

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Mosgrove v. County of Santa Clara

No. 24-cv-00808-BLF (N.D. Cal. May 20, 2025) · No. 24-cv-00808-BLF · Decided May 20, 2025

SUMMARY

The United States District Court for the Northern District of California granted motions to dismiss Tom Mosgrove’s Second Amended Complaint against the County of Santa Clara, the City of Morgan Hill, and related police officers. The court held that the pleaded facts established probable cause for Mosgrove’s warrantless domestic-violence arrest, defeating his Fourth Amendment claim, and dismissed the Fourteenth Amendment and Monell claims. Dismissal was without leave to amend because further amendment would be futile.

OPINION

Mosgrove v. County of Santa Clara

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 SAN JOSE DIVISION

6 7 TOM MOSGROVE, Case No. 24-cv-00808-BLF 8 Plaintiff,

ORDER GRANTING MOTIONS TO

9 v. DISMISS THE SECOND AMENDED

COMPLAINT WITHOUT LEAVE TO

10 COUNTY OF SANTA CLARA, et al., AMEND

11 Defendants. [Re: ECF Nos. 84, 88] 12 13 Plaintiff Tom Mosgrove (“Plaintiff”) brings this
action alleging violations of 42 U.S.C. § 14 1983 (“Section 1983”) against the City of Morgan
Hill (“City”), Morgan Hill Police Officers Scott Martin (“Officer Martin”), Matthew Donatoni
15 (“Officer Donatoni”), Katrina Olson (“Officer 15 Olson”), and other unnamed police officers
(collectively, “City Defendants”), and the County of 16 Santa Clara (“County”). ECF 81. Before
the Court are two motions to dismiss the Second Amended 17 Complaint (“SAC”) under Federal
Rules of Civil Procedure 12(b)(6), the first brought by County, 18 and the second brought by City
Defendants. ECF 84, 88. Plaintiff opposed to both motions. ECF 19

93. County and Morgan Hill Defendants filed replies. ECF 94, 95. The Court held a hearing on the
20 two motions to dismiss on April 17, 2025. ECF 98. 21 For the reasons stated below, the Court
rules as follows: 1) GRANTS County’s motion to 22 dismiss WITHOUT LEAVE TO AMEND,

and 2) GRANTS Morgan Hill Defendants' motion to 23 dismiss WITHOUT LEAVE TO AMEND.

