UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV21-04290 JAK (GJSx)	Date	September 8, 2023
Title	Keith Anderson et al. v. Chief John E. Perez et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

T. Jackson	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (DKT. 64); AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DKT. 68); AND DEFENDANTS' CODE OF CIVIL PROCEDURE § 425.16 ANTI-SLAPP MOTION TO STRIKE THE PLAINTIFFS' COMPLAINT (DKT. 20) [REDACTED]**

I. Introduction

Keith Anderson ("Anderson") and Lorena McCaigue ("McCaigue") ("Plaintiffs") brought this action against Pasadena Police Chief John E. Perez ("Perez") and the City of Pasadena ("Pasadena" or "City") ("Defendants"). Dkt. 1. The Complaint was filed on May 22, 2021. *Id.* The action arises out of Defendants' alleged retaliation against Plaintiffs due to the following: (1) bringing a civil action against the City of Pasadena and certain Pasadena police officers in which violations of the California Tort Claims Act were alleged; and (2) making a request under California's Public Records Act ("CPRA") to obtain copies of police body camera footage. *Id.*

The Complaint advances the following causes of action under 42 U.S.C. § 1983: (1) violation of Plaintiffs' First Amendment rights by Defendant Perez (*Id.* ¶¶ 33–39); (2) violation of Plaintiffs' due process rights (retaliation) by Defendant Perez (*Id.* ¶¶ 40–47); (3) state-created danger by Defendant Perez (*Id.* ¶¶ 48–55); (4) a *Monell* Claim against Defendant City (*Id.* ¶¶ 56–67); and (5) supervisor liability against Defendant Perez (*Id.* ¶¶ 68–74). The Complaint also advances the following causes of action against all defendants: (6) negligence (*Id.* ¶¶ 75–82); (7) intrusion into private affairs; (*Id.* ¶¶ 83–87); (8) public disclosure of private facts (*Id.* ¶¶ 88–92); (9) violation of Government Code Section 6254.21 (*Id.* ¶¶ 93–100); and (10) violation of the Bane Act, Cal. Civ. Code § 52.1 (*Id.* ¶¶ 101–104). The Complaint seeks general, special, compensatory and punitive damages, as well as costs and attorney's fees pursuant to 42 U.S.C. § 1988 and Cal. Civ. Code §§ 52, 52.1. *Id.* at 24. The Complaint also seeks civil penalties, including treble damages. *Id.*

On July 21, 2021, Defendants filed a Special Motion to Strike the Plaintiffs' Complaint under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16(b). Dkt. 14. Because Defendants set their motion for a day the Court's calendar was already full, the motion was stricken on July 22, 2021. Dkt. 15.

On July 28, 2021, Defendants filed an Answer to the Complaint. Dkt. 18. On August 6, 2021,

Defendants re-filed their Anti-SLAPP motion (the "Anti-SLAPP Motion"). Dkt. 20. On September 27, 2021, Plaintiffs filed their Opposition to the Anti-SLAPP Motion. Dkt. 25. *See also* Dkts. 26–27 (accompanying sealed declarations). On October 12, 2021, Defendants filed their Reply in Support of the Anti-SLAPP Motion. Dkt. 30.

A hearing was held on Defendants' Anti-SLAPP Motion on March 14, 2022. Dkt. 42. At the hearing, the Court stated its tentative views that it was inclined to grant in part and deny in part the Anti-SLAPP Motion. The Anti-SLAPP Motion was taken under submission. *Id.*

On August 26, 2022, Plaintiffs filed a motion for partial summary judgment ("Plaintiffs' MSJ"). Dkt. 64. On August 29, 2022, Defendants filed a motion for summary judgment ("Defendants' MSJ"). Dkt. 68. On September 11, 2022, Plaintiffs filed an opposition to Defendants' MSJ ("Plaintiffs' Opposition"). Dkt. 71. On September 30, 2022, Plaintiffs filed a reply in support of their MSJ ("Plaintiffs' Reply"), arguing that Defendants had failed timely to file an opposition. Dkt. 75. On October 17, 2022, Defendants filed an opposition to Plaintiffs' MSJ ("Defendants' Opposition"). Dkt. 76. On October 21, 2022, Plaintiffs filed a sur-reply in support of their MSJ ("Plaintiffs' Sur-Reply"). Dkt. 79. On October 24, 2022, Defendants filed a reply in support of their MSJ ("Defendants' Reply"). Dkt. 80.

A hearing on Plaintiff's MSJ and Defendant's MSJ (collectively, the "MSJs") was held on December 19, 2022, and the MSJs were taken under submission. Dkt. 84.

II. Factual Background

A. Parties

The Complaint alleges that Anderson is a retired federal law enforcement agent, a federal criminal investigator under Cal. Gov't Code § 6254.24(h) and a California resident. Dkt. 1 ¶ 2. [redacted]

The Complaint alleges that McCaigue is an active federal law enforcement agent, a federal criminal investigator under Cal. Gov't Code § 6254.24(h) and a California resident. *Id.* ¶ 3. [redacted]

The Complaint alleges that Perez was the Chief of Police for the Pasadena Police Department ("PPD"). Dkt. 1 ¶ 4. It is alleged that Perez was in charge of the Department's response to the following: (1) public records requests; (2) tort Claims; (3) petitions for redress of grievances; and (4) internal investigations and trainings. *Id.* The Complaint also alleges that Perez is sued in his individual capacity, as a supervisor for his own action or inaction in training, supervising or controlling his subordinates, or his acquiescence in the alleged constitutional deprivations. *Id.* It is further alleged that Perez acted willfully, intentionally, maliciously, in bad faith and with knowledge that his conduct violated well established and settled law. *Id.* ¶ 11.

