶ 24. The officer drew his gun, pointed it at Plaintiff, and ordered  
14 him to get on the ground with his hands out to his side. *Id.* ¶¶ 24–25. Plaintiff immediately  
15 complied. *Id.* ¶ 25. Despite this, several officers jumped on top of Plaintiff and forcefully  
16 hit him and dug their nails into his skin. *Id.* ¶¶ 26–27. The SAC alleges upon information  
17 and belief that one of the officers kneeled on Plaintiff while he lay prone on the ground. *Id.*  
18 ¶ 28.

19 After Plaintiff was handcuffed and compliant in the prone position, officers pulled  
20 at his shoulders in a manner that felt like they were trying to “pull his shoulders apart.” *Id.*  
21 ¶ 29. The officers also painfully contorted and applied pressure to Plaintiff’s arms,  
22 shoulders, neck and back, tightly handcuffed his wrists leaving marks, and dragged him by  
23 his arms to another location. *Id.* Plaintiff suffered a fractured shoulder and back and wrist  
24 injuries. *Id.* ¶ 30. During his arrest and detention, officers also searched Plaintiff’s person  
25 and clothing. *Id.* ¶ 32. Plaintiff was detained for hours and ultimately cited under California  
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1 Penal Code Section 148(a)(1).<sup>1</sup> *Id.* ¶ 33. No charges were thereafter filed against him. *Id.*  
2 ¶ 34.

3 **B. Procedural Background**

4 On July 9, 2024, Plaintiff filed the instant action. ECF No. 1. On September 30,  
5 2024, Plaintiff filed his First Amended Complaint (“FAC”). ECF No. 11. The FAC asserted  
6 sixteen causes of action, including various federal civil rights claims under 42 U.S.C. §  
7 1983 against the Officer Defendants and the City. FAC ¶¶ 40–139. The FAC further  
8 asserted state law claims for intentional infliction of emotional distress, assault, battery,  
9 and violation of California Code § 52.1. *Id.* ¶¶ 140–161. On October 28, 2024, Defendants  
10 filed a motion to dismiss Plaintiff’s FAC. ECF No. 12.

11 On March 4, 2025, the Court granted in part and denied in part Defendants’ motion  
12 to dismiss. ECF No. 16. Specifically, the Court granted Defendants’ motion to dismiss:  
13 (1) Plaintiff’s individual § 1983 against defendant Lazaga; (2) Plaintiff’s First Amendment  
14 retaliation, substantive due process, equal protection, false imprisonment, and conspiracy  
15 claims against the Officer Defendants; and (3) Plaintiff’s *Monell* claims. *Id.* The Court  
16 additionally ordered Plaintiff to show cause why the Doe defendants in this case should  
17 not be dismissed for failure to effectuate service under Federal Rule of Civil Procedure  
18 4(m). *Id.* at 17–18.

19 On March 27, 2025, Plaintiff filed his SAC. The SAC asserts fourteen causes of  
20 action, including federal civil rights claims under 42 U.S.C. § 1983 against the Officer  
21 Defendants for First Amendment retaliation (Claim 1), violation of equal protection (Claim  
22 2), unlawful seizure and arrest (Claim 3), unlawful search (Claim 4), excessive force  
23 (Claim 5), and conspiracy (Claim 6). SAC ¶¶ 46–108. Plaintiff also asserts *Monell* claims  
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26 <sup>1</sup> California Penal Code § 148(a)(1) imposes a criminal penalty for “[e]very person  
27 who willfully resists, delays, or obstructs any public officer [or] peace officer, . . . in the  
28 discharge or attempt to discharge any duty of his or her office or employment.” *Vanegas*  
*v. City of Pasadena*, 46 F.4th 1159, 1165–66 (9th Cir. 2022) (quoting Cal. Penal Code §  
148(a)(1)).

1 against the City and Officer Defendants for the maintenance of an unconstitutional policy,  
2 custom or procedure (Claim 7), failure to properly train (Claim 8), failure to properly  
3 supervise (Claim 9), and failure to discipline (Claim 10). *Id.* ¶¶ 109–171. Lastly, the SAC  
4 asserts state law claims against the City and Officer Defendants for intentional infliction  
5 of emotional distress (Claim 11), assault (Claim 12), battery (Claim 13), and violation of  
6 California Civil Code § 52.1 (Claim 14). *Id.* ¶¶ 172–194. On the same day, Plaintiff filed  
7 a response to the Court’s Order to Show Cause stating that Plaintiff had identified the Doe  
8 defendants and requesting that the Court grant Plaintiff an extension of time to effectuate  
9 service. ECF No. 24 at 4–6.

10 On April 10, 2025, Defendants filed the instant motion to dismiss. ECF No. 25.<sup>2</sup>  
11 Plaintiff filed an opposition, and Defendants filed a reply. ECF Nos. 27; 31.

## 12 **II. LEGAL STANDARD**

13 A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.”  
14 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To survive a motion to dismiss, a  
15 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief  
16 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
17 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[T]he non-conclusory ‘factual content,’  
18 and reasonable inferences from that content, must be plausibly suggestive of a claim  
19 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

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22 <sup>2</sup> Defendants characterize their motion as a motion to dismiss the entirety of  
23 Plaintiff’s SAC. ECF No. 25-1 at 8. However, Defendants do not move to dismiss  
24 Plaintiff’s Fourth Amendment claims for unlawful seizure and arrest (Claim 3) or unlawful  
25 search (Claim 4) claims against any of the Officer Defendants other than defendant Lazaga.  
26 *See id.* at 9–14. Defendants also do not move to dismiss Plaintiff’s state law claims as to  
27 any defendant other than defendant Lazaga. *Id.* at 20–21. The Court will not therefore  
28 address the adequacy of these claims in this Order. *See Greenwood v. FAA*, 28 F.3d 971,  
977 (9th Cir. 1994) (courts “will not manufacture arguments for [either party], and a bare  
assertion does not preserve a claim, particularly when, as here, a host of other issues are  
presented for review.”); *Ortiz v. Pacific*, 973 F. Supp. 2d 1162, 1185 (E.D. Cal. 2013) (“It  
is not the Court’s role to make arguments for any party.”).

1 The plausibility review is a “context-specific task that requires the reviewing court to draw  
2 on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

3 Pleading facts “‘merely consistent with’ a defendant’s liability” falls short of a  
4 plausible entitlement to relief. *Id.* at 678 (quoting *Twombly*, 550 U.S. at 557). “[W]here the  
5 well-pleaded facts do not permit the court to infer more than the mere possibility of  
6 misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled  
7 to relief.” *Id.* at 679 (internal quotation marks omitted). A court “accept[s] factual  
8 allegations in the complaint as true and construe[s] the pleadings in the light most favorable  
9 to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,  
10 1031 (9th Cir. 2008). On the other hand, a court is “not bound to accept as true a legal  
11 conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (internal quotation  
12 marks omitted).

