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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANCISCO DUARTE and
ALEJANDRO GUTIERREZ,

Plaintiffs,

v.

CITY OF STOCKTON, STOCKTON
POLICE DEPARTMENT, ERIC
JONES, KEVIN JAYE HACHLER
(1641); ERIC B. HOWARD (2448);
MICHAEL GANDY (2858); CONNER
NELSON (2613); SGT. UNDERWOOD,
and DOES 1-50,

Defendants.

No. 2:19-cv-00007-MCE-CKD

MEMORANDUM AND ORDER

Through the present lawsuit, Plaintiffs Francisco Duarte and Alejandro Gutierrez (collectively "Plaintiffs" unless otherwise specified) allege they were wrongfully arrested, and subject to excessive force in the process, by members of the Stockton Police Department. Plaintiffs' operative pleading the First Amended Complaint ("FAC") names both the City of Stockton and the Stockton Police Department as Defendants, along with Officers Eric Jones, Kevin Hachler, Eric Howard, Michael Gandy, Conner Nelson and

1 Sergeant Underwood.¹ The FAC includes four separate claims for violations of 42
2 U.S.C. § 1983, as well as federal substantive due process claims on grounds that the
3 police reports prepared as a result of the subject incident included false information in
4 order to justify Defendants' arrest of Plaintiffs and to "cover up and excuse [their]
5 excessive force." Pls.' First Amended Complaint ("FAC"), ECF No. 16, ¶ 62.

6 Presently before the Court is Defendants' Motion to Dismiss pursuant to Federal
7 Rule of Civil Procedure 12(b)(6), on grounds the FAC fails to state a viable claim for two
8 reasons. First, Defendants argue that three of Plaintiffs' five Counts are barred by the
9 Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994). Secondly,
10 Defendants aver that the City of Stockton and the Stockton Police Department are
11 improperly named as Defendants in Plaintiffs' First and Second Claims, which both
12 allege excessive force in contravention of 42 U.S.C. § 1983.²

13 As set forth below, Defendants' Motion is GRANTED.³

14 15 **BACKGROUND**⁴ 16

17 This case stems from an encounter between Plaintiffs and police officers on
18 May 5, 2017, at the corner of South Hunter Street and Martin Luther King Boulevard in
19 Stockton, California. A large, and predominantly Mexican-American, crowd had
20 gathered to celebrate the so-called "Cinco de Mayo" holiday. Plaintiffs, who are both
21 Mexican-American, were in attendance.

22
23 ¹ This Memorandum and Order will also refer to said Defendants collectively unless otherwise
noted.

24 ² Defendants also included a third ground for their motion; namely that the allegations of Claims
25 One through Four, to the extent they are predicated on alleged Fourteenth Amendment violations, are
improper. Defendants have conceded that issue and, consequently, it will not be further analyzed in this
Memorandum and Order.

26 ³ Having determined that oral argument would not be of material assistance, the Court ordered this
27 matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

28 ⁴ Unless otherwise indicated, the facts set forth in this Section are taken, at times verbatim, from
the allegations contained in Plaintiffs' FAC. ECF No. 16.

1 According to the FAC, after Plaintiff Gutierrez had ordered food from a taco truck
2 at the corner he went across the street to purchase a soda. Gutierrez claims that as he
3 traversed the cross walk, a police car pulled up rapidly and waved, which he interpreted
4 as a directive to return to the taco truck. At some point Plaintiff Duarte, who is also
5 Mexican-American, arrived separately and had also ordered food from the same truck.

6 According to Plaintiffs, a number of Stockton Police officers subsequently arrived
7 and “plann[ed] a violent attack against some Mexican-American members of the crowd”
8 in order “to demonstrate the power and dominance of the Stockton Police against
9 Mexcian Americans, to demonstrate disdain for Mexican American culture and to
10 effectively disrupt, prevent, and break-up celebrations of Mexican American culture.”
11 Pls.’ FAC, ¶ 7. They pulled out wooden batons and one of the officers, Defendant
12 Gandy, allegedly ran up to Plaintiff Duarte, grabbed him by the right shoulder, and threw
13 him, face forward, to the ground. Duarte claims that Officer Gandy placed his knees on
14 Duarte’s neck and head before another officer, Defendant Hachler, hit Duarte multiple
15 times on the back and leg with his baton.