The Complaint alleges that the City is a duly organized public entity under the laws of California. *Id.* ¶ 5. It is alleged that the City has the power and authority to adopt policies and prescribe rules, regulations and practices affecting the PPD, including the PPD's response to CPRA requests, Tort Claims filings,

petitions for redress and internal investigations. *Id.*

It is alleged that the City was the employer of Perez and was legally responsible for his conduct pursuant to Cal. Gov't Code §§ 815.2(a), 815.4 and 820(a). *Id.* ¶ 6–7. It is further alleged that each defendant was the agent of each of the other defendants, and that each had the legal duty to oversee and supervise the hiring, conduct and employment of each defendant. *Id.* ¶ 9.

B. Allegations in the Complaint

The Complaint alleges that, on July 22, 2019, four Pasadena police officers "unlawfully entered Plaintiffs' residence without a warrant and without an exigency, in violation of the United States Constitution and California law." *Id.* ¶ 15.

The Complaint alleges further that, on August 14, 2019, Anderson requested copies of the body camera footage from the July 22, 2019 incident pursuant to the CPRA, Cal. Gov't Code §§ 6250 *et seq.* *Id.* ¶ 22.

Two days later, on August 16, 2019, the City allegedly denied the request. *Id.* The Complaint alleges that the City "had no legal authority to withhold said videos." *Id.*

It is alleged that, on September 25, 2019, Anderson again requested copies of the body camera footage from the July 22, 2019 incident. *Id.* ¶ 23. The same day, Alicia Patterson responded for the City, and stated that the videos would not be released. *Id.*

On October 31, 2019, Anderson allegedly requested copies of the body camera footage from the July 22, 2019 incident for a third time. *Id.* ¶ 24. That request was denied on November 4, 2019. *Id.*

On May 5, 2020, Plaintiffs' counsel allegedly requested the following pursuant to the CPRA:

> documents and information of Plaintiffs' July 22, 2019 Incident: (1) the incident report; (2) any probable cause declaration reports; (3) the identity of the involved officers; (4) digital copies of all photographs of the incident; (5) digital copies of all videos of the incident, including body camera videos and MVARS; (6) all CAD logs; (7) any evidence gathered by involved officers; (8) all evidence relied upon [by] the involved officers to enter the Subject Property; (9) all witness statements; and (10) 911 audio calls and call logs.

Id. ¶ 25.

On May 11, 2020, the City allegedly "produced a redacted incident report, and refused to produce any body camera videos and 911 audio calls and call logs." *Id.* ¶ 26.

On May 19, 2020, Plaintiffs' counsel allegedly sent a second CPRA request requesting an unredacted incident report, all body camera videos, and 911 audio calls and call logs. *Id.* ¶ 27. On the same day, the City allegedly again refused to produce body camera videos and 911 audio calls and call logs. *Id.* ¶ 28.

The Complaint alleges that, on June 11, 2020, Plaintiffs submitted a claim against the City "in compliance with California's Government Torts Claims Act to petition Defendant CITY to redress Plaintiffs' grievances for the unlawful acts that took place on or around July 22, 2019." *Id.* ¶ 16. The claim specifically identified Plaintiffs' address as 652 S. Lake Avenue No. 2, Pasadena, California. Dkt. 69 at 24.

The Complaint alleges that, on July 6, 2020, "[a]fter receiving Plaintiffs' Claims Against The City of Pasadena and in retaliation for petitioning the CITY to redress Plaintiffs' grievances," Perez and subordinates posted the home address and information about Plaintiffs on the internet without obtaining written permission from Plaintiffs in violation of Cal. Gov't Code § 6254.21. *Id.* ¶ 18. It is alleged that, despite knowing that Plaintiffs are/were federal criminal investigators under California Government Code § 6254.24(h), Perez "intentionally posted Plaintiffs' private information knowing that imminent great bodily harm would likely occur to Plaintiffs." *Id.* It is further alleged that Perez "used the posting as a threat to cause imminent great bodily harm to Plaintiffs if Plaintiffs proceeded forward with their lawful right to file a lawsuit." *Id.* The Complaint alleges that, even if Perez did not know, "he was deliberately indifferent to the risk of harm posed to Plaintiffs." *Id.* It is alleged that Perez released this information, including the body camera footage and 911 calls, after five CPRA requests by Anderson for these records had been denied. *Id.* ¶ 30.

Two days later, on July 8, 2020, Plaintiffs asked Perez to remove the posting on the internet. *Id.* ¶ 19. On July 15, 2020, Perez allegedly responded and refused to take the information down. *Id.* Plaintiffs allege that Defendant Perez continues to post the home address and information of Plaintiffs on the internet. *Id.*

On July 31, 2020, Plaintiffs brought a civil action against the City and the four PPD officers involved in the July 22, 2019 incident in the Los Angeles Superior Court. *Id.* ¶ 17 (citing *Anderson, et al. v. City of Pasadena, et al.*, No. 20STCV28881).