### 13 **III. ANALYSIS**

#### 14 **A. Individual Section 1983 Claims (Claims 1-6)**

15 The SAC asserts six federal civil rights claims under 42 U.S.C. § 1983 against the  
16 Officer Defendants. SAC ¶¶ 46–108. Defendants move to dismiss: (1) Plaintiff’s claims  
17 for First Amendment retaliation, violation of equal protection, and conspiracy against the  
18 Officer Defendants for failure to state a claim; and (2) the individual § 1983 claims asserted  
19 against defendant Lazaga for failure to allege personal participation. ECF No. 25-1 at  
20 9–14. The Court addresses these arguments below.

##### 21 *1. General*

22 “The Civil Rights Act codified in 42 U.S.C. § 1983 provides a cause of action against  
23 state officials who deprive a plaintiff of [his] federal constitutional rights.” *Sinclair v. City*  
24 *of Seattle*, 61 F.4th 674, 678 (9th Cir. 2023). “Section 1983 does not create any substantive  
25 rights; rather it is the vehicle whereby plaintiffs can challenge actions by governmental  
26 officials.” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). “To prove a case under  
27 section 1983, the plaintiff must demonstrate that (1) the action occurred ‘under color of  
28 state law’ and (2) the action resulted in the deprivation of a constitutional right or federal

1 statutory right.” *Id.* “[T]he statute requires that there be an actual connection or link  
2 between the actions of the defendants and the deprivation alleged to have been suffered by  
3 plaintiff.” *Kiger v. Johnson*, No. 223CV1263KJMDBP, 2024 WL 345978, at \*2 (E.D. Cal.  
4 Jan. 30, 2024).

5           2.     *First Amendment Retaliation (Claim 1)*

6           In Claim 1 of the SAC, Plaintiff asserts the Officer Defendants violated his rights  
7 under the First Amendment by arresting him in retaliation for his “cop watch” activities.  
8 SAC ¶¶ 46–56. Defendants argue Plaintiff has not set forth a sufficient factual basis for  
9 this claim. ECF No. 25-1 at 11–12.

10           “[T]he First Amendment prohibits government officials from subjecting an  
11 individual to retaliatory actions for engaging in protected speech.” *Nieves v. Bartlett*, 587  
12 U.S. 391, 398 (2019) (internal quotation marks omitted). “To recover under § 1983 for  
13 such retaliation, a plaintiff must prove: (1) he engaged in constitutionally protected activity;  
14 (2) as a result, he was subjected to adverse action by the defendant that would chill a person  
15 of ordinary firmness from continuing to engage in the protected activity; and (3) there was  
16 a substantial causal relationship between the constitutionally protected activity and the  
17 adverse action.” *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010).

18           Here, Plaintiff’s attempt to film police activity in public was constitutionally  
19 protected by the First Amendment. *See Askins v. United States Dep’t of Homeland Sec.*,  
20 899 F.3d 1035, 1044 (9th Cir. 2018) (“The First Amendment protects the right to  
21 photograph and record matters of public interest. This includes the right to record  
22 law enforcement officers engaged in the exercise of their official duties in public places.”)  
23 (internal citations omitted); *Barich v. City of Cotati*, No. 15-CV-00350-VC, 2015 WL  
24 6157488, at \*1 (N.D. Cal. Oct. 20, 2015) (“Filming a police officer on duty is protected  
25 First Amendment activity.”).

26           Next, Plaintiff’s arrest constituted an adverse action that would have chilled a person  
27 of ordinary firmness from the future exercise of their First Amendment rights. *See Ford v.*  
28 *City of Yakima*, 706 F.3d 1188, 1194 (9th Cir. 2013) (“[A] person of ordinary firmness

1 would be chilled from future exercise of his First Amendment rights if he were booked and  
2 taken to jail in retaliation for his speech.”); *DeCastro v. Las Vegas Metro. Police Dep’t*,  
3 No. 2:23-CV-00580-APG-EJY, 2024 WL 4189939, at \*18 (D. Nev. Sept. 12, 2024)  
4 (“Arresting a person for exercising [their First Amendment] rights would chill the First  
5 Amendment activities of a person of ordinary firmness.”); *see also Savage v. Segura*, No.  
6 23-55812, 2025 WL 900433, at \*2 (9th Cir. Mar. 25, 2025) (“Being arrested after voicing  
7 anti-police views would chill a person of ordinary firmness from engaging in future First  
8 Amendment activity.”).

9 Finally, the nature of Plaintiff’s arrest reasonably suggests a retaliatory motive. The  
10 SAC alleges Plaintiff regularly engages in “cop watch” duties in downtown San Diego and  
11 encountered members of the SDPD’s bike team multiple occasions in the past. SAC ¶¶ 13–  
12 14, 20. According to Plaintiff, at the time of the incident, Plaintiff was wearing a neon  
13 green vest that read: “SESD 4th District First Response Team Copwatch Accountability  
14 Unit” and was retrieving his phone to film responding police officers. *Id.* ¶¶ 23–24. Plaintiff  
15 further alleges he was one of only three individuals arrested—two of whom were allegedly  
16 involved in the shooting itself and that he was the only person on the scene filming the  
17 officers. *Id.* ¶ 50.

18 Defendants contend that rather than being retaliatory, it is more likely Plaintiff was  
19 detained because he was walking through a shooting scene and ignoring repeated  
20 commands by police officers. ECF No. 31 at 4–5. This is not, however, the version of the  
21 facts pleaded in Plaintiff’s SAC and the Court’s task at this stage is “not to resolve any  
22 factual dispute[s].” *Dahlia v. Rodriguez*, 735 F.3d 1060, 1076 (9th Cir. 2013); *Snow v.*  
23 *Earthworks Nw., Inc.*, No. C07-1729-JCC, 2008 WL 11506781, at \*2 (W.D. Wash. Jan.  
24 24, 2008) (“[B]y essentially asking the Court to adopt their version of the facts, Defendants  
25 misapprehend their burden as the moving party on a motion to dismiss under Rule 12(b)(6).  
26 The Court must take the facts alleged by Plaintiff as true, in order to decide whether  
27 Plaintiff could be entitled to the relief requested.”).

28 ///

1 Drawing all inferences in Plaintiff’s favor, the Court holds the allegations set forth  
2 in the SAC are sufficient to plead a plausible First Amendment retaliation claim. For these  
3 reasons, the Court **DENIES** Defendants’ motion to dismiss Claim 1.

4 3. *Equal Protection (Claim 2)*

5 In Claim 2 of the SAC, Plaintiff asserts the Officer Defendants violated his rights  
6 under the Equal Protection Clause by arresting him based on his race. SAC ¶¶ 57–70.  
7 Defendants argue Plaintiff has failed to plead any facts establishing that he was treated  
8 differently due to his race or that any of the Officer Defendants acted with discriminatory  
9 intent. ECF No. 25-1 at 12–13.

