

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ANGEL SANDOVAL RIOS,)	No. CV-F-05-644 REC/SMS
)	
)	ORDER GRANTING IN PART AND
Plaintiff,)	DENYING PART DEFENDANTS'
)	MOTION TO DISMISS OR FOR
vs.)	MORE DEFINITE STATEMENT AND
)	DIRECTING PLAINTIFF TO FILE
)	FIRST AMENDED COMPLAINT
)	
CITY OF FRESNO, et al.,)	
)	
)	
Defendant.)	
)	
)	

On June 27, 2005, the court heard defendants' motion to dismiss or for more definite statement.

Upon due consideration of the record and arguments of the parties, the court grants this motion in part and denies it in part for the reasons set forth herein.¹

¹Because plaintiffs' opposition to the motion to dismiss was untimely filed, defendants argues that the court should disregard plaintiffs' opposition to the motion to dismiss. Pursuant to Rule 78-230, Local Rules of Practice, plaintiffs' opposition to the motion should have been filed on June 13. However, it was not filed until June 16 at 4:15 p.m. The opposition was served by mail on defendants on June 15 and received by defendants on June 16.

1 Plaintiff, Angel Sandoval Rios has filed a Complaint for
2 Damages against defendants City of Fresno, the Fresno Police
3 Department, Alfred Campos, Ron Manning and Does 1-100. The
4 Complaint alleges in pertinent part:

5 11. On March 20, 2004, Plaintiff had been
6 driving a chartered bus owned by Villa
Express.

7 12. Villa Express had contracted with Betty
8 Gerardin, for the purposes of providing
9 transportation to a group of approximately 40
retirees. The group's itinerary revolved
around a visit to the Mission at. [sic]

10 13. At approximately 9:00 p.m. and after
11 returning from a trip to San Juan Capistrano,
12 Plaintiff drove into the parking lot of the
headquarters for the Catholic Diocese of
Fresno.

13 14. The Catholic Diocese of Fresno is
14 located about 100 feet southwest from where
15 freeway 41 and McKinley Avenue intersect.
16 The Catholic Diocese of Fresno occupies the
northeast section of San Joaquin Memorial
High School.

17 15. Plaintiff entered the parking lot of the
18 Catholic Diocese and noticed that a number of
19 Fresno Police Department squad cars were
20 directly behind him as they had activated
their overhead lights in order to conduct a
routine traffic stop.

21 Rule 78-230(c) provides that "[n]o party will be entitled to be
22 heard in opposition to a motion at oral argument if opposition to
23 the motion has not been timely filed by that party." [Emphasis
24 added]. Therefore, the rule does not allow this court to disregard
25 plaintiff's written opposition in resolving the motion to dismiss.
26 Consequently, defendant's request that the court "disregard" the
written opposition is not allowed by the rule. However, plaintiff
is advised that it is his obligation to timely comply with court
orders, the Federal Rules of Civil Procedure, and the Local Rules
of Practice. Failure to do so may result in the imposition of
sanctions, including the sanction of dismissal.

1 16. Once stopped, Defendants CAMPOS and
2 MANNING approached Plaintiff and asked
Plaintiff to exit the bus, which he did.

3 17. Plaintiff asked Defendants CAMPOS and
4 MANNING what their purpose was for the
traffic stop.

5 18. Defendants CAMPOS and MANNING responded
6 that a 'tipster' informed them he had seen
Plaintiff conducted [sic] an unsafe lane
7 change.

8 19. Plaintiff was then asked by Defendant
CAMPOS for his driver's license. Plaintiff
9 obliged.

10 20. The driver's license which was presented
to Defendant CAMPOS was a temporary license
11 because Complainant [sic] had yet to receive
his *actual* driver's license in the mail.

12 21. Plaintiff has a valid license to operate
the bus in question.

13 22. Soon thereafter, Plaintiff was told by
14 Officers that he should sit down.