16 Plaintiff Gutierrez, for his part, after “seeing the phalanx of police officers
17 approaching the crowd with batons out and swinging, decided he should leave” and
18 began to jog away. *Id.* at ¶ 17. He states the police chased him and that after he
19 stopped, Officer Nelson tackled him, with Officer Howard subsequently also striking
20 Gutierrez multiple times with his wooden baton.

21 Not surprisingly, the police officers’ version of events is strikingly different. The
22 FAC quotes extensively from the reports prepared as a result of the incident. Officer
23 Gandy wrote that Plaintiff Duarte had been ordered to leave the area. When he did not,
24 and after interfering with another suspect being taken into custody, the reports state that
25 Officer Gandy took Duarte to the ground. Officer Hachler helped gain control of Duarte
26 after he continued to struggle with Officer Gandy and in the process used his baton to
27 gain compliance. *Id.* at ¶ 20.

28 Similarly, with respect to Plaintiff Gutierrez, the reports claim that Gutierrez yelled

1 at the officer, clenched his fists and assumed a fighting stance indicative of wanting to
2 fight the officers before he too was taken down after he refused to stop. Id. at ¶ 19.

3 Plaintiffs claim these allegations were false and that body-worn camera footage
4 contradict the Officers' statements. Plaintiffs were nonetheless taken into custody and
5 charged by the San Joaquin County District Attorney's office with misdemeanor
6 violations of California Penal Code § 148(a)(1), resisting arrest. According to the FAC,
7 on the day of trial those charges were dismissed as to both Plaintiffs "in exchange for 10
8 hours of community service time" to be performed by both men, which they allegedly
9 satisfied. Id. at ¶ 23.

10 In connection with the present Motion to Dismiss, Defendants have requested that
11 the Court judicially notice certain documents, including the police reports, the criminal
12 complaint lodged against the Defendants, and records from the criminal proceedings,
13 including the pleas and dismissal entered in both cases.⁵ The Court records show that
14 both Defendants changed their pleas to the resisting arrest charges to "no contest" on
15 July 12, 2018, which, as the FAC avers and as the Declaration of Victor Bachand also
16 attests, was the day trial was scheduled to begin. The state court judge accepted the no
17 contest pleas, but held them in abeyance provided Plaintiffs completed 10 hours of
18 community service within the next six months. See RJN, Exs. B, E to Bachand Decl.

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20 ⁵ Defendants' Request for Judicial Notice, ECF No. 17-3 ("RJN") is made on grounds that since
21 the materials at issue are public records and pertain to court proceedings, they are properly subject to
22 judicial notice. Bias v. Moynihan, 508 F.3d 121, 1225 (9th Cir. 2007). With regard to the police reports,
23 the RJN makes it clear that the request does not extend to the truth of the matters asserted therein, but
24 only for purposes of establishing the basis for Plaintiffs' subsequent incident-related convictions. RJN,
25 2:22-24. Plaintiffs nonetheless object to inclusion of both the reports and certain court documents,
26 alleging that the police reports are "subject to reasonable dispute", and that some of the court documents
27 were not properly docketed so as to be noted as official court records of the criminal proceedings. Those
28 contentions are misplaced. First, as Defendants specifically note in the RJN itself, the police reports are
offered only for foundational purposes and not to prove the truth of the matters asserted therein. Second,
with respect to the court records, Plaintiffs object only to consideration of the plea forms they both
executed. The Court is satisfied that those documents are indeed court records. Even if they were not,
disposition of criminal charges is specifically discussed at ¶ 23 of the FAC, and as indicated above, the
FAC also recites at length from the police reports themselves. Plaintiffs' counsel herself points to authority
permitting a court to judicially notice matters beyond the four corners of the complaint either as public
records or where the complaint relies on material not attached thereto. See Lee v. City of Los Angeles,
250 F.3d 668, 688-89 (9th Cir. 2001). Notwithstanding whether police reports and plea forms qualify as
public records, they may be judicially noticed here as having been relied upon in the Complaint.
Defendants' RJN is accordingly GRANTED.