10 The Equal Protection Clause of the Fourteenth Amendment provides, in relevant  
11 part, that: “[n]o state shall . . . deny to any person within its jurisdiction the equal protection  
12 of the laws.” U.S. Const., amend. XIV. “A government entity has discretion in prosecuting  
13 its criminal laws, but enforcement is subject to constitutional constraints.” *Rosenbaum v.*  
14 *City & Cnty. of S.F.*, 484 F.3d 1142, 1152 (9th Cir. 2007); *Ae Ja Elliot-Park v. Manglona*,  
15 592 F.3d 1003, 1006 (9th Cir. 2010) (“[W]hile [a police] officer[’s] discretion in deciding  
16 whom to arrest is certainly broad, it cannot be exercised in a racially discriminatory  
17 fashion.”). “To prevail on its claim under the equal protection clause of the Fourteenth  
18 Amendment, a plaintiff must demonstrate that enforcement had a discriminatory effect and  
19 the police were motivated by a discriminatory purpose.” *Rosenbaum*, 484 F.3d at 1152.  
20 “To establish a discriminatory effect in a race case, the claimant must show that similarly  
21 situated individuals of a different race were not prosecuted.” *United States v. Armstrong*,  
22 517 U.S. 456, 465 (1996). “To show discriminatory purpose, a plaintiff must establish that  
23 the decision-maker . . . selected or reaffirmed a particular course of action at least in part  
24 because of, not merely in spite of, its adverse effects upon an identifiable group.”  
25 *Rosenbaum*, 484 F.3d at 1153 (internal quotation marks omitted).

26 Here, Plaintiff alleges that at the time of the incident, a crowd of approximately  
27 twenty to thirty other individuals of varying racial backgrounds were also present.  
28 *Id.* ¶¶ 62, 65. Plaintiff alleges that despite this the Officer Defendants did not question any

1 non-Black bystander. *Id.* ¶ 67. Plaintiff further alleges he was one of only three individuals  
2 arrested, all of whom were Black. *Id.* ¶ 66.<sup>3</sup>

3 To support his claim the Officer Defendants’ actions were motivated at least in part  
4 based on race, Plaintiff cites: (1) a 2021 report conducted by the Center for Policing Equity,  
5 commissioned by the SDPD; and (2) a 2016 study conducted by San Diego State  
6 University, commissioned by the City of San Diego. *Id.* ¶¶ 68–69, 116. As alleged, the  
7 2021 report analyzed SDPD data on traffic stops, non-traffic stops, and use of force  
8 incidents between 2016-2020, controlling for crime and poverty rates and neighborhood  
9 demographics and found Black individuals were 4.2 times more likely to experience non-  
10 traffic stops than White individuals. *Id.* ¶¶ 38, 68. According to the 2016 San Diego State  
11 University study, Black individuals were disproportionately subject to searches compared  
12 to White individuals. *Id.* ¶ 69.

13 Defendants contend that rather than being motivated by race, it is more likely the  
14 Officer Defendants’ actions were taken based upon probable cause to believe a crime had  
15 occurred. ECF No. 25-1 at 13. In support, Defendants argue that SDPD Officers did not  
16 confront or arrest other Black bystanders in the crowd. ECF Nos. 25-1 at 13; 31 at 5. It is  
17 true the SAC does not indicate whether there were other Black bystanders in the crowd  
18 who may not have been confronted or questioned. However, Plaintiff does allege that all  
19 three individuals arrested at the scene were Black. SAC ¶ 66. At this early juncture, the  
20 Court concludes Plaintiff’s allegations concerning the circumstances of his own arrest,  
21 combined with the data allegedly set forth in the 2021 Center for Policing Equity and 2016  
22 San Diego State University reports, are together sufficient to allege an equal protection  
23 claim. *See Wright v. City of San Diego*, No. 24CV2089-GPC(BLM), 2025 WL 1222507,  
24 at \*3–4 (S.D. Cal. Apr. 28, 2025) (holding plaintiff’s allegation regarding his arrest  
25 combined with statistical evidence regarding the disparate treatment of Black individuals  
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28 <sup>3</sup> The other two individuals were allegedly connected to the shooting itself.  
*Id.* ¶ 50.

1 was sufficient to allege a plausible equal protection claim); *Ze Chang v. Cnty. of Siskiyou*,  
2 746 F. Supp. 3d 808, 826 (E.D. Cal. 2024) (holding a plausible equal protection claim had  
3 been pleaded where plaintiffs had alleged, among other facts, “evidence of gross statistical  
4 disparities”); *Harper v. Cnty. of Monterey*, No. 18-CV-03695-YGR, 2020 WL 3833393, at  
5 \*1 (N.D. Cal. July 8, 2020) (plaintiff’s allegation he personally witnessed differential  
6 treatment while in custody sufficient to plead an equal protection claim). For these reasons,  
7 the Court **DENIES** Defendants’ motion to dismiss Claim 2.

8           4.     *Conspiracy (Claim 6)*

9           In Claim 6 of the SAC, Plaintiff alleges the Officer Defendants conspired to: (1)  
10 unlawfully detain and search Plaintiff without probable cause or reasonable suspicion; and  
11 (2) use excessive force during Plaintiff’s detention and arrest. SAC ¶ 95. Defendants argue  
12 Plaintiff’s conspiracy claim should be dismissed as it improperly conflates conspiracy with  
13 a failure to intercede. ECF No. 25-1 at 13–14.

14           “To establish liability for a conspiracy in a § 1983 case, a plaintiff must demonstrate  
15 the existence of an agreement or meeting of the minds to violate constitutional rights.”  
16 *Crowe v. Cty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (internal quotation marks  
17 omitted). “Such an agreement need not be overt, and may be inferred on the basis of  
18 circumstantial evidence such as the actions of the defendants.” *Id.* As a general principle,  
19 “[t]o state a claim for a conspiracy to violate one’s constitutional rights under section 1983,  
20 the plaintiff must state specific facts to support the existence of the claimed conspiracy.”  
21 *Burns v. Cty. of King*, 883 F.2d 819, 821 (9th Cir. 1989). Conclusory allegations of a  
22 conspiracy are not sufficient. *See Woodrum v. Woodward Cty.*, 866 F.2d 1121, 1126 (9th  
23 Cir. 1989); *Rouse v. Campagna*, No. 10CV1304 WQH BGS, 2010 WL 4817994, at \*1  
24 (S.D. Cal. Nov. 19, 2010) (“[P]leading a conspiracy [under § 1983] requires more than a  
25 conclusory allegation that Defendants conspired to deprive Plaintiff’s civil rights.”).

