

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Ross v. County of San Diego

Ross · No. 21CV-2130-JO-VET · Decided March 27, 2025

SUMMARY

The United States District Court for the Southern District of California grants defendants’ motion for summary judgment in a civil rights action arising from San Diego County deputies’ use of force during Plaintiff Thomas Ross’s restraint and arrest. The court concludes that the challenged uses of force did not violate the Fourth Amendment and that the deputies were entitled to qualified immunity. The court also addresses related municipal-liability claims and state-law claims.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 THOMAS ROSS, Case No.: 21CV-2130-JO-VET 12 Plaintiff, 13 v.
ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY 14 COUNTY OF SAN
DIEGO; SAN JUDGMENT DIEGO COUNTY SHERIFF’S 15 DEPARTMENT; et. al., 16
Defendants. 17 18 19 20 Plaintiff Thomas Ross1 filed a civil rights action pursuant to 42 U.S.C. §
1983 alleging 21 that San Diego Sheriff’s Deputies used excessive force when they restrained and
arrested 22 him on December 17, 2020.

Dkt. 25, Second Amended Complaint (“SAC”). Defendants 23 moved for summary judgment on
the grounds that qualified immunity shields these 24 officers’ actions. Dkt. 95-2 (“Def. Mot.
Summ. J.”). For the reasons stated below, the 25 Court GRANTS Defendants’ motion for
summary judgment on all claims. 26 27 1 Mr. Thomas Ross is now deceased, for reasons
unrelated to the December 2020 incident 28 1 I. BACKGROUND 2 On December 17, 2020, the
San Diego Sherriff’s Department received frightened 3 911 calls from Plaintiff’s roommate, Ms.
Connie Estrada, and from Plaintiff himself.

At 4 around 2:00 a.m., Plaintiff arrived at their shared residence and woke up Ms. Estrada by 5
shouting and screaming incoherently at her and repeatedly yelling her name. Dkt. 96-1 6 (Dow
Police Report), Dow bodyworn camera transcript (“Dow BWC Tr.”) at 2-3; Dow 7 Dep. Tr. at 35-
36. Alarmed by his behavior, Ms. Estrada and Ms. Lopez, another 8 roommate, locked themselves
in Ms. Estrada’s room.

Lopez Dep. Tr. at 33-34; see also 9 Dkt. 96-1 at 7. Plaintiff continued to shout Ms. Estrada’s name
and repeatedly called her 10 cell phone. Id.; Estrada Dep. Tr. at 33-37. Fearful for her safety, Ms.
Estrada called 911 11 twice and then left the apartment with Ms. Lopez to wait for the police.

Estrada Dep. Tr. 12 at 3. During this time, Plaintiff also made calls to the Sheriff's Department telling them 13 that he felt "unsafe" in his home for unspecified reasons, repeatedly mentioning Ms. 14 Estrada's name without elaboration.

SAC at 5; see also Dow Dep. Tr. at 65-66. Because 15 of Ms. Estrada's and Plaintiff's calls, the Sheriff's Dispatch requested a welfare check on 16 Mr. Ross. Dow Dep. Tr. at 65-66. 17 When Deputies Saunders and Dow arrived to conduct the welfare check, they 18 attempted to assist Mr. Ross and to calm him down. Ms. Estrada told the deputies that Mr. 19 Ross had not been home in three days and, upon returning home in the middle of the night, 20 had begun shouting at her.

Saunders bodyworn camera transcript ("Saunders BWC Tr.") 21 at 2-3; see also Dow bodyworn camera footage ("Dow BWC") at 11:09:00-11:15:32. The 22 deputies entered the residence and approached Mr. Ross's room to check on him. Id. 23 Bodyworn camera footage captures their approximately six-minute interaction in the 24 hallway.

After initially slamming his bedroom door shut, Plaintiff reopened it when 25 Deputy Dow introduced herself. Dow BWC at 11:09:00-11:09:38. Although parts of the 26 conversation are inaudible, Mr. Ross told the deputies that that he felt "trapped," 27 "threatened," and "disrespected"; that he "[didn't] know these people"; and asked the 28 1 deputies for help.

Dow BWC Tr. at 2-5. In response to this request, Dow affirmed that 2 they were there to help and offered to escort Mr. Ross outside if he felt unsafe. Id. at 2-10. 3 However, instead of accepting the deputies' offer, Mr. Ross began rapidly and 4 incoherently oscillating between requesting an escort to leave and shouting that he couldn't 5 leave and saying that he "just want[ed] to go home." Id. at 5-9.

He then began complaining 6 that he felt "trapped" and unsafe because the deputies were standing in the hallway. Id. 7 Although Dow offered several times to move out of the way so that he wouldn't feel 8 trapped, Mr. Ross ignored these requests and, screaming the entire time, ran past both 9 deputies and out of the apartment. They allowed Mr. Ross to pass and followed him as he 10 ran into his vehicle and slammed the door closed.

Dow BWC at 11:15:32-11:19:20. Based 11 on these interactions, the deputies suspected that Mr. Ross was experiencing a mental 12 health episode or under the influence of a controlled substance, and likely the latter given 13 his paranoia, incoherence, and rigid and sudden body movements. Dow Dep. Tr. at 69-70; 14 Saunders Dep. Tr. at 142. 15 For the next ten minutes, the deputies continued their attempts to reason with 16 Plaintiff and offer him help, but his erratic behavior only escalated.

Dow BWC at 17 11:19:20-11:31:38. Upon entering his car, Mr. Ross started his engine and stayed inside 18 his vehicle while screaming; calling 911 again; banging his hands on the steering wheel 19 and car window; slamming the car door open and shut; and repeatedly accusing the 20 deputies

of trapping and tricking him. Id. During this time, Deputy Dow continued her 21 attempts to calm him, including by asking about his mental health diagnoses, where he 22 might feel safe, and how she could help.

Dow BWC Tr. at 13-22; see also Dow BWC at 23 11:19:20-11:31:38. But Mr. Ross continued to scream and slam his door open and shut, 24 and eventually ran out of the vehicle and past the deputies. Saunders bodyworn camera 25 footage (“Saunders BWC”) at 11:30:00-11:35:17. 26 27 2 Mr. Ross did not specify who he felt trapped and threatened by, but at one point he seems to 28 1 The deputies first ordered Mr. Ross to surrender after he began banging on Ms. 2 Estrada’s vehicle and ran directly at Deputy Saunders.

The deputies then pulled out their 3 Tasers and ordered Mr. Ross to get on his stomach. Id. at 11:35:17-11:35:40. By this 4 point, Deputies Dow and Saunders had been attempting to reason with Mr. Ross for well 5 over twenty-five minutes. See id. at 11:09:00-11:35:40.

Although Mr. Ross said “I 6 surrender” numerous times, he did not comply with the deputies’ thirty-five orders to get 7 on the ground. Dow BWC Tr. at 23:14-27:15. Deputy Saunders then told Mr. Ross to turn 8 around if he was, in fact, surrendering, and Mr. Ross responded “no.” Id. at 26:17-28:10. 9 Deputy Saunders repeated his order to turn around seven more times, and Mr. Ross again 10 refused, stating, “don’t touch me,” “I won’t do that,” and “if I turn around you guys 11 outnumber me.” Saunders BWC Tr. at 26:5-7; Saunders BWC at 11:35:17-11:37:01.