1 The “nolo” pleas were memorialized by Minute Orders prepared the same day (id. at
2 Exs. C. F) and both cases were subsequently dismissed on January 14, 2019, in the
3 interests of justice once the requisite community service had been performed. Id. at
4 Exs. D. G.

6 STANDARD

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8 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
9 Procedure 12(b)(6), all allegations of material fact must be accepted as true and
10 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.
11 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and plain
12 statement of the claim showing that the pleader is entitled to relief’ in order to ‘give the
13 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell
14 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,
15 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require
16 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of
17 his entitlement to relief requires more than labels and conclusions, and a formulaic
18 recitation of the elements of a cause of action will not do.” Id. (internal citations and
19 quotations omitted). A court is not required to accept as true a “legal conclusion
20 couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
21 Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right to relief
22 above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright &
23 Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the
24 pleading must contain something more than “a statement of facts that merely creates a
25 suspicion [of] a legally cognizable right of action”)).

26 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket
27 assertion, of entitlement to relief.” Twombly, 550 U.S. at 555 n.3 (internal citations and
28 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard

1 to see how a claimant could satisfy the requirements of providing not only 'fair notice' of
2 the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing Wright &
3 Miller, supra, at 94, 95). A pleading must contain "only enough facts to state a claim to
4 relief that is plausible on its face." Id. at 570. If the "plaintiffs . . . have not nudged their
5 claims across the line from conceivable to plausible, their complaint must be dismissed."
6 Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge
7 that actual proof of those facts is improbable, and 'that a recovery is very remote and
8 unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

9 A court granting a motion to dismiss a complaint must then decide whether to
10 grant leave to amend. Leave to amend should be "freely given" where there is no
11 "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
12 to the opposing party by virtue of allowance of the amendment, [or] futility of the
13 amendment" Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
14 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
15 be considered when deciding whether to grant leave to amend). Not all of these factors
16 merit equal weight. Rather, "the consideration of prejudice to the opposing party . . .
17 carries the greatest weight." Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
18 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
19 "the complaint could not be saved by any amendment." Intri-Plex Techs. v. Crest Group,
20 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,
21 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.
22 1989) ("Leave need not be granted where the amendment of the complaint . . .
23 constitutes an exercise in futility"))).

24 ANALYSIS

25 A. Plaintiffs' Third, Fourth and Fifth Claims are Barred by Heck

26 Under the Supreme Court's 1994 decision in Heck v. Humphrey, a plaintiff cannot
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1 maintain a lawsuit seeking damages under 42 U.S.C. § 1983 if success in that lawsuit
2 would “necessarily imply” the invalidity of a related prior criminal conviction, Heck,
3 512 U.S. at 487. Consequently, Plaintiffs like Duarte and Gutierrez herein cannot bring
4 an action asserting § 1983 claims which, if successful, would undermine a prior
5 conviction for the same conduct unless they can prove the underlying conviction has
6 been “reversed on direct appeal, expunged by executive order, declared invalid by a
7 state tribunal . . . , or called into question by a federal court’s issuance of a writ of habeas
8 corpus.” Heck, 512 U.S. at 486-477.

9 A claim is barred under Heck if the plaintiff “would have to negate an element of
10 the offense of which he has been convicted” (id. at 486 n. 6) or make specific factual
11 allegations inconsistent with his criminal conviction. Cunningham v. Gates, 312 F.3d
12 1148, 1154 (9th Cir. 2002). “[If] a criminal conviction arising out of the same facts stands
13 and is fundamentally inconsistent with the unlawful behavior for which section 1983
14 damages are sought, the 1983 action must be dismissed.” Smith v. City of Hemet,
15 394 F.3d 689, 695 (2005). According to Heck, then, a plaintiff cannot bring a § 1983
16 action unless there has been a “termination of the prior criminal proceeding [on which
17 the 1983 claim is based] in favor of the accused.” Heck, 512 U.S. 484.

