

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Michael Ward v. City of Redding, et al.

Ward v. Upshaw, No. 2:24-cv-0978 TLN AC PS (E.D. Cal. Apr. 3, 2025) (findings and recommendations) · No. 2:24-cv-0978 TLN AC PS · Decided April 4, 2025

SUMMARY

This document is a magistrate judge’s Findings and Recommendations in a pro se civil-rights action arising from a traffic stop and arrest by Redding police officers. It recommends granting defendants’ motion to dismiss the First Amended Complaint, which asserted claims under the Tom Bane Civil Rights Act, the First, Fourth, Fifth, and Fourteenth Amendments, the Americans with Disabilities Act, and the Rehabilitation Act, and recommends closing the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 4, 2025
DOCKET	2:24-cv-0978 TLN AC PS
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff, proceeding pro se, filed a First Amended Complaint asserting claims under the Tom Bane Civil Rights Act, the First, Fourth, Fifth, and Fourteenth Amendments, 42 U.S.C. § 1983, the Americans with Disabilities Act, and § 504 of the Rehabilitation Act. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), for judgment on the pleadings under Rule 12(c), for a more definite statement under Rule 12(e), and to strike under Rule 12(f). The magistrate judge issued findings and recommendations recommending dismissal without leave to amend.
STANDARD OF REVIEW	Rule 12(b)(6) dismissal tests the legal sufficiency of the complaint. The court accepted well-pleaded factual allegations as true, construed them in the light most favorable to plaintiff, and liberally construed the pro se pleading, but did not accept legal conclusions or allegations contradicted by properly incorporated materials. The court also applied the Rule 12 incorporation-by-reference and judicial-notice doctrines.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Michael Ward v. City of Redding, et al.

TOPICS

[motions to dismiss](#)
[civil procedure](#)
[section 1983](#)
[qualified immunity](#)
[ada / disability](#)

PRACTICE AREAS

[civil rights](#)
[constitutional law](#)
[civil procedure](#)
[police misconduct](#)
[disability discrimination](#)

QUESTIONS PRESENTED

1. Whether the complaint stated a Tom Bane Civil Rights Act claim based on alleged threats, intimidation, or coercion.
2. Whether Ward stated a First Amendment claim based on interference with his attempt to record police while detained.
3. Whether the alleged traffic stop, detention, and arrest violated the Fourth Amendment.
4. Whether the officers used objectively excessive force in removing and restraining Ward.
5. Whether the officers unlawfully seized Ward's vehicle keys.
6. Whether Ward stated a Fifth Amendment self-incrimination claim based on his refusal to identify himself.
7. Whether Ward plausibly alleged race discrimination in violation of the Fourteenth Amendment.
8. Whether Ward stated a municipal-liability claim under 42 U.S.C. § 1983.
9. Whether Ward stated claims under Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act.
10. Whether dismissal should be without leave to amend because amendment would be futile.

HOLDINGS

1. The complaint did not state a Bane Act claim because its only asserted basis for specific intent was an alleged verbal declaration that officers intended to use excessive force, and the incorporated video contradicted that allegation. Dismissal without leave to amend was recommended.
2. The officer defendants were entitled to qualified immunity because, at the time of Ward's detention, no clearly established First Amendment right permitted a person being detained for investigatory purposes to personally record his own detention. Dismissal without leave to amend was recommended.
3. Ward did not state a Fourth Amendment claim challenging the traffic stop, detention, or arrest because the officers had probable cause or reasonable suspicion for the initial stop and probable cause to detain and arrest him after his prolonged refusal to identify himself during the traffic stop. Dismissal without leave to amend was recommended.

4. Ward did not state an excessive-force claim because the complaint's conclusory allegations were contradicted by the incorporated video, which showed officers using minimal and objectively reasonable force to remove and restrain him after he failed to follow instructions and resisted the investigation. Dismissal without leave to amend was recommended.
5. Ward did not state an unlawful-seizure claim because the incorporated video showed that the officer placed the keys in the vehicle rather than throwing them on the ground or permanently depriving Ward of them. Dismissal was recommended.
6. Ward did not state a Fifth Amendment claim because he did not allege that any statement was compelled and used against him in a criminal proceeding. Dismissal was recommended.
7. Ward did not plausibly allege that the officers acted with discriminatory intent or purpose based on race. Dismissal was recommended.
8. Ward did not state a municipal-liability claim because he did not identify an official municipal policy, custom, or practice that caused a constitutional injury, and he did not adequately allege any underlying constitutional violation.
9. Ward did not state claims under Title II of the ADA or § 504 of the Rehabilitation Act because the complaint and incorporated video did not plausibly show wrongful arrest, failure to accommodate, or greater injury or indignity caused by disability discrimination. Dismissal was recommended.
10. Further leave to amend should be denied because amendment would be futile in light of the allegations and incorporated video evidence.

KEY QUOTATIONS

“The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint.” (at 5)

“There was, at the time of plaintiff’s detention, no “clearly established” First Amendment right for a person being detained for investigatory purposes to personally record his own detention.” (at 12)

“It is clear from the facts presented in the complaint and from the incorporated body camera footage that there was probable cause for both the initial stop and the arrest.” (at 17)

“The totality of the circumstances demonstrate that minimal force was used, and the force that was used was objectively reasonable in light of plaintiff’s resistance to the investigation.” (at 21)

“Here, given the facts alleged and the incorporation of video evidence into the complaint, it is clear that there are no additional facts that plaintiff can allege in order to sufficiently support any of his legal claims.” (at 32)

FACTUAL BACKGROUND

Ward was stopped by Redding police on November 4, 2023, after an officer believed his vehicle lacked a visible front license plate and another officer observed allegedly illegal window tint. Ward refused repeated requests to identify himself, and officers removed him from the vehicle, restrained and arrested him, and conducted an inventory search. Ward alleged that officers interfered with his attempt to record the encounter, used excessive force, seized or mishandled his keys, targeted him because of his race, and failed to accommodate alleged

physical disabilities. The body-camera footage relied on in the complaint showed the officers repeatedly requesting identification, using limited force to remove and restrain Ward after he did not follow instructions, placing the keys in the vehicle, and taking him to a hospital after he complained of injuries.

PROCEDURAL HISTORY

Ward alleged that Redding police officers unlawfully stopped, detained, arrested, and used force against him during a November 4, 2023 traffic stop, interfered with his recording, seized his keys, discriminated against him based on race, and failed to accommodate alleged disabilities. Defendants moved to dismiss and sought judicial notice of police records, audio, and body-camera videos. The court took judicial notice of the existence of the materials and incorporated the body-camera videos by reference because the complaint repeatedly relied on them. The magistrate judge recommended granting the motion to dismiss, denying further leave to amend as futile, and closing the case, subject to review by the assigned district judge.