26           Plaintiff has not alleged sufficient facts to plausibly suggest that the Officer  
27 Defendants agreed to violate his constitutional rights. Instead, Plaintiff’s conspiracy claim  
28 appears predicated on his allegations the Officer Defendants failed to intercede on his

1 behalf at the time of the incident or act against one another afterwards. SAC ¶¶ 99–107.  
2 Specifically, Plaintiff alleges that the “uniform decision” of the Officer Defendants to  
3 remain silent, not to intervene, and withhold complaints or reports suggests a “tacit”  
4 meeting of the minds. *Id.* ¶ 104.

5 “Mere association does not make a conspiracy.” *Shirazi v. Oweis*, No. 5:21-CV-  
6 00136-EJD, 2022 WL 445763, at \*6 (N.D. Cal. Feb. 14, 2022). Here, Plaintiff’s conclusory  
7 allegations the Officer Defendants failed to take any action are not sufficient to support the  
8 existence of a conspiracy. *See Pryor v. SF City & Cnty.*, No. C -12-02696 (EDL), 2013  
9 WL 12199455, at \*9 (N.D. Cal. Sept. 19, 2013) (granting motion to dismiss where plaintiff  
10 “conflated conspiracy with failure to intervene”), *aff’d sub nom. Pryor v. City & Cnty. of*  
11 *San Francisco*, 672 F. App’x 751 (9th Cir. 2017); *Galindo v. City of San Mateo*, No. 16-  
12 CV-03651-EMC, 2016 WL 7116927, at \*4 (N.D. Cal. Dec. 7, 2016) (holding allegation  
13 that one officer did not act against another was insufficient to establish a plausible claim  
14 for conspiracy). For these reasons, the Court **GRANTS** Defendants’ motion to dismiss  
15 Claim 6.

16 5. *Allegations Against Lazaga*

17 The Court next turns to Plaintiff’s claims against defendant Lazaga. Defendants  
18 argue Plaintiff has failed to state a § 1983 claim against defendant Lazaga because Plaintiff  
19 has not adequately alleged how Lazaga personally participated in the deprivation of  
20 Plaintiff’s constitutional rights. ECF No. 25-1 at 9–10. Plaintiff responds the FAC  
21 adequately alleges that defendant Lazaga: (1) used excessive force against him and (2)  
22 failed to intercede to prevent other officers from violating his rights. ECF No. 27 at 9–10.

23 a. *Excessive Force (Claim 5)*

24 A claim that officers used excessive force “in the context of an arrest or investigatory  
25 stop of a free citizen” is analyzed under the Fourth Amendment’s prohibition against  
26 unreasonable seizures. *Graham v. Connor*, 490 U.S. 386, 394 (1989); *Ames v. King Cnty.*,  
27 846 F.3d 340, 348 (9th Cir. 2017) (holding the use of force “is a seizure that is subject to  
28 the Fourth Amendment’s reasonableness requirement”). “Under the Fourth Amendment,

1 officers may use only such force as is ‘objectively reasonable’ under the circumstances.”  
2 *Ames*, 846 F.3d at 348 (citing *Graham*, 490 U.S. at 397).

3 Here, the SAC alleges Plaintiff was handcuffed and taken to a patrol vehicle. SAC ¶  
4 82. While three SDPD officers were present, Plaintiff complied with an instruction to enter  
5 the vehicle through an open door. *Id.* After Plaintiff seated himself, one of the officers  
6 opened the opposite car door, yelled and then grabbed Plaintiff by his cuffed wrists forcibly  
7 dragging him to the other end of the patrol car. *Id.* According to Plaintiff, defendant Lazaga  
8 was one of three officers present and Plaintiff “believes” that Lazaga was the officer who  
9 forcibly dragged him. *Id.* ¶¶ 83–84.<sup>4</sup>

10 Taking the facts alleged as true, Plaintiff has sufficiently set forth a plausible  
11 excessive force claim against defendant Lazaga. *See Hansen v. Black*, 885 F.2d 642, 645  
12 (9th Cir. 1989) (reversing district court’s grant of summary judgment where plaintiff set  
13 forth facts that officers used excessive force by unreasonably injuring her wrist and arm as  
14 they handcuffed her); *Villa v. Cnty. of San Diego*, No. 20-CV-537-CAB-NLS, 2020 WL  
15 3100045, at \*4 (S.D. Cal. June 11, 2020) (holding plaintiff alleged a plausible excessive  
16 force claim by alleging he was restrained and unarmed when a deputy punched him and  
17 bent his fingers).

18 Defendant’s argument that Plaintiff must have either lacked the ability or refused to  
19 enter the vehicle as instructed is unpersuasive. ECF No. 31 at 2–3. At this stage of the  
20 proceedings, “the Court’s inquiry is limited to whether Plaintiff has pleaded sufficient facts  
21 to state a claim for excessive force.” *R.A. ex rel. Penrose v. Morris*, No. 5:14-CV-0077-  
22 ODW PJW, 2015 WL 1191266, at \*5 (C.D. Cal. Mar. 16, 2015). At the pleading stage, it  
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25 <sup>4</sup> “The *Twombly* plausibility standard . . . does not prevent a plaintiff from pleading  
26 facts alleged upon information and belief where the facts are peculiarly within the  
27 possession and control of the defendant or where the belief is based on factual information  
28 that makes the inference of culpability plausible.” *Park v. Thompson*, 851 F.3d 910, 928  
(9th Cir. 2017) (quoting *Arista Records Ltd. Liab. Co. v. Doe*, 604 F.3d 110, 120 (2d Cir.  
2010)).

1 is not the Court’s task to resolve a factual dispute as to whether Lazaga’s actions were  
2 taken in response to Plaintiff’s willful resistance. *See Dahlia v. Rodriguez*, 735 F.3d 1060,  
3 1076 (9th Cir. 2013) (court’s task on a motion to dismiss is “not to resolve any factual  
4 dispute”).

5 For these reasons, the Court **DENIES** Defendants’ motion to dismiss claim 5 against  
6 defendant Lazaga.

7 *b. Failure to Intercede (Claims 1-4)*

8 Plaintiff additionally asserts First Amendment retaliation, equal protection, unlawful  
9 seizure, and unlawful search claims against defendant Lazaga predicated on Lazaga’s  
10 alleged failure to intervene to prevent other officers from engaging in constitutional  
11 violations. SAC ¶¶ 46–78; ECF No. 27 at 9. Defendants move to dismiss these claims as  
12 conclusory. ECF No. 31 at 1–3.