24 I. BACKGROUND

25 A. Factual Background 26 Plaintiff filed this action on February 9, 2024. ECF 1. The following facts are taken from 27 the SAC and are accepted as true for purposes of the motions to dismiss. 1 Plaintiff's Arrest 2 On February 10, 2022, at about 8:14pm, Officers Martin, Donatoni, and Olson (collectively, 3 "MHPD Officers") from the Morgan Hill Police Department ("MHPD") arrived at Plaintiff's house 4 in Morgan Hill to investigate a domestic violence allegation. SAC ¶¶ 22-23. The officers were 5 dispatched because Plaintiff's wife, Wendy Mosgrove ("Ms. Mosgrove") called 911 and alleged 6 that "[P]laintiff had pushed her into a bedroom closet and used his body physically to block her from 7 leaving the closet." Id. Upon arrival, the Officers separated Plaintiff and Ms. Mosgrove. Id. ¶ 24. 8 Plaintiff walked outside with Officers Martin and Donatoni and Officer Olson walked inside the 9 residence and remained with Ms. Mosgrove. Id. While Plaintiff was detained outside his home, he 10 denied Ms. Mosgrove's allegation that he physically or verbally abused Ms. Mosgrove, that he 11 blocked or impeded Ms. Mosgrove from exiting the closet, that he touched Ms. Mosgrove in a 12 harmful or offensive manner, and that he violated Ms. Mosgrove's personal liberty. Id. ¶ 25. While 13 detained outside of his home, Plaintiff was informed by at least one officer that "whenever MHPD 14 officers are dispatched for a domestic violence incident, someone must be arrested without 15 exception." Id. ¶ 26. 16 Eight minutes after the MHPD officers arrived at Plaintiff's house, the MHPD Officers 17 decided to arrest Plaintiff. Id. ¶ 27. Plaintiff alleges that his arrest was without probable cause. Id. 18 After Officer Martin initiated the arrest protocol, he spoke with Plaintiff's son Maxwell William 19 Mosgrove ("Max"). Id. ¶ 28. Officer Martin told Max that "[it was] going to be an official arrest 20 and [Plaintiff was] going to have to see a judge because [it was] an allegation of domestic violence 21 and so because California is a mandatory arrest state he's going to have to see a judge." Id. Max 22 explained the dynamics of his parents' relationship to Officer Martin and told Officer Martin that 23 he had never seen Plaintiff "get violent," or "touch [] or hit [Ms. Mosgrove]." Id. ¶ 29. Officer 24 Martin told Plaintiff that "there were allegations made of domestic violence so in California as peace 25 officers we are mandated to take action." Id. ¶ 31. Officer Martin also informed Plaintiff that he was 26 arrested for "domestic violence" based on his "marital status and [Ms. Mosgrove's] allegation of 27 physical violence." Id. ¶ 34. 1 domestic violence battery of spouse, and California Penal Code section 236, misdemeanor false 2 imprisonment. Id. ¶ 36. Plaintiff spent about five days in the Santa Clara County main jail. Id. ¶ 48. 3 Plaintiff was not charged for the alleged misdemeanors that led to his arrest. Id. 4 Defendants' Unwritten Policy, Custom, or Practice 5 Plaintiff alleges that "[t]he County, and the City, including the MHPD, worked in concert 6 with one another to establish a longstanding, widespread, or well-settled custom or practice of 7 making unlawful arrests or seizures in all cases involving domestic violence allegations, regardless 8 of probable cause and without justification." Id. ¶ 52. Plaintiff

alleges that, in 1993, the County, the 9 Police Chiefs' Association of Santa Clara County ("Association") and the County of Santa Clara 10 Domestic Violence Council jointly developed the Domestic Violence Protocol for Law Enforcement 11 ("Domestic Violence Protocol"). Id. ¶ 53. Plaintiff alleges that, since 1993, the County, other County 12 department heads, the City, and other law enforcement agencies within Santa Clara County 13 "participate in meetings or otherwise jointly collaborate" to develop, review, and update the written 14 Domestic Violence Protocol." Id. ¶ 55. Plaintiff alleges that, "as a result of those meetings or 15 otherwise joint collaboration, the County, the City, and/or other law enforcement agencies within 16 Santa Clara County, have [also] established a custom or practice of making arrests when responding 17 to domestic violence incidents regardless of probable cause or without justification." Id. ¶ 55. 18 Plaintiff alleges that, through "joint collaboration," the written Domestic Violence Protocol and the 19 unwritten custom or practice "is uniformly implemented throughout law enforcement agencies in 20 Santa Clara County." Id. ¶ 57. Plaintiff does not allege that the written Domestic Violence Protocol 21 is unconstitutional. 22 In addition to Plaintiff's arrest, Plaintiff identifies two separate domestic violence arrests 23 "within Santa Clara County." Id. ¶ 62. First, on November 8, 2021, the Sunnyvale Police Department 24 arrested Neel Mehta ("Mr. Mehta") pursuant to the City of Sunnyvale's policy on domestic violence. 25 Id. ¶ 62(a). On February 3, 2024, the Santa Clara County Sheriff's Office arrested Paul Davis ("Mr. 26 Davis") in response to a call about domestic violence. Id. ¶ 62(b). Mr. Davis was not charged for 27 domestic violence. See id. Plaintiff alleges that these arrests were made without probable cause. Id. B. Procedural History 1 On April 25, Plaintiff filed the First Amended Complaint ("FAC") against the City 2 Defendants, the County, the Association and District Attorney Jeffrey F. Rosen ("D.A. Rosen"). 3 ECF 31. On May 9, 2024, City Defendants answered the FAC. ECF 38. On May 28, 2024, the 4 County and D.A. Rosen moved to dismiss the FAC. ECF 41. On June 18, 2024, the Association 5 moved to dismiss the FAC. ECF 41, 49. On August 7, 2024, the Court granted the County's and the 6 Association's motions to dismiss with leave to amend and granted D.A. Rosen's motion to dismiss 7 without leave to amend. See ECF 74. 8 On December 17, Plaintiff filed the SAC. ECF 81. In the SAC, Plaintiff dropped his claims 9 against the Association. See SAC. 10