DISPOSITION

dismissed

CASES CITED

- N. Star International v. Arizona Corporation Commission, 720 F.2d 578, 581 (9th Cir. 1983)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011)
- Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010)
- Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)
- Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001)
- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014)
- Ivey v. Board of Regents of University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982)
- Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992)
- Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)
- Lee v. City of Los Angeles, 250 F.3d 668, 688-689 (9th Cir. 2001)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998-1002 (9th Cir. 2018)
- Reese v. County of Sacramento, 888 F.3d 1030, 1040 (9th Cir. 2018)
- Sandoval v. County of Sonoma, 912 F.3d 509, 520 (9th Cir. 2019)
- Cornell v. City & County of San Francisco, 17 Cal. App. 5th 766, 804 (2017)
- Fordyce v. City of Seattle, 55 F.3d 436, 439 (9th Cir. 1995)

- *Askins v. U.S. Department of Homeland Security*, 899 F.3d 1035, 1044 (9th Cir. 2018)
- *Reed v. Lieurance*, 863 F.3d 1196, 1211 (9th Cir. 2017)
- *Lee v. City of San Diego*, No. 18-cv-0159 W (BLM), 2019 WL 117775, at *4 (S.D. Cal. Jan. 7, 2019)
- *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)
- *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)
- *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)
- *Kelly v. Borough of Carlisle*, 622 F.3d 248, 262 (3d Cir. 2010)
- *Mullenix v. Luna*, 577 U.S. 7, 13 (2015)
- *Albright v. Oliver*, 510 U.S. 266, 271 (1994)
- *West v. Atkins*, 487 U.S. 42, 48 (1988)
- *Williams v. Gorton*, 529 F.2d 668, 670 (9th Cir. 1976)
- *Rizzo v. Goode*, 423 U.S. 362, 371-372 (1976)
- *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)
- *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000)
- *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)
- *United States v. Sokolow*, 490 U.S. 1, 7 (1989)
- *United States v. Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2006)
- *Tarabochia v. Adkins*, 766 F.3d 1115, 1121 (9th Cir. 2014)
- *Ornelas v. United States*, 517 U.S. 690, 696 (1996)
- *Ashcroft v. al-Kidd*, 563 U.S. 731, 739 (2011)
- *Saucier v. Katz*, 533 U.S. 194, 206 (2001)
- *United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015)
- *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)
- *Bryan v. MacPherson*, 630 F.3d 805, 825 (9th Cir. 2010)
- *Garlick v. County of Kern*, 167 F. Supp. 3d 1117, 1144 (E.D. Cal. 2016)
- *Graham v. Connor*, 490 U.S. 386, 396 (1989)
- *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1056 (9th Cir. 2003)
- *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1013 (C.D. Cal. 2011)
- *United States v. Hensley*, 469 U.S. 221, 229 (1985)
- *Hayes v. Florida*, 470 U.S. 811, 816 (1985)
- *Chavez v. Robinson*, 12 F.4th 978, 999 (9th Cir. 2021)
- *Hiibel v. Sixth Judicial District Court*, 542 U.S. 177, 187-188, 190-191 (2004)
- *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-266 (1977)
- *James v. City of Seattle*, 2011 WL 6150567, at *13 (W.D. Wash. Dec. 12, 2011)
- *Whren v. United States*, 517 U.S. 806 (1996)
- *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166-1167 (9th Cir. 2005)
- *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403 (1997)

- Monell v. Department of Social Services, 436 U.S. 658, 690-691 (1978)
- Connick v. Thompson, 563 U.S. 51, 60-61 (2011)
- Weinreich v. Los Angeles County Metropolitan Transportation Authority, 114 F.3d 976, 978 (9th Cir. 1997)
- Zukle v. Regents of University of California, 166 F.3d 1041, 1045 (9th Cir. 1999)
- Sheehan v. City and County of San Francisco, 743 F.3d 1211, 1232 (9th Cir. 2014)
- Bresaz v. County of Santa Clara, 136 F. Supp. 3d 1125, 1132 (N.D. Cal. 2015)
- California Architectural Building Products v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1987)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153, 1156-1157 (9th Cir. 1991)

OPINION

(PS) Ward v. Upshaw

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 MICHAEL WARD, No. 2:24-cv-0978 TLN AC PS

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 CITY OF REDDING, et al., 15 Defendants. 16 17 Plaintiff is proceeding in this matter pro se, and pre-trial proceedings are accordingly 18 referred to the undersigned pursuant to Local Rule 302(c)(21). Defendants move for dismissal of 19 the operative First Amended Complaint pursuant to Federal Rule of Civil Procedure Rule 20 12(b)(6); and/or Judgment on the Pleadings pursuant to Rule 12(c); and/or a More Definite 21 Statement pursuant to Rule 12(e); and/or to Strike pursuant to Rule 12(f). ECF No. 15. Plaintiff 22 opposed the motion. ECF No. 17. Defendant replied (ECF No. 18), and later submitted a request 23 for judicial notice of documents in support of the motion to dismiss. ECF Nos. 19 (request), 20 24 (documents). For the reasons that follow, the undersigned recommends the motion to dismiss be 25 GRANTED and that this case be closed. 26 I. Background 27 A. The First Amended Complaint 28 Plaintiff's operative First Amended Complaint ("FAC") presents six putative causes of 1 action: (1) violation of the Tom Bane Civil Rights Act; (2) violation of the First Amendment right 2 to videotape the police; (3) violation of the Fourth Amendment; (4) violation of the Fifth 3 Amendment right to remain silent; (5) race discrimination in violation of the Fourteenth 4 Amendment; and (6) violation of the Americans with Disabilities Act and §504 of the 5 Rehabilitation Act. ECF No. 5 at 2-17. 6 Plaintiff's case arises out of a traffic stop that occurred on November 4, 2023, at 7 approximately 8:00 p.m. ECF No. 5 at 1. Plaintiff was pulled over by Officer Dahnke, who 8 informed plaintiff that he was being pulled over for driving without a front license plate. ECF

9 No. 5 at 6. Plaintiff did have a front license plate. Id. According to the operative complaint,
10 “Body Camera shows Officers Dahnke, and Upshaw suspiciously pulling Plaintiff over in a 11
12 dark secluded area of Redding under a bridge next to a parking lot away from the general public,
13 to keep from being recorded by bystanders” in a “calculated move.” Id. “The Officers Body 13
14 Camera video shows The following Officer Upshaw walking up to another officer (Unidentified)
15 arriving on scene not being truthful with his fellow officer an African American cop from what
16 it appears to be on video, audio recorded conversation between both, officer Upshaw stated
17 ‘He’s 16 pulling the race card, he says my partner and I are racially profiling him,’ other officers
18 African American ‘He Black’?, Upshaw ‘Yes’.” Id. at 6. Plaintiff refused to identify himself to
19 the 18 officers, invoking his Fifth Amendment right to be silent. Id. at 10. 19 One of the officers
20 stated they believed plaintiff was Michael Smith from Maryland and 20 that plaintiff was
21 unlicensed because the vehicle identification number came back registered to a 21 Michael Smith
22 from Maryland, and that the officers were waiting on a photo because plaintiff 22 wouldn’t
23 identify himself. Id. at 6. However, plaintiff contends that “Body Camera Footage 23 audio can be
24 heard between dispatch (SHASCOM-911) and Upshaw where SHASCOM 9-11 24 identified the
25 plaintiff vehicle is registered to Michael M Ward . . . , registration current, 25 insurance Valid, no
26 active warrants, no probation, no criminal history.” Id. at 7. 26 Plaintiff alleges he attempted to
27 invoke his First Amendment right to record the stop, but 27 “video camera footage, and audio
28 shows Officer Dahnke” telling plaintiff to turn off the phone 28 and put it down. Id. at 4. Then,
29 “documented on camera, the officers Byron Upshaw, Jacob 1 Gutrdig, and Chace Arnold
30 forcefully participated knocking plaintiffs phone out of plaintiffs right 2 hand, breaking plaintiffs
31 arm, with the intent to prevent plaintiff from ever being able to use that 3 arm again, using
32 excessive force.” Id. at 4-5. 4 Plaintiff alleges that “video, and audio evidence the Officer’s
33 Dahnke, Upshaw, Townelsy 5 are being witnessed Verbally threatened to use Excessive force
34 beyond what is necessary on the 6 Plaintiff to pull him out of his vehicle, and placed the Plaintiff
35 under false arrest instead of 7 simply asking the Plaintiff to step out, tum around, and to put his
36 hands up” and that “Officer 8 Upshaw, who was caught on his own axon body camera video not
37 being untruthful with his 9 supervisor about the true identity of the plaintiff, after the Plaintiff
38 identified himself to both 10 officers by name as documented on body camera, after the officers
39 identified the plaintiff Officer 11 Upshaw created a fictious suspects name, falsifying Plaintiffs
40 identity to get other officers 12 involved in carrying out an unlawful arrest of the Plaintiff, this is
41 done as a mechanism to cover 13 up the misconduct of both Upshaw, and Dahnke.” Id. at 3. 14
42 During the interaction, “it is documented on video plaintiff’s vehicle was completely shut 15 off,
43 hands on the steering wheel recording the interaction with the supervisor, 10 minutes 16 past,
44 video shows the supervisor opening Plaintiffs car door, as 4 cops rush plaintiffs vehicle 17 (swat
45 style), using Excessive Force by participant Officers Upshaw, Chase Arnold, Guterding in 18
46 pulling the Plaintiff out of his vehicle[.]” Id. at 8. A supervising officer told plaintiff that he was 19
47 not being charged with any crime. Id. The officers then used flashlights to search plaintiff’s 20