13 “[P]olice officers have a duty to intercede when their fellow officers violate the  
14 constitutional rights of a suspect or other citizens.” *Cunningham v. Gates*, 229 F.3d 1271,  
15 1289 (9th Cir. 2000) (internal quotation marks omitted). “Importantly, however, officers  
16 can be held liable for failing to intercede only if they had an opportunity to intercede.” *Id.*  
17 “Furthermore, bystander officers only have a duty to stop a violation when they know or  
18 have reason to know of the constitutional violation.” *Monteilh v. Cnty. of L.A.*, 820 F. Supp.  
19 2d 1081, 1092 (C.D. Cal. 2011). The inquiry as to whether any officer had the opportunity  
20 to intercede “is specific to [each] individual defendant.” *Adams v. Kraft*, No. 5:10-CV-  
21 00602-LHK, 2011 WL 3240598, at \*21 (N.D. Cal. July 29, 2011).

22 Here, the SAC fails to allege any facts indicating whether Lazaga was involved in  
23 the decision to detain, arrest, and search Plaintiff. Instead, the SAC alleges Lazaga was one  
24 of three officers present at a patrol vehicle *after* Plaintiff had already been seized and  
25 handcuffed. *Id.* ¶¶ 83–84. Plaintiff has not explained how these allegations are sufficient  
26 to demonstrate Lazaga had a realistic opportunity to intercede as to any other alleged  
27 constitutional violations. For example, Plaintiff does allege whether Lazaga was even  
28 *present* when Plaintiff was seized and then subsequently searched. *See Sandoval on behalf*

1 of *B.U. v. City of Nat'l City*, No. 22CV1657-GPC(AGS), 2023 WL 3295590, at \*6 (S.D.  
2 Cal. May 5, 2023) (“Officers do not have a realistic opportunity to intercede when they are  
3 not present at the time of a constitutional violation.”).

4 For these reasons, the Court **GRANTS** Defendants’ motion to dismiss claims 1-4  
5 against defendant Lazaga.<sup>5</sup>

6 **B. Monell Section 1983 Claims (Claims 7-10)**

7 The SAC asserts four federal civil rights claims under *Monell* against the City,  
8 defendant Lazaga, and “applicable Does.” SAC ¶¶ 109–171. Defendants move to dismiss  
9 these claims for failure to state a claim. ECF No. 25-1 at 14–20. The Court addresses each  
10 of these *Monell* claims below.

11 *1. General*

12 Municipal entities “cannot be held liable under § 1983 on a respondeat superior  
13 theory.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978). Instead, a municipal  
14 entity can be held liable only if a “policy or custom” of the municipality “inflicts the injury  
15 that the government as an entity is responsible under § 1983.” *Id.* at 694. “In order to  
16 establish liability for governmental entities under *Monell*, a plaintiff must prove ‘(1) that  
17 the plaintiff possessed a constitutional right of which she was deprived; (2) that the  
18 municipality had a policy; (3) that this policy amounts to deliberate indifference to the  
19 plaintiff’s constitutional right; and (4) that the policy is the moving force behind the  
20 constitutional violation.’” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011)  
21 (quoting *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997)).

22 “A plaintiff can satisfy *Monell*’s policy requirement in one of three ways.” *Gordon*  
23 *v. Cty. of Orange*, 6 F.4th 961, 973 (9th Cir. 2021). “First, a local government may be held  
24 liable when it acts pursuant to an expressly adopted official policy.” *Id.* (internal quotation  
25 marks omitted). “Second, a public entity may be held liable for a longstanding practice or  
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27 <sup>5</sup> As discussed above, the Court dismissed Plaintiff’s conspiracy claim against *all* the  
28 Officer Defendants.

1 custom.” *Id.* (internal quotation marks omitted). “Third, a local government may be held  
2 liable under [Section] 1983 when the individual who committed the constitutional tort was  
3 an official with final policy-making authority or such an official ratified a subordinate’s  
4 unconstitutional decision or action and the basis for it.” *Id.* at 974 (internal quotation marks  
5 omitted).

6           2.     *Allegations Against Individual Defendants*

7           In its March 4, 2025 Order, the Court dismissed Plaintiff’s *Monell* claims against  
8 defendant Lazaga on the grounds that *Monell* claims are not cognizable against individual  
9 defendants. ECF No. 16 at 11–12; *see Langham v. City of Union City*, No. 4:22-CV-06284-  
10 YGR, 2024 WL 3431342, at \*3 (N.D. Cal. Jan. 25, 2024) (“A section 1983 claim premised  
11 on *Monell* can be asserted only against a municipality or local government unit.”);  
12 *Hernandez v. San Bernardino Cnty.*, No. EDCV221101JGBSPX, 2023 WL 3432206, at \*5  
13 (C.D. Cal. Jan. 26, 2023) (“A *Monell* claim is, by definition, one brought against a public  
14 entity alone.”); *Patino v. Cnty. of Monterey*, No. 22-CV-01564-BLF, 2023 WL 375349, at  
15 \*4 (N.D. Cal. Jan. 24, 2023) (“*Monell* claims cannot be asserted against Moving Parties in  
16 their individual capacities.”). To the extent Plaintiff is reasserting his *Monell* claims against  
17 Lazaga or any other individual defendant, the Court dismisses these claims for the same  
18 reasons stated in its prior Order.

19           3.     *Allegations Against the City*

20           a.     *Practice, Custom or Policy (Claim 7)*

21           In Claim 7 of the SAC, Plaintiff alleges that the City, through the SDPD, maintains  
22 a “de facto policy, custom and/or practice of harassing, intimidating, citing and threatening  
23 to arrest” individuals who are exercising their First Amendment rights or are African  
24 American. SAC ¶ 111. Plaintiff further alleges that this policy was the moving force behind  
25 the violation of his own constitutional rights. *Id.* Defendants argue Plaintiff has failed to  
26 plead a persistent or widespread policy of unconstitutional conduct. ECF Nos. 25-1 at 15–  
27 17; 31 at 7.

28     ///

1 “An unconstitutional policy need not be formal or written to create municipal  
2 liability under Section 1983; however, it must be ‘so permanent and well settled as to  
3 constitute a ‘custom or usage’ with the force of law.’” *Gordon*, 6 F.4th at 974 (quoting  
4 *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 168 (1970)). “Liability for improper custom  
5 may not be predicated on isolated or sporadic incidents; it must be founded upon practices  
6 of sufficient duration, frequency and consistency that the conduct has become a traditional  
7 method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

8 Here, Plaintiff alleges that at least four other separate incidents have occurred in  
9 which members of the SDPD’s bike team have used excessive force against African  
10 American individuals. SAC ¶¶ 122–23, 125, 129. Plaintiff identifies incidents on  
11 November 19, 2023 and January 3, 2024 captured in short video clips. *Id.* ¶¶ 138–39. In  
12 the November 19, 2023 incident, SDPD officers from the Bike Team allegedly responded  
13 to a situation involving a White and Black individual, but arrested the Black individual  
14 only. *Id.* ¶ 122. The January 3, 2024 video allegedly shows a SDPD Bike Team officer  
15 violently punching a Black individual that was already restrained. *Id.* ¶ 123. Plaintiff also  
16 cites a news report and video published on August 19, 2024, where a SDPD Bike Team  
17 officer allegedly forcefully pushed a compliant Black individual to the ground. *Id.* ¶ 125.  
18 Finally, Plaintiff points to a lawsuit filed in this District—*Lee v. City of San Diego et al*,  
19 3:18-cv-00159-W-BLM—involving an altercation between SDPD police officers and  
20 another African American individual. *Id.* ¶ 129. According to Plaintiff, in *Lee*, the City was  
21 held liable for this individual’s injuries. *Id.*