II. LEGAL STANDARD

11 "A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a 12 claim upon which relief can be granted 'tests the legal sufficiency of a claim.'" *Conservation Force 13 v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d 729, 732 14 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts as true all 15 well-pled factual allegations and construes them in the light most favorable to the plaintiff. *Reese v. 16 BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court needs not 17 "accept as true allegations that contradict matters properly subject to judicial notice" or "allegations 18 that are merely conclusory, unwarranted deductions of fact, or unreasonable interferences." *In re 19 Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th

Cir. 2008). While a complaint does not need to contain detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable of the misconduct alleged.” *Id.* In deciding whether to grant leave to amend following dismissal, or pursuant to Federal Rule 26 of Civil Procedure 15(a), the Court must consider the factors set forth by the Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962), and discussed at length by the Ninth Circuit in *Eminence 1 Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th Cir. 2009). A district court ordinarily must grant leave to amend unless one or more of the *Foman* factors is present: (1) undue delay, (2) bad faith or 3 dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to the 4 opposing party that carries the greatest weight. *Id.* Moreover, the proposed addition of new claims 5 unrelated to the claims and defenses in the original complaint may be grounds for denial leave to 6 amend. See, e.g., *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) 7 (denial of leave to amend not abuse of discretion where proposed new claims would have “greatly 8 altered the nature of the litigation” and required defendants to undertake “an entirely new course of 9 defense”); *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990) (affirming denial of 10 leave to amend where additional claims “advance different legal theories and require proof of 11 different facts”).

12 III. REQUEST FOR JUDICIAL NOTICE

13 The County requests that the Court take judicial notice of the Domestic Violence Protocol 14 and the Morgan Hill Police Department Policy Manual (“MHPD Policy Manual”). ECF 86. The 15 Domestic Violence Protocol and the MHPD Policy Manual are both available online and are 16 referenced in the SAC. ECF 86 at 2-3; see ECF 81 ¶¶ 13, 30, 52, 59, 64, 75. The Domestic 17 Violence Protocol and the MHPD Policy Manual are properly subject to judicial notice because the documents 18 are incorporated by reference into the SAC. See *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 19 U.S. 308, 322 (2007). Plaintiff has not objected. Thus, the Court GRANTS the County’s request.

20 IV. DISCUSSION

21 Plaintiff brings a single claim of unreasonable seizure in violation of the Fourth Amendment 22 and the Fourteenth Amendment against the MHPD Officers, and a claim under 42 U.S.C. § 1983 23 against the County and the City based on liability under *Monell v. Dep’t of Soc. Servs. Of City of 24 New York*, 436 U.S. 658 (1978). See SAC ¶¶ 67-84. 25 A. Fourth and Fourteenth Amendment Violation against the City Defendants 26 Plaintiff alleges that his “unlawful seizure” claim is brought under the Fourth Amendment 27 and the Fourteenth Amendment. SAC ¶¶ 5, 37, 63, 73, 75-76, 79-80, 82-83. City Defendants argue 1 88 at 8 n.2.; ECF 94 at 5 n.1. Plaintiff has not advanced any argument on how his “unlawful seizure” 2 claim can be brought under the Fourteenth Amendment. See ECF 93; see also ECF 94 at 5 n.1. 3 Because Plaintiff’s “unlawful

seizure” claim is brought on the basis that his warrantless arrest was without probable cause and was unlawful, his claim should be analyzed under the Fourth Amendment, not the Fourteenth Amendment. See *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (holding that “where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.”) (quotation omitted). Accordingly, the Court GRANTS City Defendants’ motion to dismiss on the basis that Plaintiff’s “unlawful seizure” claim is improperly brought under the Fourteenth Amendment.