At a date not provided in the Complaint, Plaintiffs allegedly "were forced to move out of their residence due to the threats to their safety and well being" because of Defendants' actions. *Id.* ¶ 20. "As a direct result of Defendants' unlawful activities, Plaintiffs suffered severe pain and suffering, mental anguish, humiliation, and emotional distress." *Id.* ¶ 21.

It is alleged that "Defendants willfully withh[eld] information that evidences their Constitutional violations of citizens." *Id.* ¶ 31. Plaintiffs allege that "[p]rior to and since Plaintiffs' July 22, 2019 incident and numerous CPRA requests that were unlawfully denied, Defendants routinely unlawfully denied CPRA requests that would disclose Defendants' Constitutional violations of other citizens and video footage of said violations." *Id.* The Complaint provides allegations as to examples of requests made by other citizens that were denied. *Id.* The Complaint further alleges that "if a CPRA request would not reveal a Constitutional violation, Defendants would routinely and without pause produce documents and videos responsive to said CPRA requests." *Id.*

C. Undisputed Facts Submitted in Connection with the MSJs

On July 22, 2019, an individual identifying himself as Jose Santerio ("Santerio") called 911, and then

stated that he was going to commit suicide. Dkt. 72, Plaintiffs' Statement of Genuine Disputes of Material Fact ("PDMF") ¶ 6. Santerio informed the dispatcher that he was presently at the address 652 South Lake Avenue, No. 2, Pasadena. *Id.* However, Plaintiffs, not Santerio, lived at that address. *Id.* In response to the 911 call from Santerio, officers from the PPD arrived at the residence, knocked several times, and after receiving no answer, broke open the front door and "swept" the house. *Id.* ¶ 7.

On or about June 15, 2020, Plaintiffs each submitted claims under the Government Tort Claims Act against the City regarding the July 22, 2019 incident ("Tort Claims"), in which Plaintiffs claimed the officers acted unlawfully. *Id.* ¶ 8. The Tort Claims identified Plaintiffs' home address. *Id.* ¶ 16. Perez knew that Plaintiffs would have to adhere to a waiting period after filing the Tort Claims before they could initiate a civil action regarding the July 22, 2019 incident. Dkt. 77, Defendants' Statement of Genuine Disputes ("DDMF") ¶ 27.The City returned those claims as untimely because they were not submitted within six months of the incident. Dkt. 72 ¶ 8.[1]

On June 29, 2020, Pasadena Now, a website that focuses on local news, published a news article regarding the July 22, 2019 incident. *Id.* ¶ 9. The article referred to the allegations in Plaintiffs' Tort Claims. *Id.* The article also mentioned Plaintiffs by name. *Id.* ¶ 44. On July 6, 2020, Perez posted a news release ("News Release") on www.cityofpasadena.net regarding the July 22, 2019 incident. *Id.* ¶ 10. Defendants assert that:

> [i]n so doing, Chief Perez wanted to ensure that the public had all of the facts regarding the July 22, 2019 incident, which had become a matter of public issue and/or an issue of public interest due to the plaintiffs' filing of their Tort Claims, the June 29, 2020 publication in Pasadena Now, and the ongoing debate regarding police reform in the wake of the George Floyd murder.

Id. Plaintiffs dispute that Perez had such a purpose in publishing the News Release. *Id.*

The News Release stated:

> The City of Pasadena received two claims from an attorney asserting that the Constitutional Rights of two people were violated by Pasadena Police Officers. The Pasadena Police Department is releasing officer body worn camera and a "911" recording of the incident. The recordings detail what transpired on July 22, 2019 when the Police Department's Communications Center received a call from a despondent male, threatening suicide after losing a large sum of money to an apparent scam. The recordings can be accessed at the link provided below… In conjunction with the current demands for reform of police agencies, it is important the Pasadena Police Department share with the public as much information as legally possible regarding police performance. In releasing information, it is imperative the public have a complete view of critical incidents to understand the dynamics in their entirety, rather than a limited view. Change is never easy, but as we continue to work towards better policing practices, the benefit to all will be significant.

[1] Plaintiffs dispute whether the City's service of the returned tort claims was permitted under California law. PDMF ¶ 8. This dispute is not material to the issues addressed in this Order.

Id. ¶ 11.

The News Release included a link to footage from the body cameras worn by the officers who responded to the incident, as well as to the 911 call and dispatch call. *Id.*; DDMF ¶ 31. Plaintiffs' names were not mentioned in the News Release. PDMF ¶ 12. Their address was not included in the article itself, but only in the audio calls and body worn camera footage. *Id.* The body warn camera videos show the outside and inside of Plaintiffs' residence. DDMF ¶ 33. Defendants did not provide notice to Plaintiffs of the News Release or of the publication of their address. *Id.* ¶ 40.

It is not disputed that, at the time Perez issued the News Release, he knew that Plaintiffs were law enforcement officers. *See* PDMF ¶¶ 17–18. However, it is disputed to what extent Perez was aware of the specific roles of Plaintiffs in law enforcement, and whether Perez knew that Plaintiffs were federal criminal investigators. *See id.*

III. Evidentiary Objections

Plaintiffs and Defendants have submitted evidentiary objections. *See* Dkt. 74; Dkt. 78; Dkt. 81. Those objections are addressed in separate orders.

IV. Motions for Summary Judgment (Dkt. 64, 68)

A. Legal Standard

1. Summary Judgment

A motion for summary judgment will be granted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the initial burden to show the basis for its motion and to identify those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. *Id.* Where the non-moving party will have the burden of proof on an issue, the movant need only demonstrate that there is an absence of evidence to support such claims. *Id.* at 324. If the moving party meets its initial burden, the nonmoving party must set forth "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); Fed. R. Civ. P. 56(e).