12 After Mr. Ross refused the deputies’ repeated orders to turn around, Deputy 13 Saunders physically engaged with Plaintiff for the first time. He approached Mr. Ross, 14 grabbed his shoulder, and attempted to turn him physically towards the car to place him in 15 handcuffs. Saunders BWC at 11:36:45-11:37:02.

The two fell to the ground as Mr. Ross 16 tried to pull away and Deputy Saunders attempted to restrain him. Dow BWC at 11:33:20- 17 11:33:55; Dow Dep. Tr. at 79:11-13. Deputy Saunders delivered two strikes to Mr. Ross’s 18 head in an attempt to gain compliance and positioned himself on top of Mr. Ross’s upper 19 body, while Deputy Dow mounted his legs to assist in physically restraining him.

Id. The 20 deputies shouted at Mr. Ross to stop resisting and to stop flexing his hands; Deputy 21 Saunders also shouted at Mr. Ross to stop attempting to bite him.³ Saunders BWC Tr. at 22 27. Deputy Saunders also employed a knee strike to Mr. Ross’s back during an attempt to 23 roll him into a prone position. Saunders Rep. at 3. 24 25 26 3 Plaintiff argues that there is no video evidence of an attempted bite on the part of Mr. Ross.

The Court agrees that the video evidence is inconclusive as to whether Mr. Ross attempted to bite any of the 27 deputies, and for purposes of summary judgment, assumes no actual bite or attempted bite took place. However, it is not in dispute that Deputy Saunders shouted multiple

times at Mr. Ross to “stop biting,” 28 1 While struggling to hold Mr. Ross in this position for nearly three minutes, the 2 deputies radioed for additional assistance.

Saunders BWC at 11:37:02-11:38:39. Deputy 3 Ramos arrived about two minutes after the deputies radioed and asked them how he could 4 assist. Deputy Saunders requested a “full mount,” and Deputy Ramos positioned himself 5 next to Deputy Saunders on top of Mr. Ross’s upper body, who was continuing to actively 6 resist. Ramos bodyworn camera footage (“Ramos BWC”) at 11:38:30-11:39:15.

The three 7 deputies attempted to roll Mr. Ross into a seated or prone position to handcuff him; Deputy 8 Dow shouted at Mr. Ross to “stop kicking,” and Deputy Saunders shouted at Mr. Ross to 9 “let go of [his] hand.” Id. at 11:38:30-11:41:00. During this entire time, the camera footage 10 shows Mr. Ross thrashing, kicking, and frustrating the attempts of the deputies to place his 11 arms behind his back.

Id. 12 After his initial attempts to help subdue Plaintiff failed, Deputy Ramos resorted to 13 the use of his Taser and fist strikes to gain compliance and to prevent Plaintiff from 14 grabbing one of the deputies’ weapons. Right after hearing the other two deputies shout at 15 Mr. Ross to stop kicking, biting, and to let go, Deputy Ramos deployed his Taser while 16 Deputy Saunders shouted at Mr. Ross to place his arms behind his back.

Saunders BWC 17 Tr. at 31:23-33:13. A few seconds later, when Mr. Ross failed to comply, Deputy Ramos 18 tased him a second time; body camera footage shows Mr. Ross was not yet incapacitated 19 and continued to fiercely resist by kicking, thrashing, and attempting to free his hands even 20 while being tased. Ramos BWC at 11:38:30-11:41:00.

Because Deputy Ramos began 21 losing control of Mr. Ross’s right arm, he also deployed two fist strikes to Mr. Ross’s head 22 to prevent him from grabbing one of the deputies’ weapons. Ramos Rep. at 2. During this 23 struggle, Mr. Ross said, “you’re killing me” and “I can’t breathe” several times. Dow 24 BWC Tr. at 32:16-25.

After another several minutes of significant physical exertion, the 25 three deputies were finally able to place both of Mr. Ross’s arms behind his back and 26 handcuff him. Ramos BWC at 11:41:00-11:43:30. In total, it took the three deputies more 27 than five minutes, two Taser deployments, and multiple strikes to Mr. Ross’s head and 28 1 back to successfully handcuff him.

Ramos BWC 11:38:00-11:43:30. Deputy Ramos then 2 told Mr. Ross that he was being placed under arrest. 3 After three more deputies, including Deputy McCarthy, arrived on the scene, Deputy 4 Dow requested that Mr. Ross be placed in a WRAP device to fully immobilize him because 5 he was continuing to kick and trying to break free even after being handcuffed. Dow Dep.

6 Tr. at 79:22-80:10. Deputies Ramos, Dow, Saunders, and McCarthy were able to apply 7 the WRAP after several more minutes of significant effort. Dow BWC at 11:43:30-46:38. 8 Even after Mr. Ross was placed in the WRAP device and fully immobilized, he continued 9 to thrash about and actively resist. Saunders BWC at 11:46:30-11:48:40.

Finally, the 10 deputies placed a spit sock over Mr. Ross's head because they were concerned that he 11 would attempt to bite them.⁴ Id.; see also McCarthy Force Rep. Mr. Ross was then taken 12 to the hospital for medical attention and was later charged with misdemeanor public 13 intoxication, misdemeanor resisting arrest, and the felony of resisting an executive officer.

14 Plaintiff filed a complaint against Deputies Dow, McCarthy, Saunders, and Ramos 15 on December 28, 2021, alleging that the Deputies used excessive force and violated Mr. 16 Ross's Fourth Amendment rights under 42 U.S.C. §1983. See generally Second Am. 17 Compl. Plaintiff also sued the County of San Diego and the San Diego Sheriff's 18 Department ("County Defendants"), alleging that both had failed to properly train and 19 supervise the Deputies in violation of 42 U.S.C. §1983, and separately maintained an 20 unconstitutional policy of using excessive force in arrests in violation of *Monell v. 21 Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

Id. Finally, 22 Plaintiff filed state law claims of negligence, battery, and violations of the Bane Act (Cal. 23 Civ. Code § 52.1) against all defendants ("Defendants"). Defendants moved for summary 24 judgment on all the respective claims against them.⁵ Dkt. 95-1 ("Def. Mot. Summ. J."). 25 26 4 Plaintiff does not challenge the deputies' use of the spit sock as excessive force.

27 5 Defendants also moved in their motions in limine to exclude certain expert opinions proffered by Roger Clark on the grounds that they constitute impermissible legal conclusions but do not raise 28 1 II. LEGAL STANDARD 2 Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil 3 Procedure if the moving party demonstrates the absence of a genuine issue of material fact.

4 Fed. R. Civ. P. 56(a). A fact is material if it could affect the outcome of the case under the 5 applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A 6 dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury 7 to return a verdict in favor of the non-moving party. Id. 8 A party seeking summary judgment always bears the burden of establishing the 9 absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 10 (1986). The moving party can satisfy this burden in two ways: (1) by presenting evidence 11 that negates an essential element of the nonmoving party's case; or (2) by demonstrating 12 that the nonmoving party has failed to establish an essential element of the nonmoving 13 party's case for which they bear the burden of proof at trial.

Id. at 322–23. The moving party may also satisfy its initial burden by demonstrating that the opposing party lacks sufficient evidence from which a jury could find an essential element of the opposing party’s claim. Id. at 325; *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 171102 (9th Cir. 2000). If the moving party meets its initial burden, the burden shifts to the nonmoving party to provide evidence that there is a genuine dispute for trial.

See *Celotex*, 477 U.S. at 324. The nonmoving party cannot merely rest on their pleadings, but must direct the court to specific, triable facts by “citing to particular parts of materials in the record.” Fed. R. Civ. P. 56(c)(1)(A); see *Anderson*, 477 U.S. at 250.