22 Plaintiff additionally cites four studies in support of his *Monell* claim: (1) a 2016  
23 study conducted by San Diego State University, commissioned by the City of San Diego;  
24 (2) a 2019 NBC San Diego report; (3) a report from the Police Scorecard, a nationwide  
25 public evaluation of policing in the United States; and (4) a 2021 report conducted by the  
26 Center for Policing Equity, commissioned by the SDPD. *Id.* ¶¶ 34–42. The 2021 report is  
27 particularly relevant here. According to the Center for Policing Equity report, African  
28 American individuals experienced non-traffic stops 4.2 times as often as white people,

1 were subjected to force 4.8 times as often, and accounted for 22.3% of persons who  
2 experienced use of force in San Diego despite comprising only 6.1% of the population. *Id.*  
3 ¶¶ 40–42; see *Russell v. City of San Diego*, No. 24CV0527-GPC(SBC), 2025 WL 297034,  
4 at \*5 (S.D. Cal. Jan. 24, 2025) (holding Plaintiff had plausibly alleged a *Monell* claim partly  
5 considering Center for Policing Equity report). Plaintiff alleges that despite these incidents,  
6 Defendants have failed to adequately supervise, discipline or correct the officers involved  
7 in these incidents. *Id.* ¶¶ 155, 162.

8 In response, Defendants argue that the video clips and news reports relied upon by  
9 Plaintiff are brief and lack context, leaving it unclear whether the force used by SDPD  
10 officers in those instances was excessive. ECF No. 25-1 at 17. Even if that were the case,  
11 the incidents described involve multiple specific instances in which SDPD officers used  
12 force against African American individuals in a manner that could plausibly be considered  
13 excessive. Whether these prior incidents involved force ultimately determined to be  
14 excessive is not determinative at this early stage as to whether Plaintiff has alleged a  
15 plausible *Monell* claim. See *Wright v. Cnty. of San Bernardino*, No. 5:24-CV-01123-JLS-  
16 JC, 2025 WL 546362, at \*4 (C.D. Cal. Jan. 14, 2025) (holding a *Monell* claim was properly  
17 pleaded even though “none of the factual circumstances” in prior incidents “perfectly  
18 match[ed]” the circumstances alleged); *Estate of Osuna v. Cnty. of Stanislaus*, 392 F. Supp.  
19 3d 1162, 1173 (E.D. Cal. 2019) (“Whether these previous cases are all manifestations of  
20 the same policy or custom, and whether that policy or custom was the moving force behind  
21 the injury to decedent in this case, are factual issues to be determined following the  
22 discovery phase of this litigation.”); *J.M. by & Through Rodriguez v. Cnty. of Stanislaus*,  
23 No. 1:18-CV-01034-LJO-SAB, 2018 WL 5879725, at \*6 (E.D. Cal. Nov. 7, 2018)  
24 (“Whether the prior incidents did involve misuses of force and establish that alleged  
25 custom, policy, or practice exists is a question of fact, and Plaintiffs have offered enough  
26 detail to plausibly state a claim at this stage in the proceedings.”).

27 For these reasons, the Court **DENIES** Defendants’ motion to dismiss Claim 7,  
28 insofar as the Plaintiff’s allegations are based on the City’s maintenance of a custom,

1 practice, or policy of discriminatory conduct directed toward African Americans, which  
2 Plaintiff alleges was the moving force behind the violation of his constitutional rights.

3 *b. Failure to Train (Claim 8)*

4 In Claim 8 of the SAC, Plaintiff alleges that the City, through the SDPD, failed to  
5 properly train its officers “on the dangers of kneeling on a prone, compliant individual’s  
6 back and piling onto compliant individuals.” SAC ¶ 143. These allegations are identical to  
7 the failure to train claim pleaded in Plaintiff’s FAC. FAC ¶ 96. In its prior order on  
8 Defendants’ motion to dismiss Plaintiff’s FAC, the Court dismissed Plaintiff’s failure to  
9 train claim, holding Plaintiff had failed to adequately allege a pattern of similar  
10 constitutional violations. ECF No. 16 at 15. The allegations in Plaintiff’s SAC are deficient  
11 for the same reasons. *See Connick v. Thompson*, 563 U.S. 51, 63 (2011) (“[B]ecause those  
12 incidents are not similar to the violation at issue here, they could not have put [the District  
13 Attorney] on notice that specific training was necessary to avoid this constitutional  
14 violation.”); *City of Canton v. Harris*, 489 U.S. 378, 391 (1989) (“[F]or liability to attach  
15 in this circumstance the identified deficiency in a city’s training program must be *closely*  
16 *related* to the ultimate injury.”); *Estate of Davis v. City of N. Richland Hills*, 406 F.3d 375,  
17 383 (5th Cir. 2005) (“Prior indications cannot simply be for any and all ‘bad’ or unwise  
18 acts, but rather must point to the specific violation in question. That is, notice of a pattern  
19 of *similar* violations is required.”).

20 Plaintiff argues Defendants have improperly emphasized the allegations pertaining  
21 solely to kneeling. ECF No. 27 at 19. Nevertheless, this is how Plaintiff framed his failure  
22 to train claim in the SAC. *See* SAC ¶ 143 (“[Plaintiff] alleges that the City of San Diego,  
23 through the SDPD, failed to properly train its officers in key constitutional protections,  
24 including those related to excessive force and unlawful detentions and arrests. *Specifically*,  
25 the failure to train officers on the dangers of kneeling on a prone, compliant individuals  
26 back and piling onto compliant individuals . . . .”); 145 (“Defendant City’s decision not to  
27 train its officers about their constitutional limits in using force and *kneeling on compliant*  
28 *persons* in effectuating arrests . . . .”). It is well established that a “[p]laintiff’s allegations

1 and theories of liability are confined to those found in the operative complaint.” *Hayward*  
2 *Prop., LLC v. Commonwealth Land Title Ins. Co.*, No. 17-CV-06177 SBA, 2021 WL  
3 4503457, at \*6 (N.D. Cal. Sept. 30, 2021). For these reasons, the Court **GRANTS**  
4 Defendants’ motion to dismiss Claim 8.