With certain exceptions, only admissible evidence may be considered in connection with a motion for summary judgment. Fed. R. Civ. P. 56(c)(2). However, in considering such a motion, a court is not to make any credibility determinations or weigh conflicting evidence. *Id.* All inferences are to be "drawn in the light most favorable to the nonmoving party." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987). This means that "where the facts specifically averred by [the non-moving] party contradict facts specifically averred by the movant, the motion must be denied." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990).

A court is not required to assume that "general averments embrace the 'specific facts' needed to sustain the complaint." *Id.* "The object of [summary judgment] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." *Id.* Thus, conclusory, speculative testimony in declarations or other evidentiary materials is insufficient to raise genuine issues of material fact and defeat summary judgment. *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1136 (9th Cir. 2009); *Thornhill Publ'g Co., Inc. v. Gen. Tel. & Electronics Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). "If the factual context makes the non-moving party's claim of a disputed fact implausible, then that party must come forward with more persuasive evidence than otherwise would be necessary to show that there is a genuine issue for trial." *Blue Ridge Ins. Co. v. Stanewich*, 142 F.3d 1145, 1147 (9th Cir. 1998).

2. Qualified Immunity

"Qualified immunity is the default status of natural persons employed by the government." 139 Am. Jur. 3d 1 Proof of Facts § 21 (2014). Thus, "government officials performing discretionary functions generally are shielded 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).

In resolving questions of qualified immunity at summary judgment, courts engage in a two-pronged inquiry. *Tolan v. Cotton*, 572 U.S. 650, 654 (2014). First, it must be determined whether "the officer violated a plaintiff's constitutional right." *Mattos v. Agarano*, 661 F.3d 433, 440 (9th Cir. 2011). Second, the court must assess "whether the constitutional right was clearly established in light of the specific context of the case at the time of the events in question." *Id.* (internal quotation marks omitted). These steps may be addressed in either order. *See Pearson*, 555 U.S. at 236. Regardless, once the defendant pleads qualified immunity, the burden is on the plaintiff to prove both elements. *Isayeva v. Sacramento Sheriff's Dep't*, 872 F.3d 938, 946 (9th Cir. 2017).

Although "qualified immunity is a question of law, not a question of fact . . . Defendants are only entitled to qualified immunity as a matter of law if, taking the facts in the light most favorable to [Plaintiff], they violated no clearly established constitutional right. *Torres v. City of Los Angeles*, 548 F.3d 1197, 1210 (9th Cir. 2008). Thus, "if genuine issues of material fact prevent a determination of qualified immunity, the case must proceed to trial." *Thompson v. Rahr*, 885 F.3d 582, 586 (9th Cir. 2018), *cert. denied sub nom. Thompson v. Copeland*, 139 S. Ct. 381 (2018).

Deciding whether a right was "clearly established" at the relevant time turns on whether a "reasonable official could have believed that the conduct at issue was lawful." *Shoshone-Bannock Tribes v. Fish & Game Comm'n, Idaho* 42 F.3d 1278, 1285 (9th Cir. 1994); *see also Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam) ("Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct."). Although the Supreme Court "does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *White v. Pauly*, 580 U.S. 73, 91

(2017)).

B. Application

1. First Cause of Action: § 1983 Claim for Retaliation in Violation of First Amendment – Defendant Perez

Both Plaintiffs and Defendants have moved for summary judgment on Plaintiffs' first cause of action. In support of their motion, Defendants assert that Perez has qualified immunity.

a) Whether Perez Violated Plaintiffs' Constitutional Rights

To establish a First Amendment retaliation claim, a plaintiff must show "that (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016). A plaintiff must demonstrate "a causal connection between the government defendant's retaliatory animus and the plaintiff's subsequent injury." *Capp v. Cty. of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019) (quoting *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019)) (internal quotations omitted). The retaliatory motive "must be a 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive." *Nieves*, 139 S. Ct. at 1722.

Plaintiffs argue that Perez violated their First Amendment rights by posting publicly Plaintiffs' residential address in retaliation for their protected activity of filing Tort Claims against the City. Dkt. 64 at 13–14.

The parties do not dispute that Plaintiffs' filing of claims under California's Tort Claims Act ("Tort Claims") against the City constitutes protected activity under the First Amendment. *See* Dkt. 64 at 14; Dkt. 76 at 10. Defendants do not address the second element of the test. *See* Dkt. 76. Instead, Defendants dispute the third element, i.e., whether the posting of the News Release was motivated by Plaintiffs' filing of the Tort Claims. *Id.* at 11–12.