The court must view all reasonable inferences that can be drawn from the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587. These are evidentiary objections for the purposes of the summary judgment motion. Dkts. 96, 101.

To the extent that they sought to do so through their motions in limine, the Court overrules these objections as moot because the Court did not rely on the objected-to portions in reaching its decision, and they would be (1986).

However, “when opposing parties tell two different stories, one of which is blatantly contradicted by the record, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 4378-79 (2007) (hereinafter *Scott*) (lower court should have discredited plaintiff’s factual allegations at summary judgment where video evidence flatly contradicted plaintiff’s version of events).

Moreover, “a party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda.” *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982). III. DISCUSSION In his Fourth Amendment claims, Plaintiff alleges that San Diego County Sheriff’s Deputies used excessive force against him when (1) Deputy Saunders first took him down in the parking lot; (2) Deputies Saunders and Dow attempted to subdue and restrain him on the ground before Deputy Ramos arrived, including by using two fist strikes and a pain compliance technique; (3) Deputy Ramos used two Taser deployments and two fist strikes against him; and (4) Deputies Saunders, Dow, and McCarthy placed him in handcuffs and a full-body WRAP restraint.⁶ For each of these actions, to determine whether the officers are entitled to qualified immunity, the Court will first examine whether the force used was objectively reasonable given the totality of the circumstances and, if so, whether a reasonable officer would have known their conduct was illegal based on clearly established law, to determine whether the officers are entitled to qualified immunity.⁷ If it concludes After reviewing Plaintiff’s Second Amended Complaint and Opposition Brief, the Court concludes that Plaintiff alleges four distinct instances of excessive force.

The Court addresses each of these instances or phases separately for the purpose of its analysis. See SAC ¶¶ 23, 64, 73; Pl. Opp. Br. at 24 16-20. 25 7 Plaintiff relies on the following opinions of his police practices expert, Roger Clark, to raise a triable issue of fact regarding the reasonableness of the deputies' actions: (1) "the use of force and restraint 26 inflicted on Mr. Ross by the Defendants was excessive and unreasonable, including but not limited to Deputy Ramos' use of his of his Taser [sic], the severe knee strike by Deputy Saunders, and the multiple 27 closed-fist strikes delivered to Mr. Ross' [sic] by them both," and (2) "even one use of Deputy Ramos's Taser could prove highly dangerous and, in light of alternatives, was not objectively reasonable." Opp.

28 1 that the Deputies in question acted reasonably, the Court will then address the viability of 2 Plaintiff's municipal liability or Monell claims that are premised on the same actions or 3 uses of force. The Court will next address whether the Fourteenth Amendment is the 4 correct vehicle for what Plaintiff styles as an arbitrary investigation and arrest claim, and, 5 finally, whether the Court should exercise supplemental jurisdiction over Plaintiff's 6 remaining state law claims.

7 A. The Law on Qualified Immunity in the Context of Excessive Force Claims 8 Because Defendants ask the Court to decide whether Deputies Dow, Saunders, 9 Ramos, and McCarthy are entitled to qualified immunity from Plaintiff's § 1983 excessive 10 force claim, the Court will begin by setting forth the law in this area. 11 "The doctrine of qualified immunity protects government officials 'from liability for 12 civil damages insofar as their conduct does not violate clearly established statutory or 13 constitutional rights of which a reasonable person would have known.'" Pearson v. 14 Callahan, 555 U.S. 223, 231 (2009).

To defeat the defense of qualified immunity, the 15 plaintiff must satisfy a two-pronged burden: (1) the plaintiff must allege or show sufficient 16 facts to "make out a violation of a constitutional right"; and (2) the plaintiff must 17 demonstrate that "the right at issue was 'clearly established' at the time of defendant's 18 alleged misconduct." Id. 19 In Fourth Amendment excessive force cases, courts examine whether police 20 officers' actions are "objectively reasonable under the totality of the circumstances" to 21 determine whether there was a constitutional violation.

Graham v. Connor, 490 U.S. 386, 22 396-97 (1989). Whether a use of force was reasonable will depend on the facts of the 23 particular case; in each case, courts must balance the "type and amount of force inflicted" 24 25 Br. at 20, 22. These constitute impermissible legal conclusions about the ultimate issue in this case: 26 whether the uses of force in question were reasonable.

Hangarter v. Provident Life and Acc. Ins. Co., 373 F.3d 998, 1016 (9th Cir. 2004) ("[A]n expert witness cannot give an opinion as to [their] legal conclusion, 27 i.e., an opinion on an ultimate issue of law."). The Court therefore does not consider these opinions in deciding this issue. Plaintiff cites to no other portions of the expert testimony or opinion in its opposition, 28 1 against the countervailing governmental interests at stake.

Id. at 396; see also *Davis v. City 2 of Las Vegas*, 478 F.3d 1048, 1054 (9th Cir. 2007) (internal citations omitted). Courts 3 consider three non-exhaustive factors in determining whether the force at issue was 4 objectively reasonable: (1) whether the suspect posed an immediate threat to anyone; (2) 5 whether the suspect resisted or attempted to evade arrest; and (3) the severity of the crime 6 at issue (the “Graham factors”).

Graham, 490 U.S. at 396. The most important of these 7 factors is whether the suspect posed an immediate threat. *Mattos v. Agarano*, 661 F.3d 8 433, 441 (9th Cir. 2011) (en banc) (*Mattos II*). Courts may also consider any other relevant 9 factors in evaluating the reasonableness of a particular use of force, including (1) “the 10 availability of less intrusive alternatives to the force employed,” *Williamson v. City of 11 National City*, 23 F.4th 1146, 1153 (9th Cir.

2022); (2) whether officers gave a “ a warning 12 or an order to halt” before using force, *Bryan v. MacPherson*, 630 F.3d 805, 831 (9th Cir. 13 2010); and (3) whether it should have been “apparent to officers that the individual 14 involved [was] emotionally disturbed,” *Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th 15 Cir. 2001). 16 If the Court finds that the officers committed a constitutional violation, it must then 17 determine whether they did so in violation of clearly established law.

Sampson v. Cnty of 18 Los Angeles, 964 F.3d 1012, 1018 (9th Cir. 2020) (citations omitted). An officer 19 “cannot be said to have violated a clearly established right unless the right’s contours were 20 sufficiently definite that any reasonable official in the defendant’s shoes would have 21 understood that he was violating it.” *Kisela v. Hughes*, 548 U.S. 100, 105 (2018) (quoting 22 *Plumhoff v. Rickard*, 572 U.S. 765, 778 (2014)).

Except for an “obvious” case in which 23 the *Graham*’s factors alone are sufficient to “‘clearly establish’ the answer,” the plaintiff 24 “must identify a case that put [the officer] on notice that his specific conduct was unlawful” 25 to defeat qualified immunity. *Rivas-Villegas v. Cotresluna*, 595 U.S. 1, 6 (2021). While 26 it is not necessary for a plaintiff to find “a case directly on point,” the case must be 27 sufficiently similar that it can be said to “squarely govern” the factual circumstances at 28 1 hand.

In other words, “existing precedent must have placed the statutory or constitutional 2 question beyond debate.” *Kisela*, 584 U.S. at 104. 3 B. Deputy Saunders’ Takedown Was Not Unconstitutionally Excessive 4 The Court first examines whether Deputy Saunders acted reasonably when he first 5 initiated physical contact with Plaintiff by attempting to turn him around and, upon meeting 6 resistance, brought him to the ground.