vehicle. Id. Plaintiff told the officers that they did not have his consent to search his vehicle. Id. 21 at 9. Plaintiff alleges “documented on video, and screenshot captured shows the same officer 22 Upshaw unlawfully seizing (theft of property) the Plaintiffs only car key, removing it from the 23 key chain that contained Plaintiffs house keys, and intentionally threw them onto the ground as 24 gathered as video evidence, the officer intentionally did perform this act out of malice, as a means 25 to deprive the Plaintiffs permanently of his vehicle during the time it was being unlawfully 26 impounded, and towed.” Id. at 8-9. 27 Plaintiff alleges that “the officer (older Caucasian male) who assisted [Defendant] Dahnke 28 in booking the Plaintiff into Shasta county jail is on audio comparing the plaintiff to Jay-Z said 1 that I look like a famous gangster rapper, that is discriminative and prejudicial, because the 2 Plaintiff looks nothing like Jay-Z, Plaintiff is no rapper, nor is the Plaintiff affiliated with any 3 gangs.” Id. at 11. 4 Plaintiff goes on to allege several separate interactions with Redding police officers. 5 Plaintiff alleges that on April 7, 2023, Redding officers followed him home and ran his license 6 plates, “until The officer did a U-turn . . . speeding off when the officer noticed I was recording 7 him or her.” Id. at 14. Plaintiff further alleges that on March 21, 2023, he was confronted by an 8 officer while getting gas, and plaintiff was asked to identify himself. Id. The officer refused to 9 identify himself to plaintiff. Id. Plaintiff next alleges that on January 17, 2024, he was followed 10 by Redding Police for 20 minutes before the officer quickly switched lanes and drove away. Id. 11 at 15. Plaintiff goes on to allege that on February 8, 2024, he was parked when two officers 12 approached a nearby white woman and asked the woman if plaintiff was trying to sell her drugs 13 or if he was harassing her, but the woman said she didn’t know the plaintiff, and the police 14 ultimately left. Id. 15

II. Analysis 16

A. Legal Standards 17

1. Rule 12, Fed. R. Civ. P. 18 “The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal 19 sufficiency of the complaint.” *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 20 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of 21 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t.*, 901 22 F.2d 696, 699 (9th Cir. 1990). 23 In order to survive dismissal for failure to state a claim, a complaint must contain more 24 than a “formulaic recitation of the elements of a cause of action;” it must contain factual 25 allegations sufficient to “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. 26 Twombly*, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a statement of 27 facts that “merely creates a suspicion” that the pleader might have a legally cognizable right of 28 action. Id. (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-35 1 (3d ed. 2004)). Rather, the complaint “must contain sufficient factual matter, accepted as true, to 2 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) 3 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads 4 factual content that allows the court to draw the reasonable inference that the defendant is liable 5 for the misconduct alleged.” Id. 6 In reviewing a complaint under this standard, the court “must accept as true all of the 7 factual allegations contained in the complaint,” construe those allegations in the

light most 8 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. See *Erickson v. Pardus*, 9 551 U.S. 89, 94 (2007); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 10 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); *Hebbe v. Pliler*, 627 F.3d 338, 340 (9th

11 Cir. 2010). However, the court need not accept as true legal conclusions cast in the form of
12 factual allegations, or allegations that contradict matters properly subject to judicial notice. See
13 *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *Spewell v. Golden State*
14 *Warriors*, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001). 15 Pro se pleadings
are held to a less stringent standard than those drafted by lawyers. 16 *Haines v. Kerner*, 404 U.S.
519, 520 (1972). Pro se complaints are construed liberally and may 17 only be dismissed if it
appears beyond doubt that the plaintiff can prove no set of facts in support 18 of his claim which
would entitle him to relief. *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 19 2014). The court's
liberal interpretation of a pro se complaint, however, may not supply essential 20 elements of the
claim that were not pled. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 21 266, 268 (9th Cir.
1982); see also *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). A pro se 22 litigant is entitled
to notice of the deficiencies in the complaint and an opportunity to amend, 23 unless the
complaint's deficiencies could not be cured by amendment. See *Noll v. Carlson*, 809 24 F.2d 1446,
1448 (9th Cir. 1987). 25 When ruling on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6),
courts generally 26 may not consider material outside the pleadings. *Lee v. City of Los Angeles*,
250 F.3d 668, 688 27 (9th Cir. 2001). If "matters outside the pleading are presented to and not
excluded by the court," 28 the district court may convert the 12(b)(6) into a motion for summary
judgment under Rule 56. 1 Fed. R. Civ. P. 12(d). In that case, the court must first give both parties
the opportunity "to 2 present all the material that is pertinent to the motion." *Id.* "There are two
exceptions to this rule: 3 the incorporation-by-reference doctrine, and judicial notice under Federal
Rule of Evidence 201." 4 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).
These procedures 5 permit the court to consider extrinsic materials in determining whether
plaintiff has stated a claim, 6 without converting the Rule 12 motion to one for summary
judgment. *Id.* 7 2. Judicial Notice 8 Federal Rule of Evidence Rule 201 allows a court to notice an
adjudicative fact if it is "not 9 subject to reasonable dispute." Fed. R. Evid. 201(b). A fact is "not
subject to reasonable dispute" 10 if it is "generally known," or "can be accurately and readily
determined from sources whose 11 accuracy cannot reasonably be questioned." Fed. R. Evid.
201(b)(1)-(2). Accordingly, "[a] court 12 may take judicial notice of matters of public record
without converting a motion to dismiss into a 13 motion for summary judgment." *Lee*, 250 F.3d at
689 (quotation marks and citation omitted). 14 The court may not, however, take judicial notice of
disputed facts contained in such public 15 records. *Id.* When taking judicial notice, a court must
specifically identify which facts it is 16 noticing, if any; "[j]ust because the document itself is
susceptible to judicial notice does not mean 17 that every assertion of fact within that document is
judicially noticeable for its truth." *Khoja*, 899 18 F.3d at 999. 19 "Unlike rule-established judicial

notice, incorporation-by-reference is a judicially created doctrine that treats certain documents as though they are part of the complaint itself. The doctrine prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims.” *Id.* at 1002. However, this doctrine does not apply to every external document mentioned within a complaint. A document is subject to the incorporation by reference doctrine “if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.” *Id.* (citing *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)). “However, if the document merely creates a defense to the well-pled allegations in the complaint, then that document did not necessarily form the basis of the complaint.” *Khoja*, 899 F.3d at 1002. Here, defendants ask the court to take judicial notice of multiple documents, audio recordings, and videos, including: (1) Redding Police Department Incident Report No. RPD23- 3 037076 (Exhibit A); (2) City of Redding Claim for Money or Damages, dated February 29, 2024 (Exhibit B); (3) Notice of Rejection of Claim from City of Redding, dated March 24, 2024 (Exhibit C); (4) several sections of the California Vehicle Code and the California Penal Code (Exhibits D-L); (5) thirty-eight SHASCOM audio recordings of the November 4, 2023, traffic stop and subsequent arrest of plaintiff, provided to the court and plaintiff via a USB flash drive; and (6) seven Police Bodycam Videos, obtained from Redding Police Department Officers Carnahan, Rabon, Arnold, Dahnke, Guterding, and Upshaw, as well as Corporal Townsley, all recorded on November 4, 2023, during the traffic stop and subsequent arrest of plaintiff, provided to the court and plaintiff via a USB flash drive. ECF No. 23 at 2-3. The court finds that all of the document and recordings are subject to judicial notice for the fact of their existence, though not for the truth of any facts which they may contain. The court grants the request for judicial notice insofar as the existence of each of these documents and recordings is deemed noticed. The police reports, videos, and recordings are not judicially noticeable for the truth of facts they contain. 3. Incorporation by Reference Defendants also invoke the incorporation by reference doctrine. ECF No. 23 at 5. “[W]ithin the Ninth Circuit, district courts are split on whether the incorporation-by-reference doctrine allows a court to consider an officer’s body-camera video in a Rule 12 motion.” *Lee v. City of San Diego*, No. 18-cv-0159 W (BLM), 2019 WL 117775, at *4 (S.D. Cal. Jan. 7, 2019). In *Lee*, the district court reasoned that the Ninth Circuit’s *Khoja* decision, referenced above, clarifies that when it comes to incorporation of video or audio recordings of an incident at issue in a complaint, it is not enough that the video or audio provide an understanding of the incident at issue. Instead, “the doctrine requires the complaint to refer to the material or that plaintiff’s claims are based on the material.” *Lee*, No. 2019 WL 117775, at *4 (emphasis original). The complaint in *Lee* was based on events surrounding the plaintiff’s arrest, but did not refer to body camera videos, and accordingly the court did not incorporate the videos by reference. The circumstances are very different in the case now before this court. The operative First Amended Complaint presents a relatively unique situation in the experience of the undersigned,

because it repeatedly and extensively refers to and relies upon the 5 officers' body camera footage and related audio recordings. The following is a non-exhaustive 6 sample of plaintiff's specific references to the video recordings in the First Amended Complaint 7 (ECF No. 5), by page and line number: 2:23 ("In reviewing video, and audio evidence the 8 Officer's Dahnke, Upshaw, Townsley are being witnessed Verbally threatened to use Excessive 9 force . . ."); 3:1 ("Video Evidence shows . . ."); 3:9 ("Officer Upshaw, who was caught on his 10 own axon body camera video . . ."); 3:12 ("Plaintiff identified himself to both officers by name as 11 documented on body camera"); 3:22 ("Officer can be heard on video (face concealed) mentioning 12 . . ."); 4:25 ("documented on camera, the officers . . . knocking plaintiffs phone out of plaintiffs 13 right hand, breaking plaintiffs arm . . ."); 5:13 ("Body Camera shows Officers . . . pulling Plaintiff 14 over in a dark secluded area . . ."). 15 Plaintiff not only acknowledges the existence of the body camera footage, but he also 16 repeatedly invokes the videos as documentation of his factual allegations. On these specific facts, 17 the court concludes that the seven Police Bodycam Videos, obtained from Redding Police 18 Department Officers Carnahan, Rabon, Arnold, Dahnke, Guterding, and Upshaw, as well as 19 Corporal Townsley, all recorded on November 4, 2023, during the traffic stop and subsequent 20 arrest of plaintiff, are subject to the doctrine of incorporation by reference. This body camera 21 footage has therefore been reviewed for purposes of the motion to dismiss, and the contents of the 22 recordings is deemed incorporated into the First Amended Complaint.

23 B. Bane Act Claim 24 "The Tom Bane Civil Rights Act, 1987 Cal. Stat. 4544, was enacted in 1987 to address 25 hate crimes. The Bane Act civilly protects individuals from conduct aimed at interfering with 26 rights that are secured by federal or state law, where the interference is carried out by threats, 27 intimidation or coercion." *Reese v. County of Sacramento*, 888 F.3d 1030, 1040 (9th Cir. 2018) 28 (internal quotations omitted). To support a Bane Act claim, a plaintiff must allege facts that show 1 the defendant had a "specific intent" to violate plaintiff's constitutional rights. *Sandoval v. 2 County of Sonoma*, 912 F.3d 509, 520 (9th Cir. 2018). To determine whether a defendant acted 3 with specific intent, the court looks at two factors: First, "[i]s the right at issue clearly delineated 4 and plainly applicable under the circumstances of the case," and second, "[d]id the defendant 5 commit the act in question with the particular purpose of depriving the citizen victim of his 6 enjoyment of the interests protected by that right?" *Cornell v. City & County of San Francisco*, 7 17 Cal. App. 5th 766, 804 (2017), as modified (Nov. 17, 2017). 8 Here, plaintiff asserts that the "video, and audio evidence of the Officer's Dahnke, 9 Upshaw, Townsley are being witness Verbally threatened to use Excessive force beyond what is 10 necessary on plaintiff to pull him out of his vehicle" rather than verbally asking plaintiff to step 11 out of the vehicle. ECF No. 5 at 2-3. The court has reviewed the video. After a lengthy 12 exchange between plaintiff and the officers during which the officers asked plaintiff to identify 13 himself and plaintiff refused, the officer speaking with plaintiff says "so that's where we're at. 14 I'm going to give you the option to either identify yourself or you're going to have to get out of 15 the car." AXON Body4 D01A08103 at 10:50. The officer then opens the car door and instructs 16 plaintiff

to put his hands on his head, which plaintiff does not do. *Id.* at 11:00. Two officers then reached in the vehicle, taking plaintiff by the arms, and pull him out of the car and onto the floor, where he is restrained and handcuffed. 11:40. As the handcuffs are being placed on him, plaintiff says “my arms and shit are fucking broken.” *Id.* The video that plaintiff cites in his complaint does not align with plaintiff’s assertion that the officers verbally stated that they intended to use excessive force beyond what was necessary. Because plaintiff’s only basis for a Bane Act claim was the verbal declaration of intent to violate plaintiff’s rights, which is belied by the very video plaintiff relies upon, this claim must be dismissed without leave to amend because plaintiff does not and cannot state a claim upon which relief can be granted. C. Plaintiff’s Constitutional Claims Plaintiff asserts claims for constitutional violations pursuant to 42 U.S.C. § 1983, which “is a method for vindicating federal rights elsewhere conferred.” *Albright v. Oliver*, 510 U.S. 266, 271 (1994). To state a claim under §1983, a plaintiff must allege facts from which it may be inferred (1) he was deprived of a federal right, and (2) a person or entity who committed the alleged violation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Williams v. Gorton*, 529 F.2d 668, 670 (9th Cir. 1976). A plaintiff must identify a specific injury he suffered and show a causal relationship between the defendant’s conduct and the injury. See *Rizzo v. Goode*, 423 U.S. 362, 371-72 (1976). An individual deprives another of a federal right “if he does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally required to do so that it causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Each of plaintiff’s constitutional claims is addressed below. 1. Plaintiff Does Not State a First Amendment Claim Plaintiff’s First Amendment claim is based on his contention that he was unlawfully prevented from photographing or videotaping the police during his interaction with them. ECF No. 5 at 4. Defendants move to dismiss, asserting that plaintiff does not have a viable cause of action. ECF No. 15-1 at 5. Defendants further assert leave to amend is not warranted because the officer defendants have qualified immunity. *Id.* at 9. Government officials are immune “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Ideally, qualified immunity is determined at the earliest possible stage in litigation to avoid unnecessary burden and expense. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Federal law has long been clear that there is a First Amendment Right to photograph and record “matters of public interest,” including interactions with police officers in public spaces. *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018); see also, *Reed v. Lieurance*, 863 F.3d 1196, 1211 (9th

28 Cir. 2017) (referencing “the First Amendment-protected activity of observing a government
1 operation” and citing Fordyce as “recognizing a ‘First Amendment right to film matters of public
2 interest’ – in that case, police actions during a public demonstration” (quoting Fordyce, 55 F.3d
at 3 439)). However, the established law regarding the right to record police interactions addresses
4 the rights of journalists, observers and bystanders—it does not recognize or directly address the
5 right of an individual to record while detained. 6 The facts related to the removal of plaintiff’s
phone in the complaint are somewhat 7 unclear and are inconsistent with the body camera footage.
Regardless, it is clear that plaintiff 8 was detained by the officers during the period at issue. As this
court explained in detail in *Alston 9 v. City of Sacramento*, No. 2:21-cv-2049 DAD AC PS, 2023
WL 6626174, at *11, 2023 U.S. 10 Dist. LEXIS 182975 (E.D. Cal. Oct. 11, 2023), report and
recommendation adopted, No. 2:21-cv- 11 2049-DAD-AC-PS, 2024 WL 733260 (E.D. Cal. Feb.
22, 2024), there is not a clearly established 12 right for a detained person to videotape or
photograph police while actively detained. This is 13 because the First Amendment is subject to
“time, place and manner restrictions” on otherwise 14 protected First Amendment activity. See
Askins, 899 F.3d at 1044. For example, in *Kelly v. 15 Borough of Carlisle*, the Third Circuit found
that there is not a clearly established right for a 16 person to videotape police while they are pulled
over on a traffic stop, because traffic stops have 17 been characterized as an “inherently dangerous
situation.” 622 F.3d 248, 262 (3rd Cir. 2010). 18 The *Kelly* court noted that the right to videotape
police “is subject to reasonable time, place, and 19 manner restrictions, as long as they are
‘justified without reference to the content of the regulated 20 speech, ... are narrowly tailored to
serve a significant governmental interest, and ... leave open 21 ample alternative channels for
communication of the information.” *Id.* (quoting *Ward v. Rock 22 Against Racism*, 491 U.S. 781,
791 (1989)). 23 Assuming that the Officers did prevent plaintiff from filming as he alleges,¹ the 24
1 It appears from the video footage cited by plaintiff that he was actually allowed to record the 25
entire encounter with the officers. At AXON BODY 4 D01A07333, plaintiff is debating with the
26 officers, and says “that would be considered racial profiling, and that’s exactly why I’m filming
this video . . . I’m filming this because . . .,” and Officer Dahnke replies, “that’s fine, we’re 27
filming it too.” 5:00-5:06. Another officer is heard stating, “you’re free to record” and Officer
Dahnke says, “we’re happy to have that.” Later in the encounter, at 7:08 in the video footage, 28
plaintiff aims the camera at Dahnke with the phone light on, and Officer Dahnke says, “please put
1 undersigned is skeptical of plaintiff’s assertion that he had a First Amendment right to record 2
while being actively detained and questioned by police. However, this court need not decide that 3
question because it is apparent that the officer defendants are entitled to qualified immunity. 4
There was, at the time of plaintiff’s detention, no “clearly established” First Amendment right for
5 a person being detained for investigatory purposes to personally record his own detention. 6
Accordingly, the defendants are immune from liability See *Mullenix v. Luna*, 577 U.S. 7, 13 7
(2015) (a right is not clearly established for qualified immunity purposes unless existing 8
precedent “squarely governs” the specific facts at issue). Accordingly, the court agrees with 9

defendants that this claim must be dismissed without leave to amend. 10 2. Plaintiff Does Not State a Fourth Amendment Claim 11 Plaintiff's Fourth Amendment claim alleges three distinct violations: (1) unlawful stop, 12 detention, and arrest; (2) use of excessive force; and (3) unlawful seizure of property. ECF No. 5 13 at 5-10. Each is addressed in turn. 14 a. Unlawful Stop, Detention, and Arrest 15 Plaintiff alleges that defendants violated the Fourth Amendment by unlawfully stopping 16 him on a "hunch" that he was driving without a front plate. Plaintiff argues this "hunch" was 17 manufactured to give the appearance of probable cause. ECF No. 5 at 5-6. Plaintiff continues 18 with a narrative explanation of the encounter, but the thrust of the claim is that defendants 19 initiated an unlawful traffic stop without probable cause. *Id.* The Fourth Amendment prohibits 20 unreasonable searches and seizures by the government. U.S. Const. amend. IV. "The Fourth 21 Amendment 'applies to all seizures of the person, including seizures that involve only a brief 22 detention short of traditional arrest.'" *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 23 (9th Cir. 2000) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). "In order to 24 satisfy the Fourth Amendment's strictures, an investigatory stop by the police may be made only 25 if the officer in question has 'a reasonable suspicion [or probable cause] supported by articulable 26 facts that criminal activity may be afoot[.]'" *Montero-Camargo*, 208 F.3d at 1129 (quoting 27 the phone down." However, it is not clear that plaintiff turned off the camera when he lowered it, 28 and it does not appear that plaintiff was ever instructed to stop recording. 1 *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). "A traffic violation alone is sufficient to 2 establish reasonable suspicion." *United States v. Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2006). 3 Police may conduct traffic stops based on "individualized reasonable suspicion or 4 probable cause of unlawful conduct." *Tarabochia v. Adkins*, 766 F.3d 1115, 1121 (9th Cir. 5 2014)(internal citations omitted). To determine whether the officers had "reasonable suspicion" 6 or "probable cause" to initiate the traffic stop is an "objective" inquiry, concerned only with 7 whether the stop was "objectively reasonable" under the circumstances. *Ornelas v. United States*, 8 517 U.S. 690, 696 (1996). Courts may not delve into "concerns about improper motives and 9 pretext" to invalidate otherwise lawful stops supported by reasonable suspicion or probable cause. 10 *Ashcroft v. al-Kidd*, 563 U.S. 731, 739 (2011) (citations omitted). The probable cause inquiry 11 does not depend on whether the officer was ultimately correct about their belief that a violation of 12 the law was occurring. "Officers can have reasonable, but mistaken, beliefs as to the facts 13 establishing the existence of probable cause or exigent circumstances, for example, and in those 14 situations courts will not hold that they have violated the Constitution." *Saucier v. Katz*, 533 U.S. 15 194, 206 (2001). 16 Here, AXON BODY 4 D01A07333 shows plaintiff being pulled over by Officer Dahnke, 17 who can be heard saying, "Hello! Hey, Reding Police Department, I pulled you over because you 18 don't have a front plate on your car." Plaintiff responded, "it probably fell off, its probably on the 19 road somewhere." *Id.* at 1:14. Officer Dahnke states she will "take a peek again" and says, "well 20 it is on there, it's just not visible, that's my mistake there." *Id.* at 1:20. She then states, "do you 21 mind if I just look at your

drivers license and then I'll get out of here." Id. Another officer can 22 be heard saying "it looks like you got illegally tinted windows too" to which plaintiff responds 23 the tints are legal, and he believes he is being racially profiled. Id. at 1:45. After some back and 24 forth, plaintiff states "the license plate is visible because the headlight's on." Id. at 3:20. 25 The officers continue to explain that the other reason for probable cause is that the 26 windows are tinted, citing §26708 of the California Vehicle Code, and plaintiff disputes that he is 27 responsible for the tint because that is the way the car came from the dealer. Id. A verbal 28 exchange about the legality of and responsibility for the tint ensues. Officer Dahnke says, "Sir, 1 I'm not even asking you to search the vehicle." 5:44. After some further back and forth, plaintiff 2 says "I'm from Baltimore, Maryland." Id. at 6:00. An officer then asks plaintiff if his name is 3 "Michael Smith" and plaintiff states "I'm not going to give you guys any more information." Id. 4 at 6:07. 5 After more conversation, Officer Dahnke says "Sir, you must legally identify yourself."