B. Fourth Amendment Violation against the City Defendants

City Defendants argue that the SAC shows Plaintiff’s arrest did not violate his Fourth Amendment right because it was supported by probable cause and was lawful. ECF 88 at 6; ECF 94 at 2. In response, Plaintiff argues that he has alleged facts to state that “he was unlawfully arrested by MHPD officers without establishing probable cause and in violation of his Fourth Amendment rights.” ECF 93 at 10. Plaintiff further argues that the existence of probable cause is a question of fact that cannot be resolved at a motion to dismiss stage. *Id.* at 11. “Under the Fourth Amendment, a warrantless arrest requires probable cause.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). “A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth Amendment, provided the arrest was without probable cause or other justification.” *Lacey v. Maricopa County*, 693 F.3d 896, 918 (9th Cir. 2012) (quoting *Dubner v. City & County of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001)). “Probable cause to arrest exists when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed by the person being arrested.” *Garcia v. Cty. of Merced*, 639 F.3d 1206, 1209 (9th Cir. 2011) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). “It is well-settled that ‘the 1 at the time of the search.’ ” *Lacey*, 693 F.3d at 918 (quoting *United States v. Bishop*, 264 F.3d 919, 2 924 (9th Cir. 2001)). “[A]n arresting officer’s state of mind (except for the facts that he knows) is 3 irrelevant to the existence of probable cause.” *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004). 4 “[T]he fact that the officer does not have the state of mind which is hypothesized by the reasons 5 which provide the legal justification for the officer’s action does not invalidate the action taken as 6 long as the circumstances, viewed objectively, justify that action.” *Id.* (internal quotation omitted). 7 Plaintiff was arrested for violations of 1) California Penal Code section 243(e)(1), 8 misdemeanor domestic violence battery of spouse, and 2) California Penal Code section 236, 9 misdemeanor false imprisonment. See SAC ¶ 36. 10 Under California law, a peace officer may arrest a suspect who “commits an assault or 11 battery upon a current or former spouse” without a warrant if the peace officer “has probable cause 12 to believe that the person to be arrested has committed the assault or battery, whether or not it has 13 in fact been committed” and “makes the arrest as soon as probable cause arises to believe that the 14 person to be arrested has committed the assault or battery, whether or not it has in fact been 15 committed.” California Penal Code §836(d). “An assault is an unlawful