An "[i]ntent to inhibit speech . . . can be demonstrated either through direct or circumstantial evidence." *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300–01 (9th Cir. 1999). Plaintiffs contend that Perez posted the News Release, which contained their residential address, in an effort to "chill Plaintiffs' further speech from seeking further redress for the warrantless entry incident." Dkt. 64 at 14. They argue that Perez knew that Plaintiffs would have to wait until after submitting the Tort Claims before they could file a lawsuit, so Perez published their address during the waiting period to prevent them from making such a filing. *Id.*

Defendants contend that Perez posted the News Release in response to the publication of the Pasadena Now article about Plaintiffs' Tort Claims and the warrantless entry incident. Dkt. 76 at 10; PDMF ¶ 10. Defendants acknowledged receipt of Plaintiffs' Tort Claims on June 15, 2020, the Pasadena Now article was published on June 29, 2020 and Perez published the News Release on July 6, 2022. DDMF ¶¶ 26, 31–36. Defendants provide a declaration by Perez ("Perez Declaration"), in which he declares that his purpose in posting the News Release was "to provide information to the public regarding this issue of public interest," and not to retaliate against or intimidate Plaintiffs. Dkt. 76-

2 ¶¶ 12–15. Defendants argue that they published the News Release not to retaliate against Plaintiffs or chill their speech, but to "ensure that the public had all of the facts regarding the July 22, 2019 incident." *Id.* at 11. They further assert that the incident had become a matter of public concern "due to the plaintiffs' filing of their Tort Claims, the June 29, 2020 publication in Pasadena Now, and the ongoing debate regarding police reform in the wake of the George Floyd murder." *Id.*; DDMF ¶ 10. Defendants also point out that the News Release did not identify Plaintiffs' names and their address was not included in the article itself. PDMF ¶ 37; Dkt. 68, Perez Decl. ¶ 12.

Plaintiffs argue that Defendants' contention that the News Release was published in response to the Pasadena Now article is circular. Thus, they contend that "Defendants provided Pasadena Now Plaintiffs' private information that was used in Pasadena Now's article without notice or consent of Plaintiffs." Dkt. 64 at 14. Plaintiffs also proffer the following colloquy from Perez's deposition:

> Q: The allegations in plaintiff's Tort Claims that is referred to in this website article, that information was provided to Pasadena Now by the Pasadena Police -- well, the City of Pasadena, correct?
>
> A: Yes, sir.

Dkt. 64-31 at 63:22–64:6.

Plaintiffs have not presented any evidence to support the assertion that Defendants provided Pasadena Now with their "private information." In the testimony to which Plaintiffs cite, Perez states only that he provided Pasadena Now with "[t]he allegations in plaintiff's Tort Claims." *Id.* In general, Government Tort Claims are matters of public record. *See Poway Unified Sch. Dist. v. Super. Ct. (Copley Press)*, 62 Cal. App. 4th 1496, 1505 (1998). Plaintiffs have not provided evidence or explanation to support the contention that the City acted inappropriately by informing Pasadena Now of the allegations in the Claims. Further, that the City provided Pasadena Now with information about the allegations in the Tort Claims does not *per se* contradict the City's stated purpose of stating to the public what it deemed the full story about the incident. Defendants argue that simply because the City provided information to Pasadena Now does not mean that the story originated from the City or that the City had any control over the ultimate presentation of the story. *See* Dkt. 80 at 2. It is not an unreasonable inference that the City would provide information about the Claims to Pasadena Now, a journalistic outlet over which no party claims the City has control, and then publish a response with its position as to the relevant events.

Plaintiffs also argue that, because the Pasadena Now article included quotations from a Department Lieutenant defending the Department's actions, Defendants had already publicly responded to the Tort Claims and "had no need for the July 6, 2020 news release." Dkt. 71 at 8. However, Defendants' stated purpose for publishing the News Release was to provide the public with what they considered to be all of the facts about the incident. Thus, it could be inferred that Defendants may have believed that the article did not present all the facts, even if it included comments from a Department official. Perez also declares, in support of his statement that he lacked a retaliatory purpose, that the News Release did not mention Plaintiffs' names and it did not contain their address in the body of the article; Plaintiffs' address was contained only in the 911 call attached to the article. Perez Decl., Dkt. 76-2 ¶¶ 12–14. Defendants also contend that Perez did not know that Plaintiffs were federal criminal investigators, although Plaintiffs present evidence that Perez at least knew they were law enforcement officers. *See*

Dkt. 79 at 3; Dkt. 64-4 at 4.

As evidence of a retaliatory purpose, Plaintiffs identify the temporal proximity between their filing of the Tort Claims and the City's publication of the News Release. *See* Dkt. 73, Plaintiffs' Additional Material Facts ("PAMF") ¶ 31. Plaintiffs also offer evidence that Defendants had the ability to make redactions to records released, but did not do so in the News Release. Dkt. 79 at 3 (citing Dkt. 64-31 at 78:9–17; Dkt. 64-29). Such evidence supports an inference that Perez may have had a retaliatory motive. Plaintiffs also present evidence that the PPD has a release restriction policy, which limits the release of "personal identifying information, including an individual's . . . address." Dkt. 64-29 at 4. According to the policy, personal information is only to be released "when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722)." *Id.* The existence of a general policy against releasing individuals' addresses provides some evidence that Plaintiffs may have been treated differently from others, which supports the contention that Perez had retaliatory purpose in releasing information about them. Further, Perez testified that the PPD does not usually release the home addresses of law enforcement officers who are part of a Government Tort Claim. Dkt. 64-35 at 56:13–57:15.

Defendants also argue that Perez cannot have intended "to intimidate plaintiffs from proceeding with their State Case because the Claim was untimely and therefore plaintiffs in fact have no rights to relief in their State Case." Dkt. 68 at 14; PDMF ¶ 8.[2] However, that the City returned Plaintiffs' claims as untimely is not dispositive. It does not preclude a determination that Perez may have sought to retaliate against Plaintiffs for attempting to exercise their right to seek redress, or to discourage them from filing a civil action even if Defendants intended to raise the defense that such claims were untimely and Plaintiffs lacked a right to relief. Plaintiffs were required to submit the Tort Claims and comply with a waiting period before they could file a civil action seeking to address any grievances related to the warrantless entry incident. DDMF ¶ 27. Viewing the facts in the light most favorable to Plaintiffs, it is reasonable to infer that Perez may have intended to discourage Plaintiffs from filing a civil action, even if he believed it lacked merit, because he wished to avoid adverse publicity arising from the civil action or other negative consequences. Further, Defendants have not conclusively established that Plaintiffs lacked any right to relief, including whether Plaintiffs could have asserted equitable tolling to avoid the claimed time bar.

In light of the evidence presented, there is a triable issue of fact as to whether Defendants intended to chill Plaintiffs' attempts to seek redress, and whether this intent was a substantial motivating factor in Defendants' decision to post Plaintiffs' address online. Further, although the parties do not address the second element of the test, a reasonable trier of fact could conclude that the posting of Plaintiffs' address online would chill an individual of ordinary firmness in their position from engaging in that conduct.

b) Whether the Right Was Clearly Established

To defeat a claim of qualified immunity, Plaintiffs must also demonstrate that the right violated was

[2] Plaintiffs dispute that the City returned the claims as untimely "because pursuant to the California Code of Civil Procedure section 1013a(3), service is presumed invalid if the 'postage meter date on the envelope is more than one day after the date of the deposition for mailing contained in the affidavit,' and the correspondence from the City had a service date of July 28, 2020, but the postage meter date was July 30, 2020." PDMF ¶ 8.

clearly established. "A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.' " *Entler v. Gregoire*, 872 F.3d 1031, 1041 (9th Cir. 2017) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)). "[C]learly established law" for purposes of a qualified immunity analysis must be " 'particularized' to the facts of the case" rather than "defined at a high level of generality." *White*, 580 U.S. at 79 (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987); *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)).

Although the precise conduct in question need not have previously been held unlawful, a party challenging qualified immunity "must point to prior case law that articulates a constitutional rule specific enough to alert *these* [Officers] *in this case* that *their particular conduct* was unlawful." *Hernandez v. City of San Jose*, 897 F.3d 1125, 1137 (9th Cir. 2018) (quoting *Sharp v. Cty. of Orange*, 871 F.3d 901, 911 (9th Cir. 2017)) (emphasis and alteration in original). "This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful . . . but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002).

> [G]eneral statements of the law are not inherently incapable of giving fair and clear warning, and in [some] instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though "the very action in question has [not] previously been held unlawful."

Hardwick v. Cty. of Orange, 844 F.3d 1112, 1117 (9th Cir. 2017) (quoting *Hope*, 536 U.S. at 741).

Defendants argue that "[t]he appropriate qualified immunity question is, was it clearly established whether a Police Chief could post a News Release online concerning a matter of public concern?" Dkt. 76 at 13. However, the qualified immunity analysis is directed to whether the constitutional right of the plaintiff, which was allegedly violated by a government official, was clearly established. The inquiry does not focus on the rights of the government official. Further, on summary judgment, the qualified immunity inquiry takes all "facts as most favorable to the plaintiff[]." *Isayeva*, 872 F.3d at 945. Thus, for purposes of the present analysis, the right at issue is more appropriately framed as whether Plaintiffs had the right to be free from retaliation by a government official through the publication of their residential address on the internet when that the official knew that publication could raise safety and security issues for Plaintiffs, and allegedly did so because Plaintiffs exercised their right to pursue a civil action against the government.

It is clearly established that an individual has a First Amendment right to seek civil redress for actions by the government. "The right of access to the courts is subsumed under the first amendment right to petition the government for redress of grievances. . . . Deliberate retaliation by state actors against an individual's exercise of this right is actionable under section 1983." *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989). Further, "[r]etaliation for engaging in protected speech has long been prohibited by the First Amendment." *O'Brien*, 818 F.3d at 936 (denying qualified immunity where official took disciplinary action against plaintiff for expression of his views). Similarly, the Ninth Circuit has observed that the "right to be free from adverse police action in retaliation for constitutionally protected speech is clearly established." *Addison v. City of Baker City*, 758 F. App'x 582, 583 (9th Cir. 2018).

If the present factual disputes were to be resolved in Plaintiffs' favor, Perez could not reasonably have believed that his conduct was lawful. Thus, it was determined that Perez posted Plaintiffs' addresses online, knowing that such a disclosure posed a risk to their safety, and did so for the purpose of intimidating them from pursuing a remedy for the alleged tortious conduct by the City, it would be clear to any reasonable officer in Perez's position that such actions violated the First Amendment rights of the Plaintiffs. *See Capp*, 940 F.3d at 1059 (denying qualified immunity where "it was clear at the time [the officer] acted that a government actor could not take action that would be expected to chill protected speech out of retaliatory animus for such speech"). Thus, Perez is not entitled to qualified immunity with respect to the first cause of action.

For the foregoing reasons, Plaintiffs' Motion and Defendants' Motion are both **DENIED** as to the first cause of action.

2. Second Cause of Action: § 1983 Claim for Violation of Due Process Rights (Retaliation) – Defendant Perez

Both Plaintiffs and Defendants have moved for summary judgment on the second cause of action. Plaintiffs do not identify the basis for their due process claims. However, they discuss the due process claims in conjunction with the First Amendment retaliation claims. Thus, the due process claims appear to be based on the same allegations -- that Defendants interfered with Plaintiffs' right to bring a civil action by posting their residential address online as an act of retaliation. Defendants raise a qualified immunity defense to this cause of action as well. *See* Dkt. 64 at 14–15; Dkt. 71 at 6. In their Sur-Reply, Plaintiffs suggest that they may also seek to advance the claim that Defendants violated their right "to not have their information posted online" as provided by Cal. Govt. Code § 6254.21(a), but they do not elaborate on this theory or provide any authority showing that the right "to not have their information posted online" is constitutionally protected. Because Plaintiffs do not identify any other constitutionally-protected liberty or property interest that Perez deprived them of, it is assumed that their due process claim is coextensive with their First Amendment claim.

For the reasons stated above, there are triable issues of fact as to whether Perez retaliated against Plaintiffs, and Perez is not entitled to qualified immunity for the First Amendment retaliation claim. Therefore, Plaintiffs' Motion and Defendants' Motion are both **DENIED** as to the second cause of action.

3. Third Cause of Action: § 1983 Claim for State Created Danger – Defendant Perez

Both Plaintiffs and Defendants move for summary judgment on the third cause of action. Defendants argue that Perez is entitled to qualified immunity.

a) Whether Perez Violated Plaintiffs' Constitutional Rights

"As a general rule, members of the public have no constitutional right to sue [public] employees who fail to protect them against harm inflicted by third parties." *L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir. 1992) (citing *DeShaney v. Winnebago Cty. Dep't of Soc. Services*, 489 U.S. 189, 197 (1989)). However, under the state-created danger exception to this general rule, the government is liable when

its employees:

> affirmatively place[ ] the plaintiff in a position of danger, that is, where [their] action[s] create[ ] or expose[ ] an individual to a danger which he or she would not have otherwise faced." *Kennedy* [*v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006)] (citing *DeShaney*, 489 U.S. at 197) (internal quotation marks omitted). The affirmative act must create an actual, particularized danger, *id.* at 1063, and the ultimate injury to the plaintiffs must be foreseeable, *Lawrence v. United States*, 340 F.3d 952, 957 (9th Cir. 2003). The employees must have also acted with "deliberate indifference" to a "known or obvious danger." *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011) (citation and internal quotation marks omitted).

Hernandez, 897 F.3d at 1133 (alterations in original).

The state-created danger doctrine has been applied to officers who "affirmatively ejected [a plaintiff] from a bar" late at night, in very cold weather conditions, and did not allow him to re-enter the bar, ultimately resulting in the plaintiff's death from hypothermia. *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1085, 1087 (9th Cir. 2000); *see also Penilla v. City of Huntington Park*, 115 F.3d 707, 710 (9th Cir. 1997) (applying state-created danger where officers responding to a 911 call dragged an individual in need of medical care to an empty house, locked the door and left him there alone); *Pauluk v. Savage*, 836 F.3d 1117, 1124–25 (9th Cir. 2016) (state-created danger doctrine could be applied against a public employer that failed to address a toxic mold problem in its facilities, resulting in the illness of its employees).

(1) Affirmative Conduct

The "affirmative conduct" prong of the state-created danger doctrine requires a plaintiff to "show not only that the defendant acted 'affirmatively,' but also that the affirmative conduct placed him in a 'worse position than that in which he would have been had [the state] not acted at all.' " *Id.* at 1124–25 (alteration in original) (quoting *Johnson v. City of Seattle*, 474 F.3d 634, 641 (9th Cir. 2007)). The affirmative conduct "must have exposed the plaintiff to an 'actual, particularized danger,' and the resulting harm must have been foreseeable." *Polanco v. Diaz*, No. 22-15496, 2023 WL 5008202, at *5 (9th Cir. Aug. 7, 2023) (quoting *Pauluk*, 836 F.3d at 1125).

Plaintiffs argue that by posting their address online, Perez affirmatively placed them in a position of danger that would not otherwise have occurred. Dkt. 64 at 15. Defendants respond that Plaintiffs had already submitted their Tort Claims, which specifically identified their address, and by doing so, had made this information a matter of public record. Dkt. 68 at 20. Therefore, Defendants contend that their publicizing the information did not place Plaintiffs in any further danger. *Id.* Plaintiffs disagree that their address became a matter of public record due to the filing of the Tort Claims.

To determine whether Defendants' conduct placed Plaintiffs in a worse position, it is necessary to address whether Plaintiffs' address became a matter of public record when they submitted their Tort Claims. California law is clear that, in general, government tort claims are matters of public record under the CPRA, and an individual has no reasonable expectation of privacy in such a claim. Government tort claims are "public records . . . subject to disclosure to the public." *Bustos v. City of Fresno*, No. 20-CV-00066-DAD, 2020 WL 4748166, at *10 (E.D. Cal. Aug. 17, 2020) (citing *Poway*, 62

Cal. App. 4th at 1501 (1998)); *see also Buzayan v. City of Davis*, 927 F. Supp. 2d 893, 904 (E.D. Cal. Feb. 25, 2013). *Register Div. of Freedom Newspapers, Inc. v. County of Orange* established that government tort claims are public records, because when an individual voluntarily submits information to the government for purposes of a tort claim, he or she "tacitly waive[s] any expectation of privacy" in the information. 158 Cal. App. 3d 893, 902 (1984); *see also Copley Press*, 62 Cal. App. 4th at 1505 ("While section 910 does require a claimant to provide some potentially private information, generally, one who submits a tort claim has no reasonable expectation of privacy."). *Register Division* held that the medical records of an individual who had attached those records to a settlement letter regarding his tort claim were public record. 158 Cal. App. 3d at 902. *Copley Press* clarified that this principle extends to Tort Claim forms themselves, which are also public record. 62 Cal. App. 4th at 1503–04.