18 In now moving to dismiss, Defendants argue that any relief granted pursuant to
19 Plaintiffs’ Third, Fourth and Fifth Claims (for false arrest and imprisonment under § 1983
20 and for filing false police reports in alleged contravention of Plaintiffs’ due process
21 rights), would undermine any “conviction” for Heck purposes as to the charges levied
22 against Plaintiffs for resisting a police officer. To the extent that Plaintiffs were indeed
23 “convicted” as to the resisting charges, it seems axiomatic that any finding that they were
24 falsely arrested, falsely imprisoned or were subject to false police reports would fly in the
25 face of any such conviction. The salient issue thus becomes whether Plaintiffs’ no
26 contest pleas to the charges qualify as a Heck conviction.

27 Defendants argue that Heck applies broadly to convictions and that the manner of
28 conviction—whether by guilty verdict, guilty plea, or no contest plea—is immaterial. The

1 Court agrees. See Szajer v. City of Los Angeles, 632 F.3d 607, 609, 612 (9th Cir. 2011);
2 Radwan v. County of Orange, 519 F. App'x 490, 490-91 (9th Cir. 2013) (“We have
3 repeatedly found Heck to bar § 1983 claims, even where . . . the plaintiff’s prior
4 convictions were the result of guilty or no contest pleas.”); Nuño v. San Bernardino
5 County, 58 F. Supp. 2d 1127, 1135 (C.D. Cal. 1999) (“[F]or purposes of the Heck
6 analysis, a plea of nolo contendere in a California criminal action has the same effect as
7 a guilty plea or a jury verdict of guilty.”). Significantly for purposes of the present matter,
8 the Nuño court remarked that “under Heck, what is relevant about plaintiff’s nolo pleas
9 and [his] resulting. . . convictions is the simple fact of their existence.” Id. at 1136.

10 Plaintiffs try to distinguish this authority by alleging that even if they pleaded no
11 contest, they were never actually “convicted” since the criminal charges against them
12 were dismissed following their completion of community service; indeed, they go so far
13 as to allege this amounted not to a conviction but to a “favorable termination” in their
14 favor under Heck. Pls.’ Opp., 7: 16-18. According to Plaintiffs, Heck cannot apply since
15 “a conviction was never entered, and they received no sentence.” Id. at 7: 25-26.

16 Although it does not appear that any court within the circuit has reached this
17 particular issue, the Court ultimately finds Plaintiffs’ position to be unpersuasive. The
18 Court agrees with Defendants and finds the Third Circuit’s decision in Gilles v. Davis,
19 427 F.3d 197, 210 (3d Cir. 2005), instructive in resolving the question. There, plaintiff
20 Petit entered into an “Accelerated Rehabilitative Disposition” (“ARD”) program, which
21 permitted the expungement of his criminal record upon successful completion of a
22 probationary term. He completed the program and sued law enforcement. Even though,
23 like Duarte and Gutierrez, he was never formally convicted, the Third Circuit found that
24 there had been no favorable termination of the underlying criminal proceedings, and
25 therefore applied Heck. As the court stated:

26 Petit cannot maintain a § 1983 claim unless successful
27 completion of the ARD program constitutes a “termination of
28 the prior criminal proceeding in favor of the accused.” Heck,
512 U.S. at 485, 114 S.Ct. 2364. We have not had occasion
to address this issue directly. Our trial courts, [however,] have

1 held that ARD is not a termination favorable for purposes of
2 bringing a subsequent § 1983 . . . claim.

3 Id.

4 The situation confronted by the Third Circuit is directly analogous to the
5 circumstances with which this Court is confronted. Both instances deal with situations
6 wherein criminal charges were ultimately dismissed following completion of diversion
7 programs: here, through prescribed community service and in Giles through completion
8 of the ARD program. Moreover, like Gilles, Plaintiffs here cannot plausibly argue that
9 completing mandatory community service, after pleading no contest to a charge of
10 resisting law enforcement, can possibly constitute a “favorable termination” of the
11 proceedings for them. Consequently, Defendants’ Motion to Dismiss the Third, Fourth
12 and Fifth Claims as barred by Heck is GRANTED.