The Court begins this analysis by determining the 7 “quantum of force” that Deputy Saunders deployed, and then balances this against the 8 government’s interest in using that force. 9 Based

on the video footage of this interaction, the Court concludes that Deputy 10 Saunders' takedown of Mr. Ross constituted a low to intermediate level of force.

The 11 undisputed facts show that Deputy Saunders approached Mr. Ross, attempted to turn him 12 around, and when Mr. Ross pulled away, the two fell to the ground. This is objectively 13 less force than impact blows, such as punching or tackling, which are widely considered to 14 be intermediate levels of force.⁸ See, e.g., *Garlick v. County of Kern*, 167 F. Supp. 3d 15 1117, 1147 (E.D.

Cal. 2016) (collecting Ninth Circuit cases and finding that baton blows 16 and impact blows by punching are generally considered intermediate and significant uses 17 of force, respectively); *Bryan*, 630 F.3d at 811 (holding that Tasers and stun guns fall into 18 the category of intermediate or medium force). 19 When Deputy Saunders used this low to intermediate level of force, he faced an 20 immediate potential danger to himself given Mr. Ross's escalating bizarre and agitated 21 behavior, and his failure to get down on the ground despite repeated orders.

See *Chew v.* 22 23 24 8 The San Diego Sheriff Department's Force Guidelines designate "Less Lethal" as the lowest 25 level of physical force. They define Less Lethal as "force not likely to inflict serious injury. Less severe than intermediate or lethal force. Less lethal force includes hands-on-control And the use of batons, 26 WRAP, Cord Cuff restraints, etc. when used for restraint." The SDSD Force Guidelines define "Intermediate" force, the next level, as follows: "Intermediate force refers to forms of force capable of 27 inflicting significant pain and causing serious injury... Intermediate force includes hard intermediate weapons when used to deliver strikes... electronic immobilization devices also fall within the intermediate 28 1 *Gates*, 27 F.3d 1432, 1441 (9th Cir.

1994) ("the most important of the *Graham* factors is 2 the danger the suspect poses to the officer or others."). Leading up to this moment, 3 Deputies Saunders and Dow had ample reason, based on their own observations and 4 firsthand accounts from Plaintiff's roommates, to suspect that Plaintiff was suffering a 5 mental break, under the influence, or both. See, e.g., *Dow Dep.*

Tr. at 69-70, Saunders 6 Arrest Rep. at 5; see also *Ramos Dep. Tr.* at 142-143. Before the deputies arrived, Plaintiff 7 had been incoherently screaming at his roommates, leading them to call 911 and flee the 8 apartment for their own safety. *Estrada Dep. Tr.* at 33-37; *Lopez Dep. Tr.* at 33-34. Despite 9 the deputies' sustained efforts to calm him and talk to him, Mr. Ross became increasingly 10 erratic and unpredictable as the encounter went on.

His actions took a physically volatile 11 turn when, after locking himself in his car, he started banging his hands on the steering 12 wheel and repeatedly slamming the car door open and shut. *Dow BWC* at 11:19:20- 13 11:31:38. Plaintiff then suddenly jumped out of his car and started

banging his fists on the 14 hood of his roommate's car while screaming, and, ultimately, ran directly at Deputy 15 Saunders.

Saunders BWC at 11:30:00-11:35:17. Due to the wild and uncontrolled 16 physicality of Plaintiff's actions, Deputies Saunders and Deputy Dow had reason to believe 17 that he might be a threat to himself and others. Dow Dep. Tr. at 90:19-91:5, Saunders Rep. 18 at 2-3; see *Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090, 1096-97 (9th Cir. 2006) 19 (plaintiff who was behaving erratically and ignoring police commands in parking lot 20 objectively "posed a threat to himself, the police, and possibly to anyone who passed by 21 him").

When Plaintiff then ran directly towards Deputy Saunders and refused to get on the 22 ground despite repeated orders, the two officers also had ample reason to believe that he 23 posed a threat to them. *Gregory v. Cnty. of Maui*, 523 F.3d 1103, 1106 (9th Cir. 2008) 24 (objectively reasonable for three officers to pin plaintiff to ground and handcuff him for 25 officer safety when plaintiff had committed no crime but behaved erratically and repeatedly 26 ignored officer commands while approaching officers with a pen).

27 Moreover, although law enforcement officers are not "required to use the least 28 intrusive degree of force possible," *Marquez v. City of Phoenix*, 693 F.3d 1167, 1174 (9th 1 Cir. 2012), the deputies did exactly that—likely in consideration of the mental health 2 disturbance that Plaintiff was experiencing. Contrary to Plaintiff's assertions, the deputies 3 did not immediately resort to force, or ignore "clear, reasonable, and less intrusive 4 alternatives." *Bryan*, 630 F.3d at 831.

Instead, the video evidence shows that Deputies 5 Dow and Saunders attempted to reason with and calm down Mr. Ross for nearly thirty 6 minutes, even as Mr. Ross's behavior became increasingly erratic and unpredictable. See 7 Dow BWC at 11:09:00-11:37:02. At the beginning of their interaction, when Plaintiff 8 suddenly ran past both deputies and out of the apartment to lock himself in his car, they 9 allowed him to exit the residence and slowly approached his vehicle and continued 10 attempting to verbally calm him.

Id. at 11:15:32-11:19:20. When Deputy Dow requested 11 that he lower his car window so that she could hear what he was saying, Mr. Ross instead 12 screamed and repeatedly slammed his hands on both his car door and steering wheel before 13 suddenly running out of the car and past the deputies again. *Id.* at 11:19:20-11:31:38. 14 Even so, neither deputy resorted to the use of force.

When Mr. Ross began banging on Ms. 15 Estrada's vehicle and suddenly ran towards Deputy Saunders—less than ten feet away from 16 him—the deputies still did not resort to force. They instead issued thirty-five verbal 17 commands to get on the ground, seven more verbal commands to turn around, and only 18 after all these commands were ignored did Deputy Saunders deploy

any physical force 19 whatsoever.⁹ Id. 20 Contrary to Plaintiff's argument that the deputies "utterly fail[ed] to consider" his 21 mental disturbance in their response to him, Pl.

Opp. Br. at 19, the Court finds that the 22 deputies reasonably accounted for his mental illness by choosing to employ less intrusive 23 alternatives to physical force for as long as possible, up till the moment they determined 24 that his unpredictable and physically volatile behavior posed an immediate threat. While 25 it is true that courts must consider mental illness in determining the reasonableness of law 26 27 9 Plaintiff himself concedes that Deputy Saunders shouted these commands at Mr. Ross for several 28 1 enforcement's use of force, "[the fact] that an individual who poses an immediate threat 2 may be mentally ill does not remove the case from the Graham analysis.... [a]ny mental 3 health crisis experienced is considered in view of the surrounding circumstances." Hart v. 4 City of Redwood City, 99 F.4th 543, 555 (9th Cir.

2024); see also Sok Kong Tr. for Map 5 Kong v. City of Burnsville, 960 F.3d 985, 993 (8th Cir. 2020) ("mental illness or 6 intoxication does not reduce the immediate and significant threat a suspect poses"). Here, 7 the deputies were attentive and responsive to Plaintiff's mental health issues throughout 8 the entire interaction. Deputy Dow testified that "right from the get-go," she suspected that 9 Plaintiff was having a "mental health episode" or under the influence of a controlled 10 substance due to his bizarre behavior.