6 Id. at 6:50. Officer Dahnke continues to ask plaintiff if his name is Michael. Id. at 9:55. Officer 7 Dahnke says, "All you have to do is identify yourself. I'm done arguing, and I'm going to have 8 to pull you out of the car to detain you. I do not want to do that. But I have to identify you." Id. 9 at 10:20-10:33. Plaintiff again says, "I don't have to provide any identification." Id. at 10:50. 10 Plaintiff is again asked if he is Michael Smith from Maryland and he responds, "that's not my 11 name." 11:00-11:02. Plaintiff demands a supervisor, and Officer Dahnke explains that one has 12 already been called and is on his way. 11:40. The supervisor then approaches the window and 13 tells the plaintiff that it appears his "ID expired in 2002." 13:27. The supervisor continues to ask 14 plaintiff to identify himself and tells plaintiff that per state law plaintiff is required to identify 15 himself, explaining that "if you are an active felon and I let you go" then there is a problem. 16 17:16. Plaintiff continues to refuse to identify himself. The officer states, "See, this behavior 17 makes us think you're trying to hide something," and continues to ask for identification so that 18 plaintiff can go on his way. Id. at 17:50. 19 Plaintiff and the supervising officer continue to discuss whether there was probable cause 20 for plaintiff to be pulled over. The supervising officer goes to look at the front plate and notes 21 there is spray paint on it, which may have been the reason the plate was not initially visible to 22 Officer Dahnke. Id. at 19:50. Plaintiff explains that there was spray paint there because he 23 spraypainted his car. Id. The supervising officer explained "if it's nonreflective, they can't see 24 anything." Id. at 20:02. The supervising officer again stated that he would like to get plaintiff 25 "out of here as soon as possible" but they first needed him to confirm his identification. Id. at 26 20:18. After continued back and forth, the officer again says, "show us your ID and we'll let you 27 go about your business." Id. at 21:25. After continued discussion during which plaintiff refused 28 to identify himself, he was instructed that he must either identify himself or he was going to be 1 arrested. Id. at 22:50. At 23:38 on the AXIOM camera, the supervising officer open's plaintiff's 2 door to initiate the arrest process. 3 It is clear from the facts presented in the complaint and from the incorporated body 4 camera footage that there was probable cause for both the initial stop and the arrest. Indeed, 5 without looking to the

incorporated camera footage, plaintiff's complaint states that Officer 6 Dahnke identified the missing front plate as the reason for the stop, stating "Officer Dahnke 7 walked based on a hunch plaintiff was driving without a front plate." ECF No. 5 at 5. Again, 8 even if Officer Dahnke was ultimately wrong and plaintiff did have a front plate, probable cause 9 does not depend on the Officer being ultimately correct so long as the belief was reasonable under 10 the circumstances. *Saucier*, 533 U.S. at 206. Plaintiff's conclusory argument that the asserted 11 probable cause was a pretext for racial profiling does not undermine this conclusion. 12 As to the detention and arrest, the facts also clearly demonstrate probable cause. "When 13 stopping an individual for a minor traffic violation, 'an officer's mission includes ordinary 14 inquiries incident to the traffic stop.'" *United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015). 15 (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). These involve "checking the 16 driver's license, determining whether there are outstanding warrants against the driver, and 17 inspecting the automobile's registration and proof of insurance," and each share "the same 18 objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely 19 and responsibly." *Rodriguez*, 575 U.S. at 354. Here, the officers acted reasonably and within the 20 bounds of an ordinary traffic stop in asking plaintiff, the driver of the vehicle, to identify himself. 21 Plaintiff's prolonged refusal to do so added probable cause in support of detention and arrest: the 22 officers repeatedly told him that his behavior indicated he was trying to hide something, and that 23 if he would just identify himself, he would be free to go. Because there was clear probable cause 24 for the officers to stop, detain, and ultimately arrest plaintiff, plaintiff does not and cannot state a 25 Fourth Amendment claim on these bases. Accordingly, the claim should be dismissed without 26 leave to amend. 27 ///

28 /// 1 b. Excessive Force 2 Plaintiff's complaint states "it is documented on video plaintiff's vehicle was completely 3 shut off, hands on the steering wheel recording the interaction with the supervisor, 10 minutes 4 past, video shows the supervisor Opening Plaintiffs car door, as 4 cops rush plaintiff's vehicle 5 (swat style), using Excessive Force by participant Officer Upshaw, Chase Arnold, Gutering in 6 pulling Plaintiff out of his vehicle . . . using more force than necessary to apprehend Plaintiff[.]" 7 ECF No. 5 at 8. The Fourth Amendment requires that "all force—lethal and non-lethal—must be 8 justified by the need for the specific level of force employed." *Bryan v. MacPherson*, 630 F.3d 9 805, 825 (9th Cir. 2010). "To determine the objective reasonableness of a particular use of force 10 is a three-step inquiry." *Garlick v. County of Kern*, 167 F. Supp. 3d 1117, 1144 (E.D. Cal. 2016), 11 (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). First, courts assess the "quantum of force 12 used" by considering the "type and amount of force inflicted." *Drummond ex rel. Drummond v. 13 City of Anaheim*, 343 F.3d 1052, 1056 (9th Cir. 2003). Second, the court looks to the 14 government's countervailing interests at stake. *Graham*, 490 U.S. at 396. Third and finally, the 15 court must "weigh in balance" whether the degree of force used was warranted by the government 16 interest at stake. *Id.* 17 Here, the complaint on its face does not provide enough facts to state an excessive force 18 claim. It relies on the conclusory statement that the officers used more force than was reasonably 19 necessary, without giving details as to

precisely what type of force was used by whom or 20 explaining how it was excessive. ECF No. 5 at 8. Plaintiff alleges that he was “pull[ed]” from 21 the car, which may be sufficient to allege that force was used but is not sufficient to support an 22 inference the force was more than what was necessary under the circumstances. This would be 23 reason enough to dismiss the claim, perhaps with leave to amend, but plaintiff has specifically 24 relied on and incorporated video footage that plainly shows no excessive force was used. 25 Accordingly, plaintiff cannot state a claim upon which relief can be granted. 26 With respect to use of force, the relevant footage at AXON BODY 401A07333 begins 27 with the supervising officer opening plaintiff’ door at 23:35, and then stepping off to the side with 28 his back against the door. Plaintiff is then instructed to put his hands on his head, and plaintiff is 1 seen leaning further into the vehicle toward the passenger side. Id. at 23:42. Two officers 2 standing next to the vehicle and plaintiff’s open door reach in and grab one of plaintiff’s arms and 3 the supervising officer takes plaintiff’s other arm, and they place plaintiff onto the ground as he 4 says, “get off me.” Plaintiff’s hands are placed behind his back while plaintiff is on the ground 5 struggling. As plaintiff is being restrained at each leg and handcuffed, he states “I was injured in 6 Iraq and shit, my arms and shit are fucking broken and y’all aggravating my shit even more.” Id. 7 at 24:15. Plaintiff is assisted off the ground and walked towards the police car and is told to 8 separate his feet. Id. at 25:00. The officers examine plaintiff’s handcuffs and identify that one is 9 latched tightly. Id. at 25:14. Officers Upshaw and Dahnke loosen the cuff. Id. at 25:33. 10 Plaintiff is standing and does not appear in any physical distress as he continues to 11 challenge the officers’ probable cause. Id. At 25:35, Officer Upshaw instructs plaintiff to open 12 his hands, and plaintiff says “you guys are squeezing the shit out of my fucking arms” to which 13 Officer Upshaw replies that they are in the process of adjusting the handcuffs. Officer Upshaw 14 sates, “There, I can put three fingers inside of that handcuff.” Id. Plaintiff is instructed to widen 15 his stance and responds “my feet are spread as far as they are going to go! I have a broken foot!”