15 23. Plaintiff asked 'Why?' he should sit, as
16 he posed no threat (neither physically, nor
in terms of flight) to the responding
17 officers which now numbered over 8 uniformed
police officers. (It should also be noted
18 that there were at least five Fresno Police
Patrol units dispatched to the scene. There
19 was also a police helicopter hovering over
the scene.)

20 24. Defendant CAMPOS informed Plaintiff that
21 if he did not sit down, he would be arrested
for resisting arrest.

22 25. Soon thereafter, Defendant CAMPOS
23 grabbed Plaintiff's left arm and tried to
place it behind his back.

24 26. Defendant CAMPOS forcibly bent
25 Plaintiff's arm in such a way as to cause him
to 'stiffen' his arm.

26 27. Defendant CAMPOS and MANNING interpreted

1 this 'stiffening' as a sign of resistance.

2 28. Immediately thereafter Plaintiff was
3 subjected to the use of a taser gun.

4 29. Plaintiff fell to the ground, causing
5 him to slam his head on the asphalt.

6 30. Plaintiff laid there motionless while
7 police proceeding [sic] to roll him on his
8 stomach and handcuff him.

9 31. Plaintiff had to be taken to University
10 Medical Center to treat the injuries (more
11 particularly described below) sustained as a
12 result of the tazing.

13 32. Plaintiff was arrested and charged with
14 the crime of resisting, obstructing, and
15 delaying an officer in violation of Penal
16 Code Section 148(a)(1).

17 33. Plaintiff was also charged with the
18 crime of unlawful turning movement, in
19 violation of Vehicle code Section 22107.

20 The Complaint alleges the following causes of action:

21 1. First Cause of Action - unlawful arrest, and
22 prosecution in violation of 42 U.S.C. §§ 1983 and 1986 and
23 California Civil Code §§ 43, 51.7 and 52.1;

24 2. Second Cause of Action - false arrest and
25 imprisonment in violation of the Fourteenth Amendment to the
26 United States Constitution, Article One, Sections One and Seven
of the California Constitution, and California Civil Code §§ 43
and 52.1;

3. Third Cause of Action - for interference with civil
rights under the Tom Banes Civil Rights Act;

4. Fourth Cause of Action - for intentional infliction
of emotional distress;

1 5. Fifth Cause of Action - for negligence per se;

2 6. Sixth Cause of Action - for negligent infliction of
3 emotional distress and negligence;

4 7. Seventh Cause of Action - for assault and battery;

5 8. Eighth Cause of Action - for negligence.

6 A. Standards Governing Motion to Dismiss.

7 Rule 8(a)(2), Federal Rules of Civil Procedure, requires
8 that a pleading set forth a short and plain statement of the
9 claim showing that the pleader is entitled to relief. Under Rule
10 8(a)(2), a pleading must give fair notice and state the elements
11 of the claim plainly and succinctly. Jones v. Community
12 Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). A
13 complaint that is verbose, conclusory and confusing does not
14 comply with Rule 8(a)(2). Nevijel v. North Coast Life Ins. Co.,
15 651 F.2d 671, 674 (9th Cir. 1981). A complaint should not be
16 dismissed unless, after all of plaintiff's allegations of
17 material fact are accepted as true, it appears beyond doubt that
18 the plaintiff can prove no set of facts which would entitle him
19 to relief. In addition, "in apprising the sufficiency of the
20 complaint we follow ... the accepted rule that a complaint should
21 not be dismissed for failure to state a claim unless it appears
22 beyond doubt that the plaintiff can prove no set of facts in
23 support of his claim which would entitle him to relief." Conley
24 v. Gibson, 355 U.S. 41, 45-46 (1957). However, before a district
25 court's dismissal of a complaint without leave to amend will be
26 affirmed, the district court must have first adopted less drastic

1 alternatives, such as advising plaintiff of the deficiencies in
2 the pleading and giving leave to amend to correct them. Id.

3 B. State Law Tort Causes of Action.

4 Defendants move to dismiss the state law tort causes of
5 action on a number of grounds, each of which will be discussed
6 under separate heading.

7 1. Pleading Statutory Basis.

8 In Lopez v. Southern Cal. Rapid Transit Dist., 40 Cal.3d
9 780, 795 (1985), the California Supreme Court ruled:

10 Ordinarily, negligence may be pleaded in
11 general terms and the plaintiff need not
12 specify the precise act or omission alleged
13 to constitute a breach of duty. However,
14 because under the Tort Claims Act all
15 governmental tort liability is based on
16 statute, the general rule that statutory
causes of action must be pleaded with
particularity is applicable. Thus, to state
a cause of action against a public entity,
every fact material to the existence of its
statutory liability must be pleaded with
particularity.

17 Defendants argue that this law means that plaintiffs who sue
18 a public entity/public employee for damages under California law
19 must satisfy a heightened pleading standard by alleging the
20 correct statute establishing the mandatory duty and the statute
21 that declares the government liable. Defendants contend that
22 plaintiff has failed to plead a statutory basis for any of the
23 state law tort claims which would permit them to be pleaded
24 against a public entity or employees of that public entity.

25 The court does not agree with defendants' position and
26 denies defendants' motion to dismiss on this ground. Federal

1 law, rather than state law, sets the standard for dismissal under
2 Rule 12(b)(6). When the issue is whether a complaint states a
3 claim for relief under California law, the standard for dismissal
4 under California law is relevant but is not controlling. See
5 Church of Scientology of California v. Flynn, 744 F.2d 694, 696
6 n.2 (9th Cir. 1984).

7 2. Failure to Plead Required Elements.

8 Defendants further contend that plaintiff "has completely
9 failed to properly plead the required elements for each of the
10 eight State-law torts ... and to allege with particularity which
11 defendant she [sic] is suing for each of these torts ... [and
12 has] likewise failed to plead any of the required elements for
13 causes of action under California Civil Code sections 43 and
14 52.1."

15 This is the entire extent of this aspect of defendants'
16 motion. Nowhere do defendants describe the respective elements
17 or delineate which ones have not been pleaded. Such a conclusory
18 motion is of no use to the court in determining whether the
19 motion to dismiss has merit. Plaintiff responds that he has
20 satisfied the notice pleading requirements of Rule 8 which is not
21 particularly helpful either. Because this is defendants' motion
22 and defendants have not substantiated this basis for dismissal
23 for failure to state a claim, the court denies defendants' motion
24 to dismiss on this ground.

25 3. Failure to State California Claims.

26 In this section of defendants' motion defendants set forth a

1 series of legal conclusions for the proposition that plaintiff
2 has failed to state claims for relief under California law.

3 Thus, for example, defendants contend that an arrest based
4 on probable cause or a temporary detention for reasonable
5 investigation based on a reasonable belief connecting the suspect
6 with criminal activity is not unlawful.

7 That is the law but such a statement does not demonstrate
8 that the Complaint does not state a claim upon which relief can
9 be granted because it assumes that plaintiff's detention and
10 arrest was lawful.

11 Defendants further contend that, to the extent the Complaint
12 alleges or implies that plaintiff had the right to resist arrest
13 by failing to comply with the officers' order to sit down and by
14 stiffening his arm when the officers were attempting to handcuff
15 him, the Complaint is not actionable under California law. In so
16 contending, defendants refer the court to California Penal Code §
17 834a:

18 If a person has knowledge, or by the exercise
19 of reasonable care, should have knowledge,
20 that he is being arrested by a peace officer,
21 it is the duty of such person to refrain from
22 using force or any weapon to resist such
23 arrest.

24 The law in California is that a person may not use force to
25 resist any arrest or detention, lawful or unlawful, except that
26 he may use reasonable force to defend life and limb against
excessive force. People v. Curtis, 70 Cal.2d 347, 357 (1969);
Evans v. City of Bakersfield, 22 Cal.App.4th 321, 326-333 (1994).

1 Because the Complaint alleges that the force used against
2 plaintiff was excessive, defendants' reliance on Section 834a in
3 contending that plaintiff has not stated a claim upon which
4 relief can be granted is misplaced.

5 Defendants assert that Officers Campos and Manning are
6 entitled to immunity from liability under state law for alleged
7 torts in connection with the detention and arrest of plaintiff.
8 In so arguing, defendants refer the court to California
9 Government Code § 820.2:

10 Except as otherwise provided by statute, a
11 public employee is not liable for an injury
12 resulting from his act or omission whether
13 the act or omission was the result of the
14 exercise of discretion vested in him, whether
15 or not such discretion be abused.

16 The court is also referred to California Government Code § 820.4:

17 A public employee is not liable for his act
18 or omission exercising due care, in the
19 execution or enforcement of any law.

20 However, police officers are not immune from liability under
21 state law from claims for false arrest or false imprisonment or
22 from claims of excessive force. Robinson v. Solano County, 278
23 F.3d 1007, 1016 (9th Cir. 2002). Therefore, to the extent that
24 defendants seek dismissal of the state law claims on this ground,
25 the motion is denied.

26 4. Fresno Police Department as Defendant.

Defendants move to dismiss the Fresno Police Department as a
named defendant in this action because it is not a separate legal
entity but, rather, a subdivision of defendant City of Fresno.

1 Plaintiff not responding to this assertion, the court
2 assumes that plaintiff concedes that the proper defendant is the
3 City of Fresno.

4 C. Section 1983 Violations.

5 1. Failure to Specifically Allege Which Defendant Shot
6 Plaintiff With Taser.

7 Defendants move to dismiss the causes of action alleged for
8 violation of Section 1983 because the Complaint does not identify
9 specifically whether he was tasered by Officers Campos, Manning,
10 or one of the eight unidentified patrol officers referenced in
11 paragraph 23 of the Complaint. Defendants assert:

12 The complaint must allege in specific terms
13 how each named defendant is involved, and how
14 each named Plaintiff has been harmed. There
15 can be no liability under ... section 1983
16 unless there is some affirmative link or
17 connection between a defendant's actions and
18 the claimed deprivation ... In a
constitutional claim with multiple
defendants, a plaintiff must, in his
complaint, set forth specific information as
to 'which wrongs were committed by which
defendants.'

19 The court does not agree with defendants' position in a
20 situation where a plaintiff does not know which defendant
21 actually shot him with the taser. The Ninth Circuit allows the
22 use of Doe defendants in a situation where the identity of the
23 alleged defendant is not known prior to filing the Complaint. In
24 such a situation, the plaintiff should be given the opportunity
25 through discovery to identify the unknown defendant, unless it is
26 clear that discovery would not uncover the identities or that the

1 Complaint will be dismissed on other grounds. Wakefield v.
2 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). Therefore,
3 defendants' motion is denied on this ground.

4 2. Respondeat Superior Liability/Failure to Plead
5 Monell Claim Against City of Fresno.²

6 Defendants move to dismiss the Complaint on the ground that
7 it does not validly allege liability against the City of Fresno.

8 A supervisor is only liable for constitutional violations of
9 his subordinates if the supervisor participated in or directed
10 the violations, or knew of the violations and failed to act to
11 prevent them. There is no respondeat superior liability under
12 Section 1983. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
13 1989). The City cannot be held liable for the alleged violations
14 of plaintiff's civil rights in the absence of an allegation that
15 plaintiff was deprived of his rights pursuant to official policy
16 or custom. Monell v. Dept. of Social Services, 436 U.S. 658
17 (1978).

18 Here, the only allegation in the Complaint that appears to
19 pertain to Monell is:

20 44. Defendants CITY OF FRESNO and DOE ONE,
21

22 ²Plaintiff has submitted with his opposition to this motion
23 exhibits critical of the tazer training given to Fresno Police
24 officers in response to defendants' contention that he has not
25 sufficiently alleged a claim against the City of Fresno under
26 Monell. A motion to dismiss for failure to state a claim under
Rule 12(b)(6) must be converted to a motion for summary judgment
under Rule 56 if "matters outside the pleading are presented to and
not excluded by the court". However, because the court does not
consider these exhibits in resolving the motion, the court does not
convert the motion to one for summary judgment.

1 the supervisory officers or agents of the
2 CITY OF FRESNO, are directly liable and
3 responsible for the acts of the
4 aforementioned CITY OF FRESNO police
5 officers, because they repeatedly, knowingly
6 and with deliberate indifference failed to
7 enforce the laws of the State of California
8 and the regulations of the CITY OF FRESNO
9 police department pertaining to the proper
10 arrest of persons on probations [sic].

11 From plaintiff's reference to City of Canton v. Harris, 489
12 U.S. 378 (1989), in his opposition to this motion, it appears
13 that he intends to base his Monell claim against the City of
14 Fresno on a failure to train. However, paragraph 44 does not
15 clearly allege that this is the basis of the claim. In the Ninth
16 Circuit, an allegation based on nothing more than a bare
17 averment that the officials' conduct conformed to official
18 policy, custom, or practice suffices to state a claim under
19 Section 1983. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d
20 621, 624 (9th Cir. 1988); Shah v. County of Los Angeles, 797 F.2d
21 743, 747 (9th Cir. 1986); Guillory v. County of Orange, 731 F.2d
22 1379, 1382 (9th Cir. 1984). If plaintiff intends to proceed
23 against the City of Fresno under Section 1983, the Complaint must
24 be amended to more clearly allege the Monell claim based on the
25 failure to train.

26 3. Failure to State a Claim for Unlawful Detention.

Defendants argue that the allegations of the Complaint do
not suffice to state a claim based on unlawful detention in
violation of plaintiff's constitutional rights.

In so arguing, defendants note the Fourth Amendment requires

1 that detention be supported by facts and inferences that support
2 a reasonable suspicion that the person detained may be involved
3 in criminal activity. Terry v. Ohio, 392 U.S. 1, 30 (1968). The
4 Fourth Amendment requires only reasonable suspicion in the
5 context of investigative traffic stops. United States v. Lopez-
6 Soto, 205 F.3d 1101, 1104-1105 (9th Cir. 2000). An investigative
7 stop is not subject to strict time limitations as long as the
8 officer is pursuing the investigation in a diligent and
9 reasonable manner, United States v. Sharpe, 470 U.S. 675, 686-687
10 (1985), and a police officer can ask a driver to step out of the
11 vehicle pursuant to a valid traffic stop. Pennsylvania v. Mimms,
12 434 U.S. 106, 111 (1977).

13 Noting that the Complaint alleges that the officers told
14 plaintiff that they were detaining him because a "tipster" had
15 informed them that plaintiff had made an unsafe lane change while
16 operating the chartered bus, defendants argue that these
17 allegations, when combined with the law cited above, establish as
18 a matter of law that the detention of plaintiff was not a
19 violation of the Fourth Amendment.

20 The court does not agree. That the Complaint alleges what
21 the officers told plaintiff does not establish that was in fact
22 the reason for the detention.

23 Therefore, the motion to dismiss on this ground is denied.

24 4. Failure to State a Claim for Excessive Force.

25 Defendants further argue that the Complaint does not allege
26 facts sufficient to establish that excessive force was used

1 against plaintiff.

2 Under the Fourth Amendment, police may use only such force
3 as is "'objectively reasonable' in light of the facts and
4 circumstances confronting them, without regard to their
5 underlying intent or motivation." Graham v. Connor, 490 U.S.
6 386, 397 (1989). All determinations of unreasonable force "must
7 embody allowance for the fact that police officers are often
8 forced to make split-second judgments - in circumstances that are
9 tense, uncertain, and rapidly evolving - about the amount of
10 force that is necessary in a particular situation." Graham v.
11 Connor, id. at 396-397. As the Supreme Court explained:

12 [I]ts proper application requires careful
13 attention to the facts and circumstances of
14 each particular case, including the severity
15 of the crime at issue, whether the suspect
16 poses an immediate threat to the safety of
the officers or others, and whether he is
actively resisting arrest or attempting to
evade arrest by flight

17 The 'reasonableness' of a particular use of
18 force must be judged from the perspective of
19 a reasonable officer on the scene, rather
20 than with the 20/20 vision of hindsight ...
21 With respect to a claim of excessive force,
the same standard of reasonableness at the
moment applies: 'Not every push or shove,
even if it may later seem unnecessary in the
peace of a judge's chambers,' ... violates
the Fourth Amendment.

22 Id. at 396. Reasonableness traditionally is a question of fact
23 for the jury. Id.

24 Defendants argue that they are entitled to dismissal of
25 plaintiff's excessive force case for failure to state a claim
26 under Rule 12(b)(6):

1 Only after Plaintiff was lawfully stopped on
2 reasonable suspicion for a traffic violation,
3 proffered a temporary license, twice refused
4 to comply with verbal instructions to be
5 seated and Plaintiff 'resisted' being
6 handcuffed, was Plaintiff tasered one time.
7 These facts as pleaded by Plaintiff do not
8 give rise to a civil rights violation.

9 Plaintiff responds that defendants are improperly asking
10 the court to resolve this factual determination. Plaintiff
11 asserts that he will produce in discovery evidence that shows "1)
12 contradictory statements in the respective reports of Defendants
13 Campos and Manning; 2) numerous credible, elderly, God fearing
14 witnesses who can attest to the repulsive and otherwise
15 intimidating behavior of Campos and Manning towards Plaintiff and
16 witnesses." Plaintiff contends:

17 The strength of Plaintiff's case are the
18 police reports and the sheer number of
19 witnesses present at the time of the incident
20 in question - without them, Plaintiff would
21 regretfully have to rely on a 'he said she
22 said' case. But this is not the case.

23 The court denies defendants' motion to dismiss the excessive
24 force claim because the reasonableness of defendants' action in
25 shooting plaintiff with the taser under the circumstances alleged
26 in the Complaint is a question of fact.

27 5. Qualified Immunity.

28 Defendants contend that Officers Campos and Manning are
29 entitled to qualified immunity from liability for damages under
30 Section 1983.

31 The Ninth Circuit employs a three-part test to determine
32 whether an individual is entitled to qualified immunity. First,

1 the specific right allegedly violated must be identified.
2 Secondly, it must be determined whether that right was so clearly
3 established as to alert a reasonable officer to its
4 constitutional parameters. Third, if the law is clearly
5 established, it must be determined whether a reasonable officer
6 could have believed lawful the particular conduct at issue.
7 Kelly v. Borg, 60 F.3d 664, 666 (9th Cir. 1995). The plaintiff
8 in a Section 1983 action bears the burden of proving that the
9 right allegedly violated was clearly established at the time of
10 the officer's allegedly impermissible conduct. Camarillo v.
11 McCarthy, 998 F.2d 638, 640 (9th Cir. 1993). A law is "clearly
12 established" when "the contours of that right [are] sufficiently
13 clear that a reasonable officer would understand that what he is
14 doing violates that right." Anderson v. Creighton, 489 U.S. 635,
15 640 (1987). To demonstrate clearly established law at the time
16 of the events in question, the plaintiff

17 'must show that the particular facts of [the]
18 case support a claim of clearly established
19 right.' ... This does not mean that the
20 'exact factual situation' of [the case] must
21 have been previously litigated ...
22 '[S]pecific binding precedent is not required
23 to show that a right is clearly established
24 for qualified immunity purposes.' ... Absent
25 binding precedent, 'a court should look at
26 all available decisional law including
27 decisions of state courts, other circuits,
28 and district courts to determine whether the
29 right was clearly established.' ...
30 Nonetheless, '[t]he contours of the [clearly
31 established] right must be sufficiently clear
32 that a reasonable official would understand
33 that what he is doing violates that right.'
34

1 Doe By and Through Doe v. Petaluma City School Dist., 54 F.3d
2 1447, 1450 (9th Cir. 1995). In Saucier v. Katz, 533 U.S. 194
3 (2001), the Supreme Court set forth a two-pronged inquiry to
4 resolve all qualified immunity claims. First, "taken in the
5 light most favorable to the party asserting the injury, do the
6 facts alleged show the officers' conduct violated a
7 constitutional right?" Id. at 201. Second, if so, was that
8 right clearly established? Id. "The relevant, dispositive
9 inquiry in determining whether a right is clearly established is
10 whether it would be clear to a reasonable officer that his
11 conduct was unlawful in the situation he confronted." Id. at
12 202. This inquiry is wholly objective and is undertaken in light
13 of the specific factual circumstances of the case. Id. at 201.

14 Although defendants' brief sets forth the legal standards
15 upon which a determination of qualified immunity is made, there
16 is no discussion or analysis in their brief why these officers
17 should be entitled to qualified immunity under the allegations of
18 the Complaint. However, plaintiff's opposition also is of no
19 assistance to the court in resolving this issue:

20 Defendants correctly state that 'officers
21 performing discretionary duties have
22 qualified immunity, which shields them from
23 "civil damages liability **as long as their
actions could reasonably have been thought
consistent with the rights they are alleged
to have violated.**"'

24 Whether Officers Campos and Manning
25 reasonably thought their actions consistent
26 with the rights they are alleged to have
violated is question [sic] of fact and as
such, this is not the proper forum for this

determination.

It is clear from plaintiff's response that he does not understand the inquiry that must be conducted when the issue of qualified immunity is raised. Plaintiff has the burden of establishing that the conduct or action in question violated a clearly established constitutional right. Plaintiff does not even begin to attempt to discuss this factor. The only situation in which disputed facts might preclude a determination of qualified immunity is when the determination of the objective reasonableness of the officers' conduct turns on disputed facts. See Wilkins v. City of Oakland, 350 F.3d 949, 955-956 (9th Cir. 2003), cert. denied, ___ U.S. ___, 125 S.Ct. 43 (2004).

The threshold issue is whether the stop of plaintiff was based on reasonable suspicion. The Complaint alleges that plaintiff was stopped because a 'tipster' had informed the police officers that the he had seen Plaintiff conduct an unsafe lane change. From the court's research, a traffic stopped based solely on this kind of tip does not support a finding of reasonable suspicion. See Florida v. J.L., 529 U.S. 266, 270-271 (2000). Therefore, if the allegation in the Complaint is proved, the officers violated plaintiff's constitutional right under the Fourth Amendment by stopping him, which right is clearly established by Supreme Court authority of which a reasonable officer would have known. Because of this conclusion, the court must deny qualified immunity at this stage of the litigation to the officers for plaintiff's subsequent arrest and the use of

1 force in effecting plaintiff's arrest.³

2 6. Adequacy of Pleading of Conspiracy.