Dow Dep. Tr. at 68:14-70:15. She explained that 11 she "tried to speak with at more of a lower, more understanding tone," "tried to reiterate 12 multiple times we were there to help him and no was there [to hurt him]," and "tr[ie]d to] 13 bring down the intensity of the interaction based on the concern that there was a potential 14 mental health issue." Id. at 72:25-73:12.

Only when his actions—likely caused or 15 exacerbated by his mental breakdown—posed an immediate threat to the deputies and 16 nearby civilians, did Deputy Saunders resort to any force. Id. at 77:18-79:1. 17 In sum, the deputies used a low to intermediate level of force to restrain the wild and 18 erratic actions of a man having a mental health breakdown after attempting less intrusive 19 alternatives for thirty minutes.

Under these circumstances, no reasonable jury could find 20 that the force that Deputy Saunders deployed was objectively unreasonable. See Tatum, 21 441 F.3d at 1090 (officers did not use excessive force in using an arm bar while forcing 22 plaintiff suspected of drug use to ground); see also Gregory, 523 F.3d at 1108 (officers did 23 not use excessive force in using a chokehold, handcuffs, and bodyweight to restrain 24 plaintiff suspected of drug use).

While the deputies did not believe that Plaintiff had 25 committed a serious crime, the totality of the circumstances nevertheless justified Deputy 26 Saunders' use of the low to intermediate level of force he employed. See, e.g., Arpin v. 27 Santa Clara Valley Transp. Agency, 261 F.3d 912, 921

(9th Cir. 2001) (objectively 28 reasonable to handcuff and twist arm of person who was not suspected of a serious crime 1 but resisted arrest).

The Court therefore finds that Deputy Saunders did not subject Plaintiff 2 to excessive force when he brought him to the ground. Because the undisputed facts 3 establish that there was no constitutional violation, as required by the first prong of the 4 qualified immunity analysis, the Court need not reach the second “clearly established law” 5 prong to conclude that Deputy Saunders is entitled to qualified immunity for his actions up 6 to this juncture.

See Pearson, 555 U.S. at 236-237. 7 C. Deputies Saunders and Dow’s Actions While Holding Plaintiff on the Ground 8 Were Not Objectively Unreasonable 9 The Court next turns to the second phase of the physical encounter, during which 10 Deputies Saunders and Dow attempted to restrain and handcuff Plaintiff after he was 11 brought to the ground by Deputy Saunders.

12 The Court begins this analysis by measuring “the quantum of force used” by 13 Deputies Dow and Saunders as they were mounted on top of Plaintiff trying to immobilize 14 him. During this second phase of the physical confrontation, Deputy Dow attempted to 15 restrain Plaintiff’s legs by holding them and rolling her baton on his calves to induce pain 16 (a common “pain compliance technique” used by law enforcement to subdue individuals), 17 while Deputy Saunders deployed two closed fist strikes to Plaintiff’s head, and one knee 18 strike to his back.

Dow Rep. at 2-3; Dkt. 101, San Diego County Sheriff’s Office – Use of 19 Force Guidelines (“Force Guidelines”) at 6; see also Dow Dep. Tr. at 80:22-25. Both the 20 Force Guidelines and Ninth Circuit caselaw categorize pain compliance techniques like 21 those used by Deputy Dow as the lowest level of physical force. Force Guidelines at 7 22 (categorizing pain compliance techniques including baton rolling as the lowest of the 23 County’s force categories); see, e.g., Brooks v. City of Seattle, 599 F.3d 1018, 1027-28 (9th 24 Cir.

2010), on reh’g en banc sub nom Mattos v. Agarano, 661 F.3d 433 (9th Cir. 2011) 25 (Mattos II) (classifying pain compliance techniques as “less than intermediate” force); 26 Forrest v. City of San Diego, 25 F.3d 804, 807 (9th Cir. 1994) (describing pain compliance 27 techniques as “less significant than most claims of force”). Deputy Saunders, on the other 28 hand, deployed more significant force in the form of two closed fist strikes to Mr. Ross’s 1 head and one knee strike to his back.

See, e.g., Garlick, 167 F. Supp. at 1147 (E.D. Cal. 2 2016) (“[I]mpact blows by punching or kicking are considered ‘significant force.’”); 3 Aranda v. City of McMinnville, 942 F. Supp. 2d 1036, 1105 (D. Or. 2013) (finding that 4 closed fist and knee strikes to an individual’s head are a “significant” use of force); 5 Zawacky v. Clark Cnty., No. C22-5101-KKE, 2024 WL 2133956, at *4 (W.D.

Wash. May 6 10, 2024) (“Impact blows, such as face punches... are generally considered significant 7 intermediate force.”) (quotation marks omitted). 8 By this point in the interaction, the Court finds that even Deputy Saunders’ higher 9 degree of force was objectively reasonable given that Mr. Ross’s erratic behavior had 10 escalated to active resistance to arrest, which significantly increased the immediate danger 11 to the officers and nearby civilians.

As the Ninth Circuit has repeatedly explained, “all 12 resisting suspects pose some risk to officer safety,” *Smith v. Agdeppa*, 81 F.4th 994, 1013 13 (9th Cir. 2023), and “even passive resistance supports the use of some degree of 14 governmental force if necessary to attain compliance.” *Bryan*, 630 F.3d at 830.

However, 15 the government’s interest in using force is significantly greater when a person is actively 16 resisting arrest, even when the person is mentally ill, because of the “greater threat to the 17 officers” and the “risk of death or serious injury to the officers or [others] in the [vicinity].” 18 *Isayeva v. Sacramento Sheriff’s Dep’t*, 872 F.3d 938, 949 (9th Cir.

2017) (deadly force 19 used against mentally ill and actively resisting plaintiff was objectively reasonable given 20 the increased “perceived threat to any reasonable officer” caused by his resistance); see 21 also *Marquez*, 693 F.3d at 1175 (reasonable for officers to believe they were in immediate 22 danger and to therefore use deadly force in light of plaintiff’s active resistance, mental 23 illness, and assaultive behavior).

24 Contrary to Plaintiff’s assertions that “Mr. Ross did not resist arrest at any point” 25 and “offered no more than passive resistance at most,” Pl. Opp. Br. At 16, the video footage 26 shows that Plaintiff fiercely and violently struggled with both Deputies Saunders and Dow 27 on the ground for three full minutes before Deputy Ramos arrived. While all factual 28 inferences are drawn in favor of the party opposing summary judgment, this is only “so 1 long as their version of the facts is not blatantly contradicted by the video evidence.” *Vos 2 v. City of Newport Beach*, 892 F.3d 1024, 1028 (9th Cir.

2018) (internal citation omitted). 3 Here, the video evidence shows that Mr. Ross was actively resisting arrest: first, by 4 attempting to turn and pull away from Deputy Saunders as he tried to handcuff him; second, 5 by flexing his hands, kicking his legs, and resisting Deputies’ Dow and Saunders’ attempts 6 to turn him once on the ground; third, by continuing to kick, flex, and thrash to frustrate all 7 three deputies’ attempts to handcuff him after Deputy Ramos arrived; and fourth, by 8 continuing to resist the deputies’ attempts to turn him over even after he had been 9 handcuffed.

Saunders BWC at 11:36:45-11:41:02. There can therefore be no reasonable 10 dispute that Plaintiff was actively resisting arrest after he was brought to the ground. See, 11 e.g., *Mattos II*, 661 F.3d at 445 (woman pulled over for speeding actively resisted arrest 12 when she refused to

get out of her car, stiffened her body, and clutched at her steering wheel); Arpin, 261 F.3d at 922 (suspect actively resisted being handcuffed by stiffening her arm and attempting to “pull free”).