5 *c. Failure to Supervise or Discipline (Claims 9 and 10)*

6 In Claim 9 of the SAC, Plaintiff alleges that the City maintains a de facto policy of  
7 insufficiently supervising its officers with respect to racial profiling and the use of  
8 excessive force. SAC ¶ 153. Similarly, in Claim 10 of the SAC, Plaintiff alleges that the  
9 City has a de facto policy of failing to adequately discipline or correct its police officers  
10 with respect to racial profiling, unlawful detentions, and the use of excessive force. *Id.*  
11 ¶ 161. Defendants move to dismiss Claims 9 and 10 as conclusory. ECF No. 25-1 at  
12 19–20.

13 “A plaintiff may establish municipal liability if it can prove that a municipality’s  
14 omissions, such as a failure to supervise and discipline, render it responsible for a  
15 constitutional violation even though the municipality’s policies are facially constitutional.”  
16 *Gonzalez v. Alva*, No. 11-CV-2846 W WVG, 2013 WL 3795691, at \*6 (S.D. Cal. July 19,  
17 2013). “In order to do so, a plaintiff must show that (1) the municipality’s deliberate  
18 indifference to citizens’ constitutional rights led to its failure to supervise or discipline, and  
19 (2) the failure to supervise or discipline caused a municipal employee to commit the  
20 constitutional violation the plaintiff suffered.” *Id.*; see *Dougherty v. City of Covina*, 654  
21 F.3d 892, 900 (9th Cir. 2011) (“[A] failure to supervise that is sufficiently inadequate may  
22 amount to deliberate indifference.”) (internal quotation marks omitted).

23 As explained above, Plaintiff has plausibly alleged the City maintains an  
24 unconstitutional custom, practice or policy of discriminatory conduct directed towards  
25 African Americans. For the same reasons, the Court **DENIES** Defendants’ motion to  
26 dismiss Claims 9 and 10 for failure to supervise or discipline officers with respect to racial  
27 discrimination directed to African Americans under *Monell*. See *Hunter v. Cnty. of*  
28 *Sacramento*, 652 F.3d 1225, 1233 (9th Cir. 2011) (“[A] custom or practice can be inferred

1 from widespread practices or evidence of repeated constitutional violations for which the  
2 errant municipal officers were not discharged or reprimanded.”).

3 **C. State Law Claims**

4 The SAC asserts four state law claims against the City and Officer Defendants:  
5 intentional infliction of emotional distress, assault, battery, and violation of California Civil  
6 Code § 52.1. SAC ¶¶ 172–94. Defendants argue that because Plaintiff has failed to allege  
7 any plausible constitutional claims against Lazaga, Plaintiff’s state law claims against  
8 Lazaga must also fail. ECF No. 25-1 at 20–21.

9 *1. Assault, Battery, and Intentional Infliction of Emotional Distress*  
10 *(Claims 11, 12, 13)*

11 Defendants move to dismiss Plaintiff’s state law claims for assault, battery, and  
12 intentional infliction of emotional distress against defendant Lazaga, arguing that even  
13 assuming Lazaga was the individual that pulled Plaintiff across the patrol vehicle, this act  
14 would not support these claims. ECF No. 31 at 3.

15 The Court does not agree. Here, Plaintiff’s state law claims for assault, battery, and  
16 intentional infliction of emotional distress against defendant Lazaga implicate the same  
17 legal standards as his § 1983 excessive force claim. *See Blankenhorn v. City of Orange*,  
18 485 F.3d 463, 487 n.17 (9th Cir. 2007) (reversing district court’s grant of summary  
19 judgment on intentional infliction of emotional distress claim where plaintiff alleged  
20 officers’ use of force was excessive); *Manlove v. Cnty. of San Diego*, No. 3:24-CV-0801-  
21 CAB-MMP, 2025 WL 1346872, at \*5 (S.D. Cal. May 8, 2025) (“Under California law,  
22 claims for assault and battery against police officers are resolved under the same liability  
23 standard as 42 U.S.C. § 1983 excessive force causes of action.”); *Gonzalez v. City of Tustin*,  
24 No. 8:23-CV-01274-FWS-ADS, 2023 WL 9689159, at \*13 (C.D. Cal. Dec. 28, 2023)  
25 (holding plaintiff had plausibly alleged an intentional infliction of emotional distress claim  
26 based on the same allegations supporting a plausible excessive force claim); *Penny v. City*  
27 *of Los Angeles*, No. CV207211DMGMAAX, 2022 WL 2069132, at \*13 (C.D. Cal. May  
28 9, 2022) (“[Plaintiff’s] intentional tort claims under California law involve the same

1 standards as that of an excessive use of force claim under the Fourth Amendment.”), *aff’d*  
2 *and remanded sub nom. Penny v. Azmy*, No. 22-55572, 2024 WL 489287 (9th Cir. Feb. 8,  
3 2024); *Villa v. Cnty. of San Diego*, No. 20-CV-537-CAB-NLS, 2020 WL 3100045, at \*5  
4 (S.D. Cal. June 11, 2020) (“Plaintiff has adequately alleged a plausible excessive force  
5 claim, and therefore has sufficiently alleged a claim for . . . intentional infliction of  
6 emotional distress[.]”).

7 As Plaintiff has plausibly pleaded a § 1983 excessive force claim against defendant  
8 Lazaga, the Court also **DENIES** Defendants’ motion to dismiss plaintiff’s assault, battery,  
9 and intentional infliction of emotional distress claims against Lazaga.

10 2. *Bane Act (Claim 10)*

11 Defendants finally move to dismiss Plaintiff’s Bane Act claim against defendant  
12 Lazaga, contending Plaintiff has not sufficiently pleaded that Lazaga acted with the specific  
13 intent to violate Plaintiff’s right to be free from excessive force. ECF No. 31 at 4.

14 In excessive force cases, the Bane Act “does not require proof of coercion beyond  
15 that inherent in the underlying violation.” *Rodriguez v. Cnty. of L.A.*, 891 F.3d 776, 802  
16 (9th Cir. 2018); *Russell*, 2024 WL 3049853, at \*8 (“Because Plaintiff alleges an excessive  
17 force claim, he does not need to allege an independent threat, intimidation or coercion  
18 separate from the threat, intimidation, or coercion inherent in an excessive force claim.”);  
19 *Young v. Cnty. of San Diego*, No. 20-CV-02441-H-AHG, 2021 WL 1087102, at \*7 (S.D.  
20 Cal. Mar. 22, 2021) (“Plaintiff need not allege any facts of independent threats,  
21 intimidation, or coercion beyond his excessive force claim.”); *McAdams v. City of Newport*  
22 *Beach*, No. SACV1900615AGKESX, 2019 WL 6736919, at \*2 (C.D. Cal. Oct. 2, 2019)  
23 (“[W]here the underlying constitutional violation is excessive force instead of, for example,  
24 unlawful arrest, the plaintiff need not allege a separate and distinct act of threat,  
25 intimidation, or coercion to succeed on a Bane Act claim.”).