3 Although there is no separate cause of action for violation
4 of 42 U.S.C. § 1985, the jurisdictional allegation of the
5 Complaint alleges that it is brought pursuant to Section 1985 as
6 well as other civil rights acts. The First Cause of Action
7 contains the following allegation:

8 Plaintiff further alleges that Defendants
9 CAMPOS and MANNING conspired with one another
10 to enter into an agreement with the intent to
11 commit wrongful acts: violations of the
12 Fourth Amendment to the United States
13 Constitution, Article One, Sections One and
14 Seven of the California Constitution, and
15 California Civil Code Sections § 43 and §
16 52.1 [sic]. Defendants MANNING, CAMPOS, CITY
17 OF FRESNO, and each of them, committed
wrongful acts in furtherance of the
conspiracy, causing Plaintiff to sustain
injury and damages. Plaintiff RIOS further
alleges that the act or acts of one
conspirator pursuant to or in furtherance of
the common design of the conspiracy is the
act of all conspirators. The acts in
furtherance of the conspiracy as set forth
herein in this FIRST CAUSE OF ACTION.

18 The Second Cause of Action and the Fourth Cause of Action contain
19 essentially the same allegation, except that the City of Fresno
20 is not named as a conspirator in those causes of action.

21 If plaintiff intended in this Complaint to state a claim for
22 relief pursuant to Section 1985(3), the Complaint does not do so.

23 In order to state a claim upon which relief can be granted under

24 ³In denying the motion to dismiss on the ground of qualified
25 immunity, the court is expressing no opinion whether defendants
26 will be entitled to qualified immunity at summary judgment or
trial.

1 Section 1985(3), a plaintiff must allege the following four
2 elements:

3 (1) a conspiracy; (2) for the purpose of
4 depriving, either directly or indirectly, any
5 person or class of persons of the equal
6 protection of the laws, or of equal
7 privileges and immunities under the laws; and
8 (3) an act in furtherance of this conspiracy;
9 (4) whereby a person is either injured in his
10 person or property or deprived of any right
11 or privilege of a citizen of the United
12 States.

13 United Bhd. of Carpenters v. Scott, 463 U.S. 825, 828-829 (1983).

14 The second of these four elements requires that in addition to
15 identifying a legally protected right, that the Amended Complaint
16 allege that the conspiracy was motivated by "some racial, or
17 perhaps otherwise class-based, invidiously discriminatory animus
18 behind the conspirators' action." Trerice v. Pedersen, 769 F.2d
19 1398, 1402 (9th Cir. 1985). "A claim under this section must
20 allege facts to support the allegation that defendants conspired
21 together. A mere allegation of conspiracy without factual
22 specificity is insufficient." Karim-Panahi v. Los Angeles Police
23 Dept., 839 F.2d 621, 626 (9th Cir. 1988).

24 Nothing in the Complaint satisfies these requirements.
25 Therefore, to the extent that plaintiff is attempting to plead a
26 conspiracy pursuant to Section 1985(3), the Complaint is
dismissed with leave to amend.

Defendants also argue that the allegations of conspiracy do
not suffice to state a claim, relying on Mendocino Environmental
Center v. Mendocino County, 192 F.3d 1283, 1301-1302 (9th Cir.

1 1999). However, this case involved a review of summary judgment
2 and does not set forth the pleading required to state a claim for
3 conspiracy. Because the Supreme Court and the Ninth Circuit have
4 made clear that heightened pleading standards no longer apply and
5 that the sufficiency of the allegations are governed the
6 standards applicable to Rule 8 and Rule 12(b)(6), the court does
7 not dismiss these conspiracy allegations to the extent that they
8 are not intended to state a claim for relief under Section
9 1985(3).⁴

10 ACCORDINGLY:

11 1. Defendants' Motion to Dismiss or For More Definite
12 Statement is granted in part and denied in part.

13 2. Plaintiff shall file a First Amended Complaint in
14 accordance with this Order within 30 days of the filing date of
15 this Order. Failure to timely comply will result in the
16 dismissal of this action.

17 IT IS SO ORDERED.

18 **Dated: July 25, 2005**
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE

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24 ⁴Defendants alternatively move for a more definite statement
25 "based on the vagueness of the allegations and the indefiniteness
26 of the material claims". However, the Complaint is clear enough
for defendants to file an answer. Therefore, defendants' motion
for more definite statement is denied.