Under these circumstances—where Plaintiff, in a mentally unsound state, frightened his roommates and posed a threat to officers; refused to comply with repeated officer orders to surrender, turn around, or get on the ground; and then began actively and fiercely resisting arrest when officers attempted to use less forceful means of gaining compliance— no reasonable jury could conclude that the low to intermediate force used by Deputies Dow and Saunders was unconstitutionally excessive.

And as Defendants correctly argue, by this juncture, Plaintiff’s active resistance to arrest constituted its own serious crime, a potential felony, further justifying the use of force under Graham. 490 U.S. at 396 (including severity of the crime as a factor in determining reasonableness of a use of force); D. Mot. Summ. J. at 15.

Because the Court finds that their uses of force were objectively reasonable based on the undisputed facts, the Court finds that Deputies Dow and Saunders are entitled to qualified immunity. Even if a reasonable jury could find that the low to intermediate force used by Deputies Dow and Saunders was excessive, Plaintiff has not met his burden of identifying a case that provided them notice that their conduct was unlawful.

To defeat qualified immunity, “a plaintiff must show that the officer’s conduct was so egregious that any reasonable person would have recognized a constitutional violation,” *Gasho v. United States*, 39 F.3d 1420, 1438 (9th Cir. 1994) (internal quotations omitted), by finding a case that is sufficiently similar that it “squarely governs the specific facts at issue.” *Kisela*, 584 U.S. at 104 (internal quotations omitted).

Plaintiff argues that *Scott*, 550 U.S. at 383, and *Deorle*, 272 F.3d at 1281, constitute clearly established law that put Deputy Saunders on notice that his uses of force were unconstitutional. This argument fails for two reasons.

First, the *Scott* court approved of the use of force at issue—ramming into the bumper of fleeing motorist and causing severe and permanent injury—as objectively reasonable. *Scott*, 550 U.S. 372, 381. Even if it bore some similarity to the facts of this case, it therefore could not have the effect of warning officers that such a use of force was excessive.

Second, the *Deorle* case also fails to function as a clear prohibition on the actions in this case because it is too factually dissimilar. *Deorle* involved a much greater use of force and a plaintiff who offered no resistance. Like Mr. Ross, the plaintiff in *Deorle* was also suffering a mental breakdown, but, unlike Mr. Ross, he was “physically compliant and generally followed all the officers’ instructions,” including obeying the officers’ instructions to drop his weapon.

Deorle, 272 19 F.3d at 1277-78. Despite this lack of resistance or threat, the officer shot the plaintiff in 20 the face with a lead bullet without any warning—a use of force that could be fatal—simply 21 because he “walk[ed] directly at [the officer] at a steady gait” from more than twenty-five 22 feet away. Id. at 1279. Those actions were held to be excessive because of the total lack 23 of resistance from the plaintiff; by contrast, in this case, the officers confronted a 24 noncompliant and fiercely resisting plaintiff who posed a significant potential danger to 25 officers and nearby civilians.

In addition, the Ninth Circuit found the lack of any warning 26 to be a significant factor weighing against the reasonableness of that use of force; here, the 27 deputies issued 42 warnings to Plaintiff before using force. Neither of these cases, 28 1 therefore, constitute “clearly established law” that would notify reasonable officers that the 2 actions in question violate the constitution.

Kisela, 584 U.S. at 106. 3 Because no reasonable jury could conclude that Deputy Saunders’ use of force 4 against Mr. Ross was excessive, and because his use of force did not violate clearly 5 established law, Deputies Dow and Saunders are entitled to qualified immunity with 6 respect to their uses of force in the second phase of the interaction. See Saucier v. Katz, 7 533 U.S. 194, 201-2 (2001).

8 D. Deputy Ramos’ Taser Deployments and Fist Strikes Were Not 9 Unconstitutionally Excessive
10 The Court next considers whether Deputy Ramos’ use of force upon his arrival, 11 including two Taser deployments and fist strikes, was excessive and unreasonable.10 Pl. 12 Opp. Br. at 20-22. 13 Based on its review of Ninth Circuit caselaw, the Court concludes that Deputy 14 Ramos’ two “dart-mode” Taser deployments and use of two closed-fist strikes against 15 Plaintiff constituted “significant intermediate force.” See Bryan, 630 F.3d at 826 (Tasers 16 and stun guns fall into the category of intermediate or medium force); see also Zawacky, 17 2024 WL 2133956, at *4 (collecting Ninth Circuit cases and finding that “[i]mpact blows, 18 such as face punches... are generally considered significant intermediate force.”).

This 19 “significant, intermediate” amount of force must then be balanced against the 20 Government’s interest in using it using the Graham factors. 21 The Court finds that the significant, intermediate use of force was nevertheless 22 objectively reasonable given the immediate danger that Plaintiff’s continued forceful and 23 active resistance to arrest posed to himself, the deputies, and nearby civilians.

By the time 24 25 10 Plaintiff states in his opposition, without any evidentiary basis, that Deputy Ramos deployed his 26 Taser three times instead of two. Pl. Opp. Br. at 20. The record evidence, as well as the corresponding section of the opposition briefing, reflect that Deputy Ramos deployed his Taser twice.

The Court 27 presumes that this was a typographical error and analyzes the two Taser deployments in the record; however, even assuming three Taser deployments instead of two, the Court's conclusion would remain 28 1 Deputies Saunders and Dow called Deputy Ramos for backup, they had been 2 unsuccessfully attempting to restrain Plaintiff for over three minutes.

When Deputy Ramos 3 arrived on the scene, he saw both deputies on the ground with Mr. Ross, struggling with 4 great effort to hold him down. Ramos BWC at 11:38:30-11:39:15. Mr. Ross was not yet 5 handcuffed and was within arm's reach of the deputies' weapons. *Id.* It was therefore 6 objectively reasonable for Deputy Ramos to believe that Mr. Ross posed an immediate 7 threat to the safety of Deputies Dow and Saunders.

See *Smith v. City of Hemet*, 394 F.3d 868, 702 ("the most important of the Graham factors is the danger the suspect poses to the 9 officer or others"). As previously explained, the danger to both the deputies and nearby 10 civilians was significant throughout the entire encounter, but especially so after Plaintiff 11 began actively resisting the officers' attempts to safely detain him.

See *Isayeva*, 872 F.3d 12 at 949 (greater force justified when a mentally ill person resists arrest due to the "greater 13 threat to the officers" and the "risk of death or serious injury to the officers or [others] in 14 the [vicinity]."). 15 In addition, Deputy Ramos used only the force necessary to handcuff Plaintiff after 16 attempting less intrusive alternatives, which supports the reasonableness of his actions.

17 *Lowry v. City of San Diego*, 858 F.3d 1258, 1259 (use of less intrusive alternatives such as 18 verbal commands prior to using force weighs in favor of reasonableness). When Deputy 19 Ramos arrived, he did not immediately deploy his Taser; rather, he first attempted to assist 20 Deputy Saunders in placing Mr. Ross's hands behind his back by grabbing his left arm.

21 Ramos BWC at 11:38:30-11:39:15. Mr. Ross still continued to struggle and actively resist, 22 even with three deputies now attempting to handcuff him. *Id.* at 11:38:30-11:41:00. It was 23 only after several additional strikes from Deputy Saunders had failed, and Deputy Ramos 24 had lost control of Mr. Ross's arm, that Deputy Ramos decided to deploy his Taser to 25 prevent Mr. Ross from potentially grabbing one of the deputies' weapons.

Id.; see also 26 Ramos Dep. Tr. at 87, 186-7. Because Mr. Ross was not immobilized by the first Taser, 27 Deputy Ramos deployed his Taser again several seconds later. Ramos Rep. at 6. He then 28 delivered two closed-fist strikes to Mr. Ross's head, as Mr. Ross continued to struggle and 1 was still not handcuffed. *Id.*; see also Ramos BWC at 11:41:00-11:42:00.

Even so, it 2 still took almost three more minutes and great effort from all three deputies to finally 3 handcuff Mr. Ross, meaning none of the prior uses of force had been sufficient to 4 successfully detain him. Ramos BWC at 11:42:00-11:44:30.

The record reflects that the 5 deputies escalated their uses of force only in direct correlation to Mr. Ross's continued 6 resistance. 7 Given the undisputed facts on Mr. Ross's prolonged and active resistance; the danger 8 he posed to himself, all three deputies, and his roommates; and the unsuccessful efforts of 9 the deputies to use lesser amounts of force to detain Mr. Ross, the Court concludes that the 10 officers' need to safely restrain Mr. Ross justified Deputy Ramos' significant level of force.

11 See *Graham*, 490 U.S. at 396-97; *Hart*, 99 F.4th at 543 (objectively reasonable to use 12 deadly force against mentally ill man who refused to comply with officers' commands and 13 rapidly approached them); *A.B. v. Cnty. of San Diego*, No. 18CV1541-MMA-LL, 2020 WL 14 5847551, at *11 (S.D. Cal. Oct. 1, 2020) (objectively reasonable to use fist strikes and 15 Taser in dart-mode against mentally ill man who refused to comply with officers' 16 commands and resisted arrest), *aff'd*, No. 20-56140, 2022 WL 1055558 (9th Cir.

Apr. 8, 17 2022). 18 Even if a reasonable jury could find that Deputy Ramos' Taser deployments 19 constituted excessive force, Plaintiff has not met his burden of identifying a case that put 20 Deputy Ramos on notice that his actions were unlawful. Plaintiff points to *Bryan*, 630 F.3d 21 at 805, and *Mattos II*, 661 F.3d at 433, as "clearly established law" that should have put 22 Deputy Ramos on notice that his uses of force were excessive.

Pl. Opp. Br. at 20. Because 23 both cases are factually dissimilar, the Court disagrees. 24 25 26 11 Plaintiff asserts that Deputy Ramos lied about Mr. Ross attempting to bite him because the BWC 27 footage does not clearly show this happening.

Because the BWC footage is inconclusive, for purposes of summary judgment, the Court infers that Mr. Ross did not attempt to bite Deputy Ramos and does not rely 28 1 *Bryan* is fundamentally different from the situation at issue here because the *Bryan* 2 plaintiff posed no threat and offered no physical resistance when officers tased him. *Bryan* 3 involved a man who was also behaving erratically, wearing nothing but his underwear and 4 shouting gibberish.

630 F.3d at 805, 826. But unlike Mr. Ross, despite his unbalanced 5 state, it was undisputed that the *Bryan* plaintiff posed no threat: he never made any verbal 6 or physical threat to the officer or anyone else; he was clearly and visibly unarmed given 7 his nudity; and he was twenty-five feet away from the officer and facing away from him 8 when he was tased.

His only noncompliance was not remaining in his vehicle, a command 9 that he testified he didn't hear from the officer. Given the significant differences in the 10 potential danger to the officers, and Plaintiff's active resistance to arrest, *Bryan* cannot be 11 said to have provided notice to any reasonable officer that tasing a forcefully resisting 12 person was unconstitutionally excessive.

Scott v. Smith, 109 F.4th 1215, 1222 (9th Cir. 13 2024). 14 *Mattos II* also poses facts too dissimilar to the instant case to have provided notice 15 to Deputy Ramos that his actions could be

unconstitutional. *Mattos II* involved two 16 plaintiffs, a pregnant woman who had been pulled over for speeding, and a woman who 17 had been involved in a domestic dispute with her husband and requested assistance from 18 police.

661 F.3d at 433, 436-439. The first plaintiff's only noncompliance was refusing 19 to get out of the vehicle after having informed the officers she was pregnant. The officers 20 tased her three times in less than one minute, even as she offered no physical resistance 21 whatsoever. *Id.* The second plaintiff in *Mattos II* had asked her daughter to call 911 during 22 a domestic dispute with her husband.

Id. at 437-8. Her only act of noncompliance was not 23 immediately moving out of the way of an officer who had stepped towards her husband to 24 arrest him. While she attempted to defuse the situation verbally, the officer tased her 25 without warning. *Id.* at 437.

The Ninth Circuit held this to be unreasonable because 26 *Mattos'* resistance was "minimal," she was otherwise cooperating with the officers, and 27 "posed no threat to [them]." *Id.* at 449-451. Here, by contrast, Mr. Ross resisted fiercely 28 and posed a threat to himself, the officers, and nearby civilians. Neither scenario discussed 1 in *Mattos II* can be said to provide clear notice to "any reasonable officer" that it would be 2 unconstitutional to tase an actively resisting suspect.

Graham, 490 U.S. at 396. 3 Therefore, after reviewing the cases invoked by Plaintiff, the Court concludes that 4 Plaintiff has failed to carry his burden of identifying a case that would have put Deputy 5 Ramos on notice that his actions were unconstitutional. This Court's conclusion that the 6 force here does not violate clearly established law is further supported by *Spencer v. Pew*, 7 117 F.4th 1130 (9th Cir.

2024). Unlike *Mattos II*, and more like this case, *Spencer* involved 8 a plaintiff who resisted arrest by pushing one of the deputies with his shoulder and refusing 9 to place his hands behind his back. The deputies punched *Spencer* in the face, knocked 10 him to the ground, and tased him at least four times in rapid succession, while they also 11 repeatedly punched and kicked him on the ground.

Id. at 1134. Nevertheless, the Ninth 12 Circuit held that qualified immunity shielded the deputies' actions, because the Taser cases 13 identified by the *Spencer* plaintiff, including *Mattos II*, were "materially distinguishable" 14 given the differences in the levels of resistance. *Id.* at 1141. 15 In sum, even if a reasonable jury could find that Deputy Ramos' Taser deployments 16 and fist strikes constituted excessive force in this instance, because there was no clearly 17 established precedent governing the unconstitutionality of Tasers and fist strikes in the 18 situation that Deputy Ramos faced, see *id.*, 117 F.4th 1130, Deputy Ramos is also entitled 19 to qualified immunity with respect to these uses of force.

20 E. The Deputies' Use of Handcuffs and WRAP Restraints Was Not 21 Unconstitutional 22 Finally, the Court considers whether Deputies McCarthy, Dow, and Saunders' use 23 of handcuffs and a WRAP device for full-body immobilization constituted excessive force. 24 SAC at 9. 25 The Court concludes that the use of handcuffs and full-body restraints constituted a 26 significant but lesser use of force than the impact strikes and Taser deployments.

The Force 27 Guidelines place full-body restraints, including WRAP devices, on the same level as 28 Deputy Dow's pain compliance technique, the lowest amount of physical force. Force 1 Guidelines at 8. Multiple courts in this Circuit have likewise found that WRAP devices 2 and full-body restraints are lower than intermediate levels of force, given the purpose of 3 the device, the objectively lesser level of force compared to impact blows and other 4 intermediate uses of force, and the lower likelihood of injury.