13 **B. The Municipal Defendants are Improperly Named in Plaintiffs’ First
14 and Second Claims**

15 In addition to moving to dismiss portions of Plaintiffs’ lawsuit on Heck grounds,
16 Defendants City of Stockton and the Stockton Police Department, also seek dismissal of
17 Plaintiffs’ First and Second Claims, for excessive force in violation of 42 U.S.C. § 1983,
18 on grounds that they cannot be considered “persons” subject to § 1983 liability.
19 Section 1983 permits a “person” to be sued for the deprivation of federal rights, and
20 municipalities or other governmental bodies can qualify as a “person” in that regard
21 under the Supreme Court’s decision in Monell v. Dept. of Social Servs. Of City of New
22 York, 436 U.S. 658, 690 (1978). Nonetheless, according to Defendants, the Ninth Circuit
23 has determined that qualifying governmental entities in that regard do not include police
24 departments, since “municipal police departments and bureaus are generally not
25 considered ‘persons’ within the meaning of 42 U.S.C. § 1983.” United States v. Kama,
26 394 F.3d 1236, 1240 (9th Cir. 2005); see also Vance v. County of Santa Clara,
27 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“[T]he term ‘persons’ does not encompass
28 municipal departments.”). Importantly, the rationale of Kama has been adopted by

1 several judges within this district, including the undersigned. See, e.g., Sanders v.
2 Aranas, No. 1:06-cv-1574, 2008 WL 268972 at 2-3 (E.D. Cal. 2008); Brockmeier v.
3 Solano County Sheriff's Dept., No. 2:05-cv-2090 MCE EFB PS, 2006 WL 3760276 at *4
4 (E.D. Cal. 2006).

5 Plaintiffs, in opposition, contend the matter is not nearly as clear-cut as
6 Defendants suggest. They argue that the Kama decision relied on by Defendants is a
7 concurring opinion. While conceding that several district courts have relied on Kama to
8 dismiss police and sheriff departments as improper § 1983 defendants, Plaintiffs argue
9 that another line of cases has found otherwise following a Ninth Circuit case decided
10 prior to Kama, Streit v. County of Los Angeles, 236 F. 3d 552 565 (9th Cir. 2001). While
11 it is true that other district courts, including Courts within the Eastern District, have relied
12 on the 2001 Streit decision, it represents an earlier pronouncement of Ninth Circuit
13 authority than the 2005 Kama opinion, and relies on case law from the 1980s, including
14 Karim Panahi v. L.A. Police Dep't, 839 F.2d 621, 624 n.2 (9th Cir. 1986) and Shaw v.
15 Cal. Dep't of Alcoholic Beverage Control, 788 F.2d 600, 604 (9th Cir.1986).

16 Because the Kama case represents the Ninth Circuit's most recent
17 pronouncement on the liability of a police department under 42 U.S.C. § 1983, this Court
18 believes it should be followed. Defendants' Motion to Dismiss the Stockton Police
19 Department and the City of Stockton, under which the police department operates, is
20 accordingly GRANTED.⁶

21 22 CONCLUSION

23
24 For all the above reasons, Defendants' Motion to Dismiss (ECF No. 17) is
25 GRANTED as follows:

26 1. As Plaintiffs have conceded, the First, Second, Third and Fourth Claims are

27 _____
28 ⁶ Plaintiffs' Opposition is directly solely to the Stockton Police Department and contains no specific argument, besides that directed to the police department, that the City of Stockton is a viable party. Therefore, Defendants' Motion is GRANTED as to the City of Stockton as well.

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DISMISSED to the extent they are predicated on alleged Fourteenth Amendment violations;

2. Plaintiffs' Third, Fourth and Fifth Claims dismissed on grounds that they are barred by Heck, and because the Court believes further leave to amend would be futile, that dismissal is without leave to amend;
3. Defendants' Motion to Dismiss Defendants City of Stockton and the Stockton Police Department from the First and Second Claims is GRANTED also without leave to amend.
4. This case shall proceed on Plaintiffs' remaining claims.

IT IS SO ORDERED.

Dated: May 21, 2020


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE