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Ross v. County of Lake

cand (May 23, 2025)

SUMMARY

The United States District Court for the Northern District of California grants in part defendants' motion to dismiss Andre M. Ross's claims concerning vehicle abatement, arrest, jail booking and DNA collection, state-law civil-rights violations, and claims under 42 U.S.C. §§ 1981, 1985, and 1986. The court finds the complaint insufficiently alleges facts supporting Fourth Amendment, Fourteenth Amendment, probable-cause, DNA-swab, Bane Act, and municipal-liability claims. The dismissal is with leave to amend in part.

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
ANDRE M. ROSS, Case No. 24-cv-09475-JSC 8 Plaintiff, ORDER RE: MOTION TO DISMISS
v. 9 Re: Dkt. No. 17 10 COUNTY OF LAKE, et al., Defendants. 11 12 13 On December 30, 2024,
Andre M. Ross sued County of Lake, Lake County Sheriff's 14 Office, and individuals employed
by these agencies. Mr. Ross alleges violations of his Fourth and 15 Fourteenth Amendment rights
when Defendants tagged his car for abatement, arrested him, and 16 completed jail booking
procedures.

Now pending before the Court is Defendants' motion to 17 dismiss. Having carefully considered
the parties submissions, and with the benefit of oral 18 argument on May 22, 2025, the Court
GRANTS Defendants' motion to dismiss with leave to 19 amend in part. 20 COMPLAINT
ALLEGATIONS 21 At approximately 9:00 p.m. on August 23, 2023, Mr. Ross "confronted an
adult male 22 intruder on the Premises [his home in County of Lake] who had broken into a
locked motor 23 vehicle thereby setting off the vehicle's alarm." (Dkt.

No. 1 ¶ 1.) Mr. Ross "fire[d] a warning 24 shot from his 12-guage shotgun in order to get the
intruder(s) attention and hopefully to scare the 25 intruder(s) away." (Id.) However, "the
intruder(s) breaking into Mr. Ross's motor vehicle chose 26 not to run away." (Id.) "Neighbors
and other persons were present to observe and overhear the 27 verbal exchanges that occurred
after Mr. Ross encountered the intruder." (Id.)

1 incident, "Mr. Ross supplied... his own description of pertinent facts and circumstances in 2
addition to responding to the deputies' questioning." (Id. ¶ 2.) Mr. Ross was arrested and 3
transported to Lake County Hill Road Jail Facility. (Id. ¶¶ 1, 3.) There, persons employed by 4

Lake County received Mr. Ross’s personal information, made a jail-booking intake photograph, 5 and retrieved a sample of his DNA using a mechanical swab device inserted into his mouth.

(Id. ¶ 6 3.) Shortly thereafter, the mugshot “and portions of the personal data supplied by Mr. Ross at the 7 time of his booking[] were rendered publicly accessible and immediately downloadable by the 8 defendant’s posting.” (Id.) 9 Mr. Ross “filed a timely government tort claim” in February 2024, which was 10 subsequently rejected. (Id. ¶ 19.)

In December 2024, Mr. Ross filed suit in this Court, suing 11 County of Lake; Lake County Sheriff’s Office; Sheriff of Lake County, Rob Howe; three Deputy 12 Sheriffs employed by Lake County Sheriff’s Office and County of Lake, Demetrius Donaldson, 13 Jeffrey Mora, and Corey Paulich; Director of Lake County Community Development Department 14 and Lake County Abandoned Vehicle Abatement Authority, Mireya G. Turner; and a Code 15 Enforcement Office trained and employed by Lake County Community Development Department 16 and Lake County Abandoned Vehicle Abatement Authority, Officer C. Colen (collectively, 17 “Defendants”).¹ The complaint alleges three causes of action: (1) unlawful arrest and jail booking 18 procedures in violation of the Fourth Amendment; (2) violation of Mr. Ross’s state law rights; and 19 (3) unlawful search of Mr. Ross’s property in violation of the Fourth and Fourteenth Amendments.

20 As discussed below and as Defendants acknowledge, these causes of action include several 21 “embedded claim[s].” (Dkt. No. 17 at 9.) Mr. Ross, who “has been a member in good standing of 22 the California State Bar since May of 1995,” (Dkt. No. 18 at 2), is representing himself in this 23 action. 24 1 The complaint’s caption also lists Lake County Community Development Department and Lake 25 County Abandoned Vehicle Abatement Authority as defendants, (Dkt.

No. 1 at 1), but these entities are not listed as parties in the complaint, (id. at 4-5). The motion to dismiss is on behalf of 26 “County of Lake (also sued as Lake County Community Development Department, Lake County Abandoned Vehicle Abatement Authority)” and the individual defendants. (Dkt. No. 17 at 2.) 27 Consistent with Defendants’ motion to dismiss, the Court understands the claims against Lake 1 In March 2025, Defendants moved to dismiss the complaint.

2 LEGAL STANDARD 3 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b) (6) challenges the 4 sufficiency of the complaint where the action fails to allege “enough facts to state a claim to relief 5 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has 6 facial plausibility when the plaintiff pleads factual content that allows the court to draw the 7 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 8 556 U.S. 662, 678 (2009).

The plausibility standard is not akin to a ‘probability requirement,’ but 9 it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Under Federal 10 Rule of Civil

Procedure 8(a)(2), a party is only required to make “a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 554 (cleaned up).

For purposes of ruling on a Rule 12(b)(6) motion, the court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the non-moving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, even under the liberal pleading standard of Rule 8(a)(2), “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (cleaned up). “Determining whether a complaint states a plausible claim for relief... [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

If a Rule 12(b)(6) motion is granted, a “district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (cleaned up). DISCUSSION A. Vehicle Tagging Claims (Count Three) 1 Notice—addressed to Mr. Ross as the registered owner of a vehicle “on/or adjacent to the property 2 located at:...

8710 Wight Way Kelseyville CA”—is dated August 18, 2023. (*Id.* at 17.) The 3 Notice states “Lake County Code Enforcement has identified [that vehicle] to be a public 4 nuisance, abandoned, wrecked, dismantled, or inoperable” and provides “ten (10) days from the 5 date of this letter to remove the vehicle.” (*Id.*)

In Count Three, Mr. Ross alleges the posting of 6 such Notice violated Mr. Ross’s Fourth and Fourteenth Amendment rights. Defendants move to 7 dismiss on the ground both claims fail as a matter of law. 8 1. Fourth Amendment 9 Mr. Ross alleges “[b]y entering onto the subject Premises, and/or the curtilage of that 10 residential real property, without the property owner’s prior consent and without an inspection 11 warrant justifying any such entry, in order to post an order requiring removal of a lawfully parked 12 motor vehicle, defendants... violated the Fourth Amendment to the United States Constitution.” 13 (Dkt.

No. 1 at 8.) 14 “The Fourth Amendment’s warrant requirement applies to entries into private premises to 15 search for and abate suspected or declared nuisances.” *Schneider v. Cnty. of San Diego*, 28 F.3d 16 89, 91 (9th Cir. 1994).

The Fourth Amendment protection extends to curtilage, defined “by 17 reference to the factors that determine whether an individual reasonably may expect that an area 18 immediately adjacent

to the home will remain private.” *United States v. Romero-Bustamente*, 337 F.3d 1104, 1107 (9th Cir. 2003) (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)).

But 20 “the Fourth Amendment’s protection of ‘persons, houses, papers, and effects’ does not apply to 21 open fields.” *Schneider*, 28 F.3d at 91. This is because “open fields do not provide the setting for 22 those intimate activities that the Amendment is intended to shelter from government interference 23 or surveillance.” *Oliver*, 466 U.S. at 179. 24 In this complaint, Mr. Ross fails to allege enough facts to support a plausible inference his 25 vehicle was located in his home’s curtilage when the abatement notice was posted.

The complaint 26 alleges “[t]his civil action is based upon... damages and harms sustained by Plaintiff ROSS on or 27 about August 16, 2023, and thereafter, both on and in the immediate vicinity of that residential 1 95451.” (Dkt. No. 1 ¶ 20 (emphasis added).) But Mr. Ross does not specify where his vehicle 2 was located with respect to his residential real property and what is meant by “on and in the 3 immediate vicinity.” Attached as Exhibit 2 to the complaint is “a public record created on or 4 about August 16, 2023... on behalf of Defendant Officer C. COLEN.” (Id. ¶ 20.)

While the 5 complaint does not explicitly allege as much, the Court assumes the photos depict Mr. Ross’s 6 vehicle as it was tagged on August 16, 2023. But the photos without more do not support an 7 inference Mr. Ross had a reasonable expectation of privacy in that location. Even the complaint’s 8 allegations about the August 23, 2023 vehicle break-in fail to specify where the car was located at 9 the time of the break-in.

(Dkt. No. 1 ¶ 1 (alleging “Mr. Ross informed LCSO’s responding deputy 10 that he had, at approximately 9:00 p.m., confronted an adult male intruder on the Premises who 11 had broken into a locked motor vehicle thereby setting off the vehicle’s car alarm”).) 12 In opposition, Mr. Ross contends Defendant Colen lacked reasonable grounds to conclude 13 the car was “abandoned, wrecked, dismantled or inoperative as was then required under Section 14 13.31 of the LCV Abandonment Ordinance” and that Defendant Colen lacked reasonable grounds 15 to conclude the car was a public nuisance.

(Dkt. No. 18 at 3.) But such arguments are beside the 16 point. For Fourth Amendment purposes, the question is whether Mr. Ross “exhibited an actual, 17 subjective expectation of privacy in the area entered” and if so, whether that expectation is “one 18 that society is prepared to accept as reasonable and therefore legitimate.” *Maisano v. Welcher*, 19 940 F.2d 499, 503 (9th Cir.

1991). To establish a reasonable expectation of privacy in a driveway, 20 for example, a plaintiff “must support that expectation by detailing the special features of the 21 driveway itself (i.e. enclosures, barriers, lack of visibility from the street) or the nature of activities 22 performed upon it.” *Id.* 23 Because the complaint fails to allege facts regarding the location of his vehicle and his

24 reasonable expectation of privacy in that location, Mr. Ross fails to allege a Fourth Amendment
25 claim related to the tagging of his vehicle.

So, this section 1983 claim fails. 26 2. Fourteenth Amendment 27 Count Three also alleges “[b]y
entering onto the subject Premises, and/or the curtilage of 1 vehicle or a duly noticed opportunity
for a hearing, Defendants... violated the Fourteenth 2 Amendment.” (Dkt. No. 1 ¶ 34.) Mr. Ross
appears to argue he was entitled to notice prior to the 3 entry onto his property/its curtilage for
purposes of tagging his vehicle.

Mr. Ross does not cite— 4 and the Court is not aware—of any case finding a procedural due
process right to such notice. As 5 discussed above, entry without a warrant implicates the Fourth
Amendment’s protections against 6 unreasonable searches, rather than the Fourteenth
Amendment’s procedural due process 7 protections. 8 To the extent Mr. Ross is arguing more
process was due to dispute the determination his 9 vehicle was a public nuisance, the Notice of
Abatement provided “[i]f you believe the County 10 should not abate and remove said vehicle(s)
you have a right to file an appeal and be heard before 11 the Lake County Vehicle Abatement
Officer” and described the process for filing an appeal or a 12 sworn statement disputing the
determination.

(Dkt. No. 1 at 17.) The opposition does not address 13 why such process is constitutionally
deficient. 14 Because Mr. Ross fails to allege facts supporting a reasonable inference his
Fourteenth 15 Amendment rights were violated, Mr. Ross’s section 1983 claim premised on a
Fourteenth 16 Amendment violation fails.