attempt, coupled with a 16 present ability, to commit a violent injury on the person of another.” California Penal Code §240. 17 “A battery is any willful and unlawful use of force or violence upon the person of another.” 18 California Penal Code §242. 19 The SAC alleges that MHPD Officers Martin, Donatoni, and Olson arrived at Plaintiff house 20 in Morgan Hill in response to Ms. Mosgrove’s 911 call and “allegations that [P]laintiff had pushed 21 her into a bedroom closet and used his body physically to block her from leaving the closet.” SAC 22 ¶¶ 22-23. The SAC alleges that, upon the MHPD Officers’ arrival, Plaintiff walked outside of his 23 house with Officers Martin and Donatoni, and Officer Olson walked inside his house and remained 24 with Ms. Mosgrove. Id. ¶ 24. The SAC alleges that Plaintiff “denied that this was a domestic 25 violence incident.” Id. ¶ 25. The SAC alleges that, eight minutes after the MHPD Officers arrived 26 at Plaintiff’s house, they decided to arrest Plaintiff. Id. ¶ 27. The SAC also alleges that Officer 27 Martin advised Plaintiff that Ms. Mosgrove made “allegations [] of domestic violence” against him, 1 Mosgrove’s] allegation of physical violence.” Id. ¶¶ 31, 34. 2 Taking facts pled in the SAC as true, Plaintiff has failed to adequately allege that there was 3 no probable cause for his arrest. Instead, he has pled all the facts necessary to establish probable 4 cause. Here, the MHPD Officers arrested Plaintiff based on the report by Ms. Mosgrove that Plaintiff 5 “had pushed [Ms. Mosgrove] into a bedroom closet and used his body physically to block her from 6 leaving the closet.” SAC ¶ 23. While Plaintiff also alleges that he was informed “by at least one 7 officer, that whenever MHPD officers are dispatched for a domestic violence incident, someone 8 must be arrested without exception,” and that the MHPD Officers “failed to conduct a thorough 9 investigation as outlined by the MHPD Policy Manual,” SAC ¶¶ 26, 30, these allegations do not 10 establish that Plaintiff’s arrest was unreasonable. See *Garcia*, 639 F.3d at 1209. The officers’ 11 subjective intent is not relevant to a determination of probable cause. Plaintiff has alleged no facts 12 from which it could be reasonably inferred that the MHPD Officers did not believe Ms. Mosgrove’s 13 eyewitness account of the incident. Additionally, when the full text of the MHPD Policy Manual is 14 considered, ECF 43-1, there are no facts alleged to support Plaintiff’s allegation of an incomplete 15 investigation by the MHPD Officers. 16 The Court is also unpersuaded by Plaintiff’s argument that “the facts or circumstances 17 surrounding” Plaintiff’s arrest are disputed and that whether the MHPD Officers had probable cause 18 to arrest Plaintiff is a question of fact for the jury. ECF 93 at 9, 11. While Plaintiff also alleged that 19 he denied Ms. Mosgrove’s domestic violence allegations and that Max told Officer Martin that he 20 “[had] never seen [Plaintiff] get violent” or touched or hit Ms. Mosgrove, SAC ¶¶ 25, 29, 33, the 21 MHPD Officers were not required to accept those denials or explanations. See *D.C. v. Wesby*, 583 22 U.S. 48, 61 (2018) (“[P]robable cause does not require officers to rule out a suspect's innocent 23 explanation for suspicious facts.”). Indeed, the MHPD Officers were not required to determine 24 whether the alleged domestic violence “ha[d] in fact been committed.” California Penal Code 25 §836(d). 26 The Court further finds that the authorities cited by Plaintiff are unpersuasive. See ECF 93 27 at 9-10 (citing *NAACP of San Jose/Silicon Valley v. City of San Jose*, 562 F. Supp. 3d

382, 404 1 *Williams v. Cty. of Alameda*, 26 F.Supp.3d 925, 943 (N.D. Cal. 2014)). In *NAACP*, the Court found 2 that whether the police officers falsely arrested plaintiffs based on a curfew order was a qualified 3 immunity issue that required an evidentiary record. *NAACP*, 562 F. Supp. 3d at 404. In *Mehta*, the 4 Court found the plaintiff adequately pled a lack of probable cause for his arrest because he was the 5 reporting party, claiming to have been assaulted by his wife and that the police officers fabricated 6 evidence about the wife's injuries in their police report. *Mehta*, 721 F.Supp.3d at 1048. In *Williams*, 7 the Court found that, based on the allegation that Plaintiff was arrested about 30 minutes after a 8 young boy called to report that his parents were "about to fight," but there were no allegations in 9 the operative complaint to demonstrate probable cause for Plaintiff's arrest. *Williams*, 26 F.Supp.3d 10 at 943. Unlike those three cases, here, the facts alleged in the SAC, do not support Plaintiff's 11 conclusory claim that the MHPD officers lacked probable cause to arrest him. And, once finding 12 probable cause, the MHPD Officers had no further duty to look for additional evidence to negate 13 probable cause before the arrest. See SAC ¶¶ 22-23, 31, 34; see also *Keel v. City of Rohnert Park*, 14 No. 4:21-CV-02235-KAW, 2021 WL 6551423, at *3 (N.D. Cal. Dec. 15, 2021) (holding there was