See, e.g., A.B., 2020 WL 5 5847551 at (WRAP device was a "substantial" but less than intermediate use of force); 6 accord *Brown v. Basznianyn*, No. CV 21-00050-TUC-DCB, 2023 WL 3098982, at *13 (D. 7 Ariz. Mar. 29, 2023) (restraint chair was "non-trivial" but less than intermediate force). 8 The Court will therefore balance this less than intermediate force against the government's 9 interest in safely detaining Mr. Ross.

10 The Court finds that this lower level of force was objectively reasonable, given 11 Plaintiff's continued resistance to arrest even at this late stage, and the threat he posed to 12 the deputies and nearby civilians were he to break free from their restraint. Given that it 13 took a total of four deputies, ten minutes, two tases, and multiple impact strikes to 14 Plaintiff's head and back to restrain him, it is difficult to see how Plaintiff could have been 15 detained without the use of handcuffs.

Even after Mr. Ross was handcuffed, he still visibly 16 struggled against the efforts of three deputies to keep him still. Saunders BWC at 11:43:30- 17 11:46:38, Ramos BWC at 11:43:30- 11:46:38. Because of this resistance, he continued to 18 present a potential danger to himself and the deputies. See *Isayeva*, 872 F.3d at 949. It 19 was therefore objectively reasonable for the deputies to use additional restraints for their 20 own safety and to prevent plaintiff from harming himself or others.

See *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 593 (7th Cir. 1997) (citing *Mayard v. Hopwood*, 105 22 F.3d 1226, 1227–28 (8th Cir. 1997)) ("restraining a person in a prone position is not, in 23 and of itself, excessive force when the person restrained is resisting arrest"); accord *Tatum*, 24 441 F.3d at 1098. 25 In addition, even if a reasonable jury could find that these actions constituted 26 excessive force, Plaintiffs have not identified a single case that could have put the deputies 27 on notice that using a WRAP device to restrain an actively resisting individual would be 28 unlawful.

As such, the deputies are all entitled to qualified immunity with respect to this 1 final use of force. The Court therefore grants the deputies' motion for summary judgment 2 as to Plaintiff's first claim of excessive force. 3 F. Because the Deputies Did Not Commit a Constitutional Violation, The County 4 and Sheriff's Department Cannot Be Held Liable 5 The Court next considers Plaintiff's argument that the County of San Diego and the 6 San Diego Sheriff's Department are liable for the excessive force used by its employees.

7 SAC ¶¶ 82-84, 99, 103. 8 Municipalities such as the County of San Diego can be held liable for the 9 constitutional violations of their officers where their poor training or policies caused such 10 violations. *Monell*, 436 U.S. at 694 (1978); *City of Canton, Ohio v. Harris*, 489 U.S. 378, 11 385 (1989); see also *Davis v. City of Ellensburg*, 869 F.2d 1320, 1325 (9th Cir.

2011). It 12 is well-established that municipalities can only be held liable for such *Monell* claims when 13 there is in fact an underlying constitutional violation committed by its employee(s). See 14 *Long v. City and Cnty. of Honolulu*, 511 F.3d 901, 907 (2007) (where there was no 15 constitutional violation of plaintiff's rights by the defendant officers, there was "no basis 16 for finding the officers inadequately trained" to establish liability under *Monell*); *Scott v. 17 Henrich*, 39 F.3d 912, 916 (9th Cir.

1994) (same). Here, as discussed above, the deputies' 18 actions were objectively reasonable and therefore did not constitute a violation of Mr. 19 Ross's constitutional rights. In the absence of an underlying constitutional violation, the 20 County of San Diego and San Diego Sheriff's Department cannot be held liable and are 21 entitled to summary judgment on Plaintiff's third and fourth claims against them.

22 G. Plaintiff's Fourteenth Amendment Due Process Claim Fails As a Matter of Law 23 The Court next examines Defendants' argument that Plaintiff's Fourteenth 24 Amendment claim, while styled as a due process arbitrary arrest claim, is essentially 25 tantamount to an excessive force claim.

Because the appropriate vehicle for challenging 26 excessive force is the Fourth Amendment, any excessive force claims brought under the 27 Fourteenth Amendment would fail as a matter of law. *Def. Mot. Summ. J.* at 21-22; 28 *Graham*, 490 U.S. at 395 (holding that courts should analyze excessive force under the 1 Fourth Amendment's reasonableness standard, rather than under the Fourteenth 2 Amendment's Due Process Clause).

Upon reviewing Plaintiff's operative complaint, the 3 Court agrees with Defendants. While Plaintiff nominally brings this claim under the Due 4 Process Clause of the Fourteenth Amendment, the factual allegations in the complaint and 5 opposition briefing all relate to excessive force, rather than an arbitrary investigation and 6 arrest. See SAC ¶¶ 68-79. Plaintiff

appears to concede that his Fourteenth Amendment 7 claim is in essence an excessive force claim; he does not address these arguments in his 8 opposition briefing whatsoever.

Because the Fourteenth Amendment is not the appropriate 9 vehicle to challenge excessive force, the Court grants summary judgment and dismisses 10 Plaintiff's second cause of action. 11 H. The Court Declines Jurisdiction Over Plaintiff's Remaining State Law Claim 12 Because the Court has dismissed Plaintiff's federal claims, it declines to exercise 13 supplemental jurisdiction over Plaintiff's remaining state law claims of battery, negligence, 14 and violations of the Bane Act.

A court may exercise supplemental jurisdiction to hear a 15 litigants' state law claims that "derive from a common nucleus of operative fact[s]" as their 16 federal claims. 28 U.S.C. § 1367(c); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1174 17 (9th Cir. 2002). But where it has dismissed all federal claims over which it had original 18 jurisdiction, it may decline to extend its jurisdiction to the remaining state claims.

See 19 *id.*; *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010). In deciding whether 20 to continue to exercise supplemental jurisdiction, the Court considers the interests of 21 judicial economy, convenience, fairness, and comity. *City of Chicago v. Int'l College of 22 Surgeons*, 522 U.S. 156, 173 (1997); *Smith v. Lenches*, 263 F.3d 972, 977 (9th Cir.

23 2001). Here, the Court declines to exercise supplemental jurisdiction over Plaintiff's 24 remaining state law claims. Because the Court has dismissed all of Plaintiff's federal 25 claims—the claims that conferred original jurisdiction—the Court need not exercise 26 supplemental jurisdiction over the remaining state law claims. See 28 U.S.C. § 27 1367(c); *Sanford*, 625 F.3d at 561 ("[I]n the usual case in which all federal-law claims are 28 eliminated before trial, the balance of factors to be considered under the pendent 1 ||jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point 2 ||toward declining to exercise jurisdiction over the remaining state-law claims.") 3 (quoting *Carnegie—Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)).

Thus, 4 || Plaintiff's state law claims are dismissed without prejudice to refiling in state court. 5 IV. CONCLUSION 6 For the reasons described above, the Court grants Defendants' motion for summary 7 ||judgment and DISMISSES Plaintiff's federal claims with prejudice.

The Court declines to 8 ||exercise supplemental jurisdiction over Plaintiff's remaining state law claims and 9 || DISMISSES those claims without prejudice. The Court directs the Clerk of the Court to 10 || close the case. 11 12 || IT IS SO ORDERED. 13 14 || Dated: March 27, 2025 Qe 15 16 Honorable Jinsook Ohta" 7 United States District Judge 18 19 20 21 22 23 24 25 26 27 28 97