The Court GRANTS Defendants’ motion to dismiss Count Three. 17 B. Unlawful Arrest Claim
(Count One) 18 Count One alleges “[a]t the time the Defendant... arrested Plaintiff ROSS, the
arresting 19 officers DID NOT have reasonable suspicion and/or probable cause.” (Dkt. No. 1 ¶
22.)

The 20 complaint does not allege the grounds for Mr. Ross’s arrest. 21 “To prevail on his § 1983
claim for false arrest and imprisonment,” Mr. Ross must 22 “demonstrate that there was no
probable cause to arrest him.” *Cabrera v. City of Huntington Park*, 23 159 F.3d 374, 380 (9th
Cir.1998). Whether officers had probable cause to make an arrest 24 “depends... upon whether, at
the moment the arrest was made,... the facts and circumstances 25 within [the officers’]
knowledge and of which they had reasonably trustworthy information were 26 sufficient to
warrant a prudent man in believing that the petitioner had committed or was 27 committing an
offense.” *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964). “It doesn’t matter... if 1 *Blankenhorn v.*
City of Orange, 485 F.3d 463, 473 (9th Cir.

2007). “Probable cause may exist for 2 an arrest for a closely related offense, even if that offense
was not invoked by the arresting officer, 3 as long as it involves the same conduct for which the

suspect was arrested.” Id. (cleaned up). 4 “As long as the officers had some reasonable basis to believe [Mr. Ross] had committed a crime, 5 the arrest is justified as being based on probable cause.” Id. (cleaned up).

6 Defendants contend “the admission of the discharge of a 12-gauge shotgun with neighbors 7 and an intruder in the vicinity is sufficient probable cause for an arrest under” section 246.3 of the 8 California Penal Code. (Dkt. No. 17 at 7-8.) Section 246.3 creates an offense when “any person. 9.. willfully discharges a firearm in a grossly negligent manner which could result in injury or 10 death to a person.” “California courts have defined the elements of a section 246.3 offense to 11 include: ‘(1) the defendant unlawfully discharged a firearm; (2) the defendant did so intentionally; 12 and (3) the defendant did so in a grossly negligent manner which could result in the injury or death 13 of a person.’” *United States v. Coronado*, 603 F.3d 706, 711 (9th Cir.

2010) (quoting *People v. 14 Overman*, 126 Cal. App. 4th 1344, 1361 (2005)). The statute “does not require any intent to cause 15 harm.” Id. 16 Because Mr. Ross alleges he “did, in fact, discharge his weapon” but fails to allege facts 17 surrounding the circumstance of that discharge, the complaint does not support a reasonable 18 inference that the arrest was without probable cause.

(Dkt. No. 1 ¶ 1.) According to the 19 complaint, Mr. Ross “fire[d] a warning shot from his 12-gauge shotgun in order to get the 20 intruder(s) attention and hopefully to scare the intruder(s) away.” (Id.) But the complaint does not 21 allege where Mr. Ross stood when he fired the warning shot, in what direction he fired it, and who 22 else—if anyone—was nearby when he fired the shot.

For example, he alleges “[n]eighbors and 23 other persons were present to observe and overhear the verbal exchanges that occurred after Mr. 24 Ross encountered the intruder,” (id.), but does not allege where those neighbors were. There are 25 some facts about the warning shot in Exhibit 4 to the complaint, which Mr. Ross alleges is “a true 26 and correct photocopy of a public record prepared and then issued by the Lake County District 27 Attorney’s Office... pertaining to the Lake County District Attorney’s rejection of the criminal 1 purposes of a motion to dismiss when they are submitted with a complaint.” *Shah v. Cap.*

One 2 Fin. Corp., No. 24-CV-05985-TLT, 2025 WL 714252, at *3 (N.D. Cal. Mar. 3, 2025) (citing 3 *Durning v. First Bos. Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987)). But the form itself concludes 4 it “is unclear if the firing of the shotgun was appropriate under the circumstances,” in part because 5 it was “unclear how close any nearby residences were located.” (Dkt.

No. 1 at 22.) 6 Because Mr. Ross does not allege sufficient facts related to the “warning shot” he 7 discharged, including facts as to what the arresting officers knew about this warning shot, the 8 allegations do not support a plausible inference that the arresting officers lacked probable cause to

9 believe Mr. Ross committed a section 246.3 violation.² Drawing inferences in Mr. Ross’s favor,
10 given Mr. Ross’s allegation that he fired a “warning shot” with neighbors around, and without
any 11 other relevant factual allegations other than the District Attorney’s suggestion the firing
may not 12 have been appropriate, Mr. Ross has not plausibly alleged the arresting officers lacked
probable 13 cause.

14 C. DNA Swab (Count One) 15 In Count One, Mr. Ross alleges that Defendants acted
“unlawfully and unconstitutionally 16 in violation of ROSS’s privacy right(s) under the California
Constitution and/or the United States’ 17 Constitution” when they “seize[d] a sample of Plaintiff
ROSS’s DNA following his arrest.” (Dkt. 18 No. 1 ¶ 25.) Defendants move to dismiss on the
ground this claim is foreclosed by *Maryland v. 19 King*, 569 U.S. 435 (2013).

20 In *King*, the Supreme Court considered “whether the Fourth Amendment prohibits the 21
collection and analysis of a DNA sample from persons arrested, but not yet convicted, on felony
22 charges.” *Id.* at 442. The Court concluded the Fourth Amendment applies because “using a 23
buccal swab on the inner tissues of a person’s cheek in order to obtain DNA samples is a search.”
24 *Id.* at 446.

In assessing the reasonableness of the search, the Court recounted the substantial 25 ² Defendants
also assert the “allegations of a discharge of a 12-gauge shotgun with neighbors and 26 an intruder
in the vicinity reasonably provide separate probable cause for an arrest” based on violations of
California Penal Code sections 240 (assault), 245 (assault with a firearm), and 417 27
(brandishing).

(Dkt. No. 17 at 7-9.) Having concluded the allegations are insufficient to 1 government interest in
identification of the arrestee for purposes of determining whether the 2 individual should be
released on bail and avoiding inordinate risks to facility staff and detainees. 3 *Id.* at 451-55.
Meanwhile, a buccal swab involves a brief and minimal intrusion, and Maryland’s 4 law—
authorizing DNA collection from felony arrestees—had security procedures, for example, 5 that
the DNA sample cannot be placed in a database until the individual is arraigned and “a 6 judicial
officer ensures there is probable cause to detain the arrestee on a qualifying serious 7 offense.” *Id.*
at 443, 464-65.

So, the Court held, “[w]hen officers make an arrest supported by 8 probable cause to hold for a
serious offense and they bring the suspect to the station to be detained 9 in custody, taking and
analyzing a cheek swab of the arrestee’s DNA is, like fingerprinting and 10 photographing, a
legitimate police booking procedure that is reasonable under the Fourth 11 Amendment.” *Id.* at
465–66.

12 Subsequently, the Ninth Circuit considered whether California’s DNA collection 13 scheme—
which requires all persons arrested for or charged with any felony or attempted felony to 14

submit DNA samples for inclusion in law enforcement databases—was “constitutional as applied 15 to anyone arrested for, or charged with, a felony offense by California state or local officials.” 16 *Haskell v. Harris*, 745 F.3d 1269, 1271 (9th Cir.

2014) (en banc) (quotation marks omitted). The 17 Ninth Circuit held that “[a]fter *Maryland v. King*, the answer is clearly yes.” *Id.* (citation omitted). 18 *King* and *Haskell* involved individuals arrested for felony offenses.

In this case, Mr. Ross 19 does not allege on what grounds he was arrested. Exhibit 4 suggests he may have been arrested 20 for violating Penal Code sections 246.3 and 135. (Dkt. No. 1 at 21.) Section 246.3 can be charged 21 as a felony, see Cal. Penal Code § 246.3(a); Penal Code § 1170(h), although the trial court can 22 exercise its discretion to impose sentence as either a felony or misdemeanor offense.

People v. 23 *Feaster*, 102 Cal. App. 4th 1084, 1094 n.3 (2002). Section 135 is a misdemeanor. Cal. Penal 24 Code § 135 (“A person who... willfully destroys, erases, or conceals” evidence “is guilty of a 25 misdemeanor.”). But lacking allegations as to the grounds for Plaintiff’s arrest, the Court cannot 26 conclude that Mr. Ross plausibly alleges the DNA swab was unconstitutional.

So, the Court 27 dismisses the Count One claim as it relates to the DNA swab. D. Tom Bane Civil Rights Act (Count Two) 1 Count Two alleges Defendants “violated Plaintiff ROSS’s rights under California Civil 2 Code § 52.1” and “COUNTY OF LAKE is vicariously liable, pursuant to California Government 3 Code § 815.2 for violation(s) or rights by its employees and agent.” (Dkt.

No. 1 ¶¶ 30-31.) 4 Defendants move to dismiss on the ground “the Bane Act claim (and all state law claims) is 5 untimely and barred for failure to comply with California Government Code section 945.6.” (Dkt. 6 No. 17 at 14.)

The Court agrees. 7 “Government Code section 945.6, subdivision (a)(1) prescribes that an action against a 8 public entity must be brought within six months of written notice of a claim denial.” *Him v. City 9 & Cnty. of San Francisco*, 133 Cal. App. 4th 437, 441 (2005). One issue is Mr. Ross does not 10 allege an exact date for purposes of calculating the section 945.6 filing deadline.

He alleges he 11 filed “a timely government tort claim... which was subsequently rejected on or about June 24, 12 2024.” (Dkt. No. 1 ¶ 19 (emphasis added)). If the rejection date for purposes of section 945.6 was 13 precisely June 24, 2024, then the deadline to file the complaint was December 24, 2024, and the 14 complaint filed on December 30, 2024 was untimely.

15 In their motion, Defendants convey their understanding that “the proof of service actually 16 shows the date of mailing of the rejection was June 26, 2024.” (Dkt. No. 17 at 14.) But even were 17 June 26, 2024 the date the rejection was “deposited in the mail,” *Him*, 133 Cal. App. 4th at

442, 18 the deadline to file would be December 26, 2024. So, even in this circumstance, the complaint 19 filed on December 30, 2024 was untimely.

See *Edgington v. Cnty. of San Diego*, 118 Cal. App. 3d 20 39, 42 (1981) (affirming that a complaint filed “one day too late” was barred by the statute of 21 limitations in section 945.6(a) (1)). 22 In opposition, Mr. Ross contends “the subject filing was hand-delivered to the Court 23 Clerk’s Reception Box on Friday, December 27, but was not back-dated by the Court Clerk who 24 received the filing the following Monday” and requests the Court judicially notice “a true and 25 correct photocopy” of the envelope with a “Received” stamp dated December 27, 2024.

(Dkt. No. 26 18 at 5; Dkt. No. 19.) But a stamped envelope is not appropriate for judicial notice. See Fed. R. 27 Evid. 201(b) (stating “[t]he court may judicially notice a fact that is not subject to reasonable 1 dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can 2 be accurately and readily determined from sources whose accuracy cannot reasonably be 3 questioned”).

And regardless, a December 27, 2024 filing would have still been untimely based 4 on a June 26, 2024 mailing date. 5 Mr. Ross also states he “is willing and able to affirm, under penalty of perjury, that he 6 brought his complaint to the Court Clerk’s address at 450 Golden Gate Ave, San Francisco on 7 Tuesday, December 24, 2024 for timely filing, but that the building had already been locked down 8 for the Christmas Holidays.” (Dkt.

No. 18 at 5.) If December 24, 2024 was a court holiday, then 9 the period for filing would be “extended to and includ[e] the next day that is not a holiday.” See 10 Cal. Civ. Proc. Code § 12a; see also *Deleon v. Bay Area Rapid Transit Dist.*, 33 Cal. 3d 456, 457 11 (1983) (holding “section 12a, which extends the time period when the last day for performing an 12 act falls on a holiday, is applicable to the time limit of Government Code section 945.6 for 13 bringing an action against a public entity”).