15 probable cause for plaintiff's arrest based on facts alleged in the complaint). 16 The Court also notes that Plaintiff again attempts to supplement his pleadings with the 17 declaration of Laura Diaz, Plaintiff's counsel, and body camera videos of Officers Martin and Olson. 18 See ECF 93 at 10-11 (citing ECF 93-1 Declaration of Laura Diaz in Support of Plaintiff's 19 Opposition, ECF 93-2, ECF 93-3, ECF 93-4). But "new allegations contained in [Plaintiff's] 20 opposition [to a motion to dismiss] are irrelevant for Rule 12(b)(6) purposes." *Schneider v. 21 California Dep't. of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). That evidence is disregarded. 22 For the above reasons, the Court finds that Plaintiff has alleged the existence of probable 23 cause for his arrest, rather than its absence. Accordingly, the Court GRANTS City Defendants' 24 motion to dismiss on the basis that Plaintiff has failed to adequately plead his "unlawful seizure" 25 claim under the Fourth Amendment in the SAC. 26 C. Monell Liability against the City and the County 27 Plaintiff asserts a claim under 42 U.S.C. § 1983 against both the City and the County for 1 v. Dep't of Soc. Servs. Of City of New York, 436 U.S. 658 (1978). SAC ¶¶ 73, 75, 76, 79. 2 "The Supreme Court in *Monell* held that municipalities may only be held liable under section 3 1983 for constitutional violations resulting from official . . . policy or custom." *Benavidez v. Cty. of 4 San Diego*, 993 F.3d 1134, 1153 (9th Cir. 2021) (citing *Monell*, 436 U.S. at 694). "[P]olicies can 5 include written policies, unwritten customs and practices, failure to train municipal employees on 6 avoiding certain obvious constitutional violations, . . . and, in rare instances, single constitutional 7 violations [that] are so inconsistent with constitutional rights that even such a single instance 8 indicates at least deliberate indifference of the municipality[.]" *Id.* at 1153 (internal citations 9 omitted). "A municipality may [also] be held liable for a constitutional violation if a final 10 policymaker ratifies a subordinate's actions." *Lytle v. Carl*, 382 F.3d 978,

987 (9th Cir. 2004). “In 11 order to establish liability for governmental entities under Monell, a plaintiff must prove ‘(1) that 12 [the plaintiff] possessed a constitutional right of which [s]he was deprived; (2) that the municipality 13 had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s constitutional 14 right; and, (4) that the policy is the moving force behind the constitutional violation.’” Dougherty 15 v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011) (alterations in original) (quoting Plumeau v. 16 Sch. Dist. No. 40 Cty. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997)). 17 Plaintiff has failed to adequately allege that there was a constitutional violation surrounding 18 his warrantless arrest. On that basis alone, his Monell claims against the City and the County are 19 untenable. See City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986). Accordingly, his Monell 20 claims against the City and the County are DISMISSED WITHOUT LEAVE TO AMEND.

21 V. LEAVE TO AMEND

22 In deciding whether to grant leave to amend, the Court must consider the factors set forth by 23 the Supreme Court in Foman v. Davis, 371 U.S. 178 (1962), and discussed at length by the Ninth 24 Circuit in Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2009). A district court 25 ordinarily must grant leave to amend unless one or more of the Foman factors is present: (1) undue 26 delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) 27 undue prejudice to the opposing party, or (5) futility of amendment. Eminence Capital, 316 F.3d at 1 Id. However, a strong showing with respect to one of the other factors may warrant denial of leave 2 || to amend. Id. 3 In the Order Granting Motions to Dismiss the Amended Complaint, Plaintiff was given sixty 4 || days to file a second amended complaint. ECF 74 at 8. Yet, Plaintiff has still failed to cure the 5 deficiencies identified by the Court. Additionally, because Plaintiff has failed to allege that his 6 || challenged arrest was without probable cause and the facts alleged actually support the opposite 7 || conclusion, the Court finds that further amendment would be futile. Accordingly, the County’s and 8 || City Defendants’ motions to dismiss are GRANTED WITHOUT LEAVE TO AMEND.

9 VI. ORDER

10 For the foregoing reasons, IT IS HEREBY ORDERED that: 11 (1) The motion to dismiss brought by the County of Santa Clara is GRANTED WITHOUT 12 LEAVE TO AMEND. 5 13 (2) The motion to dismiss brought by the City of Morgan Hill, Morgan Hill Police Officers 14 Scott Martin, Matthew Donatoni, Katrina Olson, and other unnamed police officers is 3 15 GRANTED WITHOUT LEAVE TO AMEND. 16 || Date: May 20, 2025 19 feilnfncn

ETH LABSON FREEMAN

20 United States District Judge 21 22 23 24 25 26 27 28