26 Here, Plaintiff alleges he was already handcuffed and had complied with an  
27 instruction to enter a patrol vehicle through an open door. *Id.* ¶ 82. It was only after Plaintiff  
28 was seated when one of the officers—believed to be defendant Lazaga—opened the

1 opposite car door, yelled, and then grabbed and forcibly dragged Plaintiff by his cuffed  
2 wrists to the other end of the patrol car. *Id.* ¶ 84. These allegations are sufficient to plausibly  
3 infer Lazaga acted with specific intent. *See Est. of Gutierrez by & through Benitez v.*  
4 *Castillo*, No. 21-CV-01292-H-LL, 2021 WL 5989972, at \*8 (S.D. Cal. Dec. 17, 2021)  
5 (denying motion to dismiss Bane Act claim where plaintiff had alleged sufficient facts to  
6 support that the amount of force used by defendant could be considered “more than  
7 necessary under the circumstances”); *McAdams v. City of Newport Beach*, No.  
8 SACV1900615AGKESX, 2019 WL 6736919, at \*3 (C.D. Cal. Oct. 2, 2019) (“Plaintiff  
9 alleges sufficient factual detail about the circumstances surrounding the alleged use of  
10 excessive force to plausibly infer the Officers acted with specific intent.”). For these  
11 reasons, the Court **DENIES** Plaintiff’s motion to dismiss Claim 10.

12 **D. Request for Extension of Time to Effect Service on Doe Defendants**

13 On March 4, 2025, the Court ordered Plaintiff to show cause why the Doe defendants  
14 should not be dismissed for failure to effect service under Federal Rule of Civil Procedure  
15 4(m). ECF No. 16 at 17–18.

16 Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within  
17 90 days after the complaint is filed, the court—on motion or on its own after notice to the  
18 plaintiff—must dismiss the action without prejudice against that defendant or order that  
19 service be made within a specified time. But if the plaintiff shows good cause for the  
20 failure, the court must extend the time for service for an appropriate period.” Fed. R. Civ.  
21 P. 4(m). The 90-day deadline under Rule 4(m) applies to Doe defendants. *See Williams v.*  
22 *Cnty. of Los Angeles*, No. 23-55155, 2024 WL 2862587, at \*1 (9th Cir. June 6, 2024);  
23 *Jackson v. McMahon*, No. EDCV190548SBPVC, 2021 WL 3208029, at \*2 (C.D. Cal. July  
24 29, 2021) (“The 90-day service deadline under Rule 4(m) applies to Doe Defendants.”).

25 Here, the Court finds good cause to extend the service deadline under Rule 4(m).  
26 Plaintiff represents it made an informal discovery request to Defendants seeking the body  
27 worn camera footage from the incident giving rise to this litigation to identify the Doe  
28 defendants. ECF No. 24 at 2–3. Although Plaintiff did not obtain this footage, Plaintiff

1 states he nevertheless was able to identify the Doe Defendants through “alternative means.”  
2 *Id.* at 4. Under the circumstances, the Court does not conclude Plaintiff was choosing not  
3 to complete service “out of choice.” *Mejia Banegas v. Doe #2*, No. 18-CV-02670-GPC-  
4 JLB, 2019 WL 1353712, at \*3 (S.D. Cal. Mar. 26, 2019) (recommending that plaintiff be  
5 granted an extension of time to serve Doe defendants), *report and recommendation*  
6 *adopted sub nom. Banegas v. Doe #1*, No. 18CV2670-GPB(RBM), 2019 WL 4187626  
7 (S.D. Cal. Sept. 4, 2019). For these reasons, and considering the early stage of the  
8 proceedings, the Court **GRANTS** Plaintiff’s request for an extension of time to serve the  
9 Doe defendants.

10 **E. Leave to Amend**

11 Under Federal Rule of Civil Procedure 15(a)(2), the court should “freely give leave  
12 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Nevertheless, the “liberality  
13 in granting leave to amend is subject to several limitations.” *Cafasso v. Gen. Dynamics C4*  
14 *Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011) (internal quotation marks omitted). “The district  
15 court’s discretion to deny leave to amend is particularly broad where plaintiff has  
16 previously amended the complaint.” *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149,  
17 1160 (9th Cir. 1989). Here, the Court already provided Plaintiff an opportunity to amend  
18 his pleading. As Plaintiff has not been able to cure the deficiencies previously identified in  
19 the Court’s prior Order, the Court finds further amendment would be futile. *See Zucco*  
20 *Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (holding plaintiff’s  
21 failure to correct deficiencies in its second amended complaint was a “strong indication”  
22 that plaintiff had “no additional facts to plead.”) (internal quotation marks omitted).

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1 **IV. CONCLUSION**

2 For the above reasons, the Court **GRANTS IN PART** and **DENIES IN PART**  
3 Defendants' motion as follows:

4 **A. Individual § 1983 Claims against the Officer Defendants**

5 1. The Court **DENIES** Defendants' motion to dismiss Claims 1 and 2 against  
6 the Officer Defendants.

7 2. The Court **GRANTS** Defendants' motion to dismiss Claim 6 against the  
8 Officer Defendants without leave to amend.

9 **B. Individual § 1983 Claims against the Defendant Lazaga**

10 3. The Court **GRANTS** Defendants' motion to dismiss Claims 1-4 against  
11 defendant Lazaga without leave to amend.

12 4. The Court **DENIES** Defendants' motion to dismiss Claim 5 against defendant  
13 Lazaga.

14 **C. Monell Claims**

15 5. To the extent Plaintiff is asserting a *Monell* claim against any of the Officer  
16 Defendants, the Court **DISMISSES** these claims without leave to amend.

17 6. The Court **DENIES** Defendants' motion to dismiss Claims 7 and 9-10 against  
18 the City.

19 7. The Court **GRANTS** Defendants' motion to dismiss Claim 8 against the City  
20 without leave to amend.

21 **D. State Law Claims**

22 8. The Court **DENIES** Defendants' motion to dismiss Claims 11-14 against  
23 defendant Lazaga

24 **E. Request for Extension of Time**

25 9. The Court **GRANTS** Plaintiff's request for an extension of time to serve the  
26 Doe Officer Defendants. Plaintiff is **GRANTED** leave to amend solely to amend the SAC  
27 to substitute named Defendants for any parties previously identified as Doe defendants. If  
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1 Plaintiff wishes to do so, he must file a Third Amended Complaint with an appropriate  
2 redline by **June 23, 2025**.

3 10. Plaintiff shall subsequently effectuate service on the Parties previously  
4 identified as Doe defendants by **June 30, 2025**.

5 **IT IS SO ORDERED.**

6 Dated: June 13, 2025

*Robert S Huie*

Hon. Robert S. Huie  
United States District Judge

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