But, the complaint does not allege that December 24, 14 2024 was a court holiday, and it alleges Mr. Ross’s claim was denied on June 24, 2025. So, based 15 on the complaint’s allegations, the claim was untimely. The Court therefore GRANTS 16 Defendants’ motion to dismiss Count Two. 17 E. Section 1981, 1985, and 1986 Claims 18 Mr. Ross’s complaint references sections 1981, 1985, and 1986.

(Dkt. No. 1 ¶¶ 6 26.) 19 “Defendants submit that the allegations do not invoke this [sic] sections.” (Dkt. No. 17 at 10.) 20 The Court agrees that Mr. Ross fails to state claims for violations of these sections. 21 Section 1981 guarantees that “[a]ll persons... shall have the same right... to make and 22 enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and 23 proceedings for the security of persons and property as is enjoyed by white citizens.” 42 U.S.C. § 24 1981(a).

A plaintiff bringing a section 1981 claim “bears the burden of showing that race was a but-for cause of [his] injury.” *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 26 327, 333 (2020). Section 1985 prohibits conspiracies “for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws.” 42 U.S.C. § 1 (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any 2 person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and 3 (3) an act in furtherance of this conspiracy; (4) whereby a person is either injured in his person or property or 4 deprived of any right or privilege of a citizen of the United States.

5 *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir.1992). As to the second element, “there 6 must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind 7 the conspirators’ action.” *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). And “[s]ection 1986 8 imposes liability on every person who knows of an impending violation of section 1985 but 9 neglects or refuses to prevent the violation.” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 10 621, 626 (9th Cir.

1988). “A claim can be stated under section 1986 only if the complaint contains 11 a valid claim under section 1985.” *Id.* 12 As Mr. Ross fails to allege race-based discriminatory animus or that race was a but-for 13 cause of an injury, he fails to allege Defendants’ conduct fell within the purview of these statutes. 14 So, the Court GRANTS Defendants’ motion to dismiss the section 1981, 1985, and 1986 claims.

15 F. Claims against the County and its Departments 16 Defendants move to dismiss the claims asserted against the County of Lake and its 17 departments on the ground those claims “appear to be inappropriately based on respondeat 18 superior, and wholly omit any allegation based on policy.” (Dkt. No. 17 at 12.) 19 “Civil rights suits against local governments for constitutional violations by its officers 20 cannot proceed on respondeat superior liability.” *Vanegas v. City of Pasadena*, 46 F.4th 1159, 21 1167 (9th Cir.

2022). “[A] plaintiff must instead establish that the local government had a 22 deliberate policy, custom, or practice that was the moving force behind the constitutional violation 23 they suffered.” *Id.* (cleaned up); see *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 24 658, 684 (1978). “Where a plaintiff claims that the municipality has not directly inflicted an 25 injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and 26 causation must be applied to ensure that the municipality is not held liable solely for the actions of 27 its employee.” *Bd. of Cnty.*

Comm’rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 405 (1997). 1 policy, custom, or practice of County of Lake—or Lake County Sheriff’s Office, Lake County 2 Community Development Department, or Lake County Abandoned Vehicle Abatement 3 Authority—caused a constitutional violation. Nor does the complaint allege facts permitting a 4 reasonable inference “of a municipal

training policy that amounts to a deliberate indifference to 5 constitutional rights.” Vanegas, 46 F.4th at 1167 (cleaned up) (noting “Monell liability can turn 6 on a municipality’s failure to train its officers” when that failure the “amount[s] to a deliberate 7 indifference to the rights of persons with whom the police come into contact”).

8 That said, having dismissed the claims against County of Lake and its departments, the 9 Court declines to permanently dismiss those defendants from this action at this time. Mr. Ross’s 10 amended complaint may be able to state a claim against one or more of the entity defendants. See, 11 e.g., *Maricopa, Cnty. of, Arizona*, 116 F.4th 935, 939, 947 (9th Cir.

2024) (holding “Maricopa 12 County’s policy of posting photographs of arrestees” was not “constitutionally permissible” since 13 “[t]he state may not punish pretrial detainees without an adjudication of guilt”). So, the Court 14 declines to dismiss County of Lake and Lake County Sheriff’s Office from this action. 15 G. Official Capacity Claims 16 Defendants contend the claims against individual defendants in their official capacity 17 “should be dismissed as redundant to naming the County.” (Dkt.

No. 17 at 11.) “An official 18 capacity suit against a municipal officer is equivalent to a suit against the entity.” *Ctr. for Bio- 19 Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep’t*, 533 F.3d 780, 799 (9th Cir. 2008). 20 “When both a municipal officer and a local government entity are named, and the officer is named 21 only in an official capacity, the court may dismiss the officer as a redundant defendant.” *Id.* 22 Mr. Ross does not oppose dismissal of the defendants named in their official capacity.

23 And their presence in this suit does not further any interests. See *Lewis v. Clarke*, 581 U.S. 155, 24 162 (2017) (“In an official-capacity claim, the relief sought is only nominally against the official 25 and in fact is against the official’s office and thus the sovereign itself....

The real party in interest 26 is the government entity, not the named official.”). So, the Court dismisses the official capacity 27 claims against Rob Howe, Demetrius Donaldson, Jeffrey Mora, Corey Paulich, and Mireya Turner H. Individual Capacity Claims 1 Defendants contend the complaint is deficient as to the individual capacity claims against 2 Demetrius Donaldson, Jeffrey Mora, Corey Paulich, and Robe Howe.

In addition to the official 3 capacity suit, Defendants Donaldson, Mora, Paulich, and Rowe are all sued in an individual 4 capacity. (Dkt. No. 1 ¶¶ 9, 11, 12, 13.) 5 In a section 1983 claim, “a plaintiff must plead that each Government-official defendant, 6 through the official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 7 676.

Aside from the recitation of the parties (Dkt. No. 1 ¶¶ 9, 11, 12, 13), the complaint contains 8 no mention of Defendants Donaldson, Mora, Paulich, and Rowe. And so, the complaint lacks the 9 requisite specific factual allegations regarding these defendants’ alleged violations of the 10

constitution.³ So, the individual capacity claims against Defendants Donaldson, Mora, Paulich, 11 and Rowe are dismissed.

12 CONCLUSION 13 For the reasons stated above, the Court GRANTS Defendants' motion to dismiss Count 14 One (including the embedded claims), Count Two, and Count Three. The Court also dismisses the 15 individual capacity claims against Demetrius Donaldson, Jeffrey Mora, Corey Paulich, and Robe 16 Howe as the complaint fails to allege facts that plausibly support an inference any of these 17 defendants violated Mr. Ross's constitutional rights.

All of these claims are dismissed with leave 18 to amend. 19 The Court dismisses the official capacity claims against Rob Howe, Demetrius Donaldson, 20 Jeffrey Mora, Corey Paulich, and Mireya Turner without leave to amend as redundant of the 21 claims against the County and its departments.

The Court also dismisses the section 1981, 1985, 22 and 1986 claims without leave to amend. At the hearing, Mr. Ross stated he does not seek leave 23 to amend these claims. 24 An amended complaint is due by June 20, 2025.

The complaint must set forth each 25 separate claim in a separate cause of action and each cause of action must identify the specific 26 27 1 defendant(s) against whom the claim is made. For example, to the extent Mr. Ross alleges the 2 || publication of his photo violated his rights, that claim should be pled in its own cause of action. If 3 || Mr. Ross elects not to file an amended complaint, judgment will be entered in Defendants' favor.

4 The Court schedules an initial case management conference for September 3, 2025 at 2:00 5 p.m. via Zoom video. A joint case management conference statement is due one week in advance. 6 IT IS SO ORDERED. 7 Dated: May 23, 2025 8 ne CQUELINE SCOTT CORLEY 9 United States District Judge 10 11 12 13 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28