16 Id. at 27:00. Plaintiff is escorted to the back of the police car, is seated and seat belted without 17 incident, and the window is rolled down for him. Id. at 28:00-29:34. 18 Due to plaintiff’s complaints that he had broken his leg and his foot, he is taken to the 19 hospital. Id. at 41:10. Plaintiff states, “I said my foot was broken from me serving in Iraq.” Id. at 20 41:15. He states he is “disabled from head to toe.” Id. Plaintiff gets out of the vehicle on his 21 own and is walked down to hospital registration by the officers. Id. Officer Dahnke is heard 22 saying to hospital personnel, “We’re here for a medical clearance. There were no control holds 23 but he’s complaining of, he said in the past . . . we’re just making sure he’s physically ok . . . it’s 24 all old stuff.” Id. at 42:00-42:28. Plaintiff’s face is visible on the video, there are no obvious 25 injuries, and he does not appear to be in any acute physical distress. Id. at 43:48. Plaintiff asks 26 for his left knee to be photographed and instructs Officer Dahnke to roll up his pant leg. Id. at 27 44:10. Officer Dahnke does so and reveals a small abrasion on plaintiff’s knee. Id. at 44:38. 28 /// 1 The video on which plaintiff relies in his complaint undermines his claim that the force 2 used was

objectively excessive. As to the first factor, the court notes that force was not initiated 3 with plaintiff until more than 20 minutes into the encounter during which he was repeatedly 4 warned that if he did not identify himself, he would be arrested. When force was initiated, 5 plaintiff did not immediately follow the officers' instruction to place his hands on his head and 6 was therefore removed from a seated position in his vehicle directly on to the ground: a distance 7 of not more than a few feet. As plaintiff struggled, he was physically restrained. As soon as 8 handcuffs were placed, plaintiff was stood up and he walked, escorted, to the police vehicle. The 9 totality of the circumstances demonstrate that minimal force was used, and the force that was 10 used was objectively reasonable in light of plaintiff's resistance to the investigation. 11 Accordingly, the undersigned concludes the claim should be dismissed without leave to amend. 12 c. Unlawful Seizure 13 Plaintiff alleges that "documented on video, and screenshot captured shows the same 14 officer Upshaw unlawfully seizing (theft of property) the Plaintiff's only car key, removing it 15 from the key chain that contained Plaintiffs house keys, and intentionally threw them onto the 16 ground as gathered as video evidence, the officer intentionally did perform this act out of malice, 17 as a means to deprive the Plaintiff's permanently of his vehicle during the time it was being 18 unlawfully impounded, and towed." ECF No. 5 at 8-9. "While taking and destroying personal 19 property is a seizure . . . such seizures are only unlawful if they are unreasonable. To assess 20 reasonableness, courts must balance the nature and quality of the intrusion on the individual's 21 Fourth Amendment interests against the importance of the governmental interests alleged to 22 justify the intrusion." *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1013 (C.D. Cal. 23 2011) (internal citations omitted). 24 Plaintiff specifically invokes video footage of Officer Upshaw, who was in the police 25 vehicle that initiated the traffic stop with Officer Dahnke. ECF No. 5 at 8. Body camera footage 26 at D01A06303 shows the inventory search of plaintiff's vehicle. At 12:30, an officer can be seen 27 taking a key ring with multiple keys and keychains from inside plaintiff's car. The officer looks 28 at the keys, removes one key, which appears to be a car key, and another item from the ring. 1 While holding the items, he walks toward the trunk of the car and looks at it. *Id.* at 12:45. The 2 officer then asks another officer, "do you see a trunk release over there?" The officer walks back 3 to the passenger side of the car and drops what appears to be a keyless entry car remote on the 4 passenger seat. *Id.* at 13:10. He then drops what appears to be the removed car key on the 5 passenger seat as well. *Id.* at 13:23. With those items resting in the front seat of the car, the 6 officer goes back to inspect the trunk. *Id.* at 13:40. The video does not show any officer 7 throwing the keys on the floor. 8 AXON BODY D01A08103 provides another angle of the vehicle inventory search: from 9 the drivers' side, an officer's arm is shown reaching over from the open passenger side door to 10 take the keys out of the ignition at 13:50. A few second later, the officer with the keys can be 11 seen, viewed from across the car, holding up the key ring and looking at the keys and twisting an 12 item or two off the ring. From this angle, it appears the officer drops the keys in a downward 13 direction, and then walks to the back of the vehicle. When he returns, he reaches into the 14 passenger seat with

the keys. At no time does an officer throw the keys on the floor. The video 15 shows plaintiff's keys were placed in the vehicle. Because this claim is based only on facts that 16 are undercut by the incorporated video on which plaintiff relies, the court concludes that plaintiff 17 cannot state a claim upon which relief can be granted, and that this claim should be dismissed. 18 3. Plaintiff Does Not State a Fifth Amendment Claim 19 Plaintiff asserts that his Fifth Amendment rights were violated, as shown in video and 20 audio, when officers pulled him out of his vehicle and detained him for refusing to identify 21 himself. ECF No. 5 at 10. The Fifth Amendment provides that "[n]o person ... shall be 22 compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. This 23 court need not determine whether plaintiff had a Fifth Amendment right not to provide his name 24 to the officers—a highly dubious proposition.² The Ninth Circuit has squarely held that a Fifth 25 2 The Supreme Court has long recognized that questions about identity are a permissible part of 26 routine investigative stops. See *United States v. Hensley*, 469 U.S. 221, 229 (1985); *Hayes v. Florida*, 470 U.S. 811, 816 (1985). State laws requiring individuals who are stopped for 27 questioning to provide identification to the police violate neither the Fourth nor Fifth Amendments. *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 187-188, 190-191 (2004). The 28 Fifth Amendment protects disclosure of identity only in "unusual circumstances" in which the 1 Amendment violation will not support a Section 1983 claim unless the plaintiff made a statement 2 that was used against him in a criminal proceeding. *Chavez v. Robinson*, 12 F.4th 978, 999 (9th 3 Cir. 2021). There are no allegations here that any of plaintiff's statements have been used against 4 him. The video evidence that plaintiff invokes shows plaintiff voluntarily speaking with police 5 throughout the interaction, while refusing to identify himself. There are no facts in the complaint 6 that can give rise to any plausible Fifth Amendment claim. This claim should be dismissed. 7 4. Plaintiff Does Not State a Fourteenth Amendment Claim 8 Plaintiff argues that his Fourteenth Amendment rights were violated because he was 9 racially targeted, and the police have stopped him on more than 5-7 occasions for the sole purpose 10 of identifying him. ECF No. 5 at 12. Plaintiff states that the Racial and Identity Profiling 11 Advisory Board has identified uninvestigated complaints of racial profiling against the Redding 12 Police Department. *Id.* at 13. Plaintiff alleges his race was intentionally concealed from police 13 reports so that the officers could hide their racial profiling. *Id.* Plaintiff alleges there were 14 several prior interactions between himself and police which reflect a racially discriminatory 15 pattern: (1) on April 7, 2023 officers followed him home and night and ran his license plates 16 before leaving when the officer noticed he was recording; (2) on March 21, 2023, an officer saw 17 plaintiff trying to get gas and asked plaintiff to identify himself, but then the officers refused to 18 identify themselves so plaintiff could make a complaint; (3) on January 17, 2024 plaintiff was 19 being followed by police for about 20 minutes before the police car switched lands and drove 20 away; and (4) on February 8, 2024, plaintiff was followed by officers until he parked. The 21 officers parked nearby and asked a Caucasian woman sitting at a bus stop of plaintiff tried to sell 22 her drugs or harass

her, and then followed him in his car again until eventually driving away. Id. 23 at 14-16. 24 The Fourteenth Amendment provides no state shall “deny to any person within its 25 jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. “Proof of racially 26 discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” 27 28 name itself has incriminating potential beyond the scope of the stop. Id. at 190-191. 1 Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977). A plaintiff 2 need not show “the challenged action rested solely on racially discriminatory purposes.” Id. 3 Instead, a plaintiff must show the discriminatory purpose was a “motivating factor” for the 4 challenged action. Id. at 265–66. “Racial profiling can constitute a deprivation of a citizen’s 5 right to equal protection under the law.” James v. City of Seattle, 2011 WL 6150567 at *13 6 (W.D. Wash. Dec. 12, 2011); see also Whren v. United States, 517 U.S. 806 (1996) (holding that 7 claims asserting selective enforcement of the law based on considerations such as race are 8 properly brought under the Equal Protection Clause). To state a claim for racial profiling in 9 violation of the Equal Protection Clause, “a plaintiff must show that the defendants acted with an 10 intent or purpose to discriminate against the plaintiff based on membership in a protected class.” 11 Thornton v. City of St. Helens, 425 F.3d 1158, 1166-67 (9th Cir. 2005) (citation and quotations 12 omitted). 13 The allegations in the complaint and the video cited by and relied upon by plaintiff in the 14 complaint are not sufficient to establish a Fourteenth Amendment violation. Plaintiff must 15 provide more than conclusory assertions that he was pulled over on the basis of his race. As set 16 forth above, the officers repeatedly state in the video footage that plaintiff was pulled over for a 17 missing front plate. They also explain that they could not have pulled him over on the basis of his 18 race because it was dark out and plaintiff’s windows were tinted, so they could not see inside the 19 vehicle when they were pulling him over. AXON BODY 4 D01A07333 at 13:07. Plaintiff does 20 not plausibly allege that the officers “acted with an intent or purpose” to discriminate against him. 21 Accordingly, this claim must be dismissed. 22 5. Plaintiff Does Not State a Municipal Liability Claim 23 A municipality or government entity, like the Redding Police Department, cannot be held 24 liable for claims brought under 42 U.S.C. §1983 based on respondeat superior or any other theory 25 of vicarious liability. Board of County Com’rs of Bryan County, Oklahoma v. Brown, 520 U.S. 26 397, 403 (1997) (no vicarious liability under § 1983). Municipal liability is therefore limited to 27 harms caused by an official municipal policy, or a custom or practice of the entity that has the 28 force of policy. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690-91 (1978). 1 Plaintiff must plead and ultimately prove that he suffered a constitutional injury that was caused 2 by the offending municipal policy. Connick v. Thompson, 563 U.S. 51, 60-61 (2011). 3 Here, plaintiff’s generalized allegations of illegal conduct are insufficient to state a claim 4 that the Redding Police Department maintained an official policy, custom, or practice that 5 violated plaintiff’s constitutional rights. Further, because plaintiff has not stated a claim that any 6 of his constitutional rights were violated at all, it is clear he cannot state a Monell claim. 7 Accordingly, any Monell claim must be dismissed. 8 D. Plaintiff Does Not State an ADA or

Rehabilitation Act Claim 9 Plaintiff alleges his rights under Americans with Disabilities Act and the Rehabilitation 10 Act were violated when plaintiff, as “seen on the video footage, audio, and camera footage the 11 Plaintiff had assisted walking device in my right hand the officers knocked it out of my right 12 hand, with my phone as it was recording as I was prepared to exit my vehicle the officers 13 proceeded to yank my arm slightly out of my socket and with force while executing a breaking in 14 my elbow.” Plaintiff alleges he “informed them ‘I needed my cane as an accommodation but they 15 did not listen.” ECF No. 5 at 18-20. Plaintiff also alleges the officers refused to get him medical 16 treatment after he informed them that he had broken his arm. *Id.* at 18. The video incorporated 17 by plaintiff is set forth in detail above. It does not show officers knocking plaintiff’s cane out of 18 his hand. It does show that plaintiff was driven directly to the hospital after he was arrested. 19 Title II of the ADA prohibits a public entity from discriminating against a qualified 20 individual with a disability on the basis of that disability. 42 U.S.C. § 12132; *Weinreich v. L.A. 21 County Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997). As “[t]here is no significant 22 difference in analysis of the rights and obligations created by the ADA and the Rehabilitation 23 Act,” the Court analyzes these claims simultaneously. *Zukle v. Regents of Univ. of Cal.*, 166 24 F.3d 1041, 1045 (9th Cir.1999). Consistent with “the majority of circuits to have addressed the 25 question,” the Ninth Circuit has held “that Title II applies to arrests.” *Sheehan v. City and 26 County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014). “The Ninth Circuit recognized 27 two types of ADA claims applicable to arrests: (1) wrongful arrest, where police wrongly arrest 28 someone with a disability because they misperceive the effects of that disability as criminal 1 activity, and (2) reasonable accommodation, where police fail to reasonably accommodate the 2 person’s disability in the course of investigation or arrest, causing the person to suffer greater 3 injury or indignity in that process than other arrestees.” *Bresaz v. County of Santa Clara*, 136 F.

4 Supp. 3d 1125, 1132 (N.D. Cal. 2015) (internal citations omitted). The allegations in plaintiff’s 5 complaint, including the facts shown by the video incorporated into the complaint, clearly 6 demonstrate that plaintiff cannot state an ADA claim or a Rehabilitation Act claim. These claims 7 must be dismissed. 8 III. Leave to Amend Is Not Appropriate 9 Leave to amend is not appropriate in this case. Ordinarily, pro se litigants are granted 10 liberal leave to amend. “Valid reasons for denying leave to amend include undue delay, bad faith, 11 prejudice, and futility.” *California Architectural Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 12 1466, 1472 (9th Cir. 1988). Here, given the facts alleged and the incorporation of video evidence 13 into the complaint, it is clear that there are no additional facts that plaintiff can allege in order to 14 sufficiently support any of his legal claims. The undersigned finds that leave to amend would be 15 futile and should therefore not be granted. 16 IV. Pro Se Plaintiff’s Summary 17 It is recommended that your case be dismissed because the facts of your case, taken from 18 the complaint and the videos that you rely on in your complaint, show that you cannot satisfy the 19 elements of any of your legal claims. The magistrate judge is therefore recommending that you 20 not be given further leave to

amend. If you disagree with this recommendation, you may file 21 objections for the district judge to consider within 21 days. The district judge will make the final 22 decision. 23 V. Conclusion 24 Accordingly, the undersigned recommends that defendants' motion to dismiss (ECF No. 25 15) be GRANTED and that this case be DISMISSED and closed. 26 These findings and recommendations are submitted to the United States District Judge 27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days 28 after being served with these findings and recommendations, any party may file written 1 || objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). □□□□ □ 2 || document should be captioned "Objections to Magistrate Judge's Findings and 3 || Recommendations." Failure to file objections within the specified time may waive the right to 4 | appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez 5 || v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 6 || DATED: April 3, 2025 7 ~ 8 Htttenr— Lhor—e_

ALLISON CLAIRE

9 UNITED STATES MAGISTRATE JUDGE

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