Plaintiffs argue, however, that their residential addresses did not become public record when they submitted their tort claims because California Government Code § 6254.21 provides an exemption under the CPRA. Dkt. 71 at 9.[3]

Section 6254.21(a) of the California Government Code, which is now codified at Section 7928.205, prohibits the posting, display or sale of elected or appointed officials' personal information on the internet. The statute bars a "state or local agency" from posting "the home address or telephone number of any elected or appointed official on the internet without first obtaining the written permission of that individual." Cal. Gov't Code § 7928.205. Section 6254.21(b) of the California Government Code, now codified at Section 7928.210, prohibits any person from "knowingly post[ing] the home address or telephone number of any elected or appointed official . . . on the internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent bodily harm to that individual." § 7928.210. Violation of this provision is a misdemeanor. *Id.* The Government Code includes "a public safety official" as an "elected or appointed official" covered by the foregoing provisions. Cal. Gov't Code § 7920.500. Section 7920.535 includes "a federal criminal investigator" and a "peace officer" in its definition of "public safety official," whether active or retired.

The foregoing provisions have not been interpreted by any California court and only in a very limited manner by federal courts. *See Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1019 (E.D. Cal. Feb. 27, 2017) ("[T]he Court cannot find any court decision that even mentions the statute.").[4] Thus, a broader review of the CPRA is useful in determining whether Plaintiffs are correct that the provisions formerly codified at Section 6254.21 provide a blanket exemption from the CPRA for the addresses of certain public officials.

The CPRA "specifies that any public record in the possession of a state or local agency must be

[3] As a clarifying note, on January 1, 2023, after the hearing was held on the Motions, Section 6254.21, and the balance of the CPRA, were reorganized and recodified without substantive change. The relevant sections of the former Section 6254.21 are now codified at Cal. Gov't Code §§ 7928.205, 7928.210, and 7928.215.

[4] The only state court decision that cites Section 6254.21 does so in the following footnote: "The Legislature . . . has taken steps to protect peace officers from persons who might do them harm . . . . [T]he disclosure or distribution of a peace officer's home address is, under some circumstances, a crime. (Gov't Code §§ 6254.21 & 6254.24 [posting the home address or telephone number of any public safety official, including any peace officer, on the internet with malicious intent is a misdemeanor].)" *Comm'n on Peace Officer Standards & Training v. Super. Ct.*, 42 Cal. 4th 278, 302 n.13 (2007).

disclosed to any citizen unless an exemption applies." *Copley Press*, 62 Cal. App. 4th at 1501. The statute identifies specific exemptions. *Id.* The CPRA provides many rules regarding specific types of public records. *See* §§ 7923.600–7929.610. Some of these provisions provide exemptions from disclosure; Section 7924.000 provides, for example, that certain information, including a person's home address and telephone number, specified by the Secretary of State for voter registration purposes, "are confidential and shall not be disclosed to any person." Section 7923.805 provides: "Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of the home address or telephone number of any of the following individuals, as set forth in an application for a license to carry a firearm, or in a license to carry a firearm, issued by the sheriff of a county or the chief or other head of a municipal police department, pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code . . . ."

On the other hand, certain of the CPRA's special rules pertaining to particular types of records do not provide blanket exemptions. Instead, they clarify that certain records *are* public records, or they state specific rules about certain records. For example, Section 7928.400 provides: "Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to Section 7922.000 and the provisions listed in Section 7920.505." Section 7924.700 provides: "A record of a notice or an order that is directed to the owner of any building and relates to violation of a housing or building code, ordinance, statute, or regulation that constitutes a violation of a standard provided in Section 1941.1 of the Civil Code is a public record."

The provisions formerly codified at Section 6254.21 do not have the type of language that is used in those that exempt certain records entirely from the CPRA. Those provisions contain clear language exempting the records from the CPRA, e.g., "this division does not require disclosure of . . .," (*see* § 7923.805), or ". . . is confidential," (*see* § 7924.000). In contrast, Section 7928.205 (formerly Section 6254.21(a)) and Section 7928.210 (formerly Section 6254.21(b)) provide as follows:

> § 7928.205: No state or local agency shall post the home address or telephone number of any elected or appointed official on the internet without first obtaining the written permission of that individual.
>
> § 7928.210: (a) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual.
> (b) A violation of this subdivision is a misdemeanor.
> (c) A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

These provisions do not use language stating or implying that an official's home address is wholly exempt from disclosure under the CPRA. Rather, they provide specific rules about this type of record, i.e., that they may not be posted on the internet under certain circumstances. The most reasonable interpretation of these provisions is not that they exempt home addresses of public officials entirely from disclosure as a public record if they are otherwise public records, but rather that there are specific restrictions governing the online publication of these records.

In light of this interpretation, Plaintiffs' address would have become subject to disclosure as a public record when they filed their Tort Claims. Thus, such claims and the information contained in them are generally matters of public record. However, Section 7928.205 and Section 7928.210 impose a limitation on the ability of the City and other persons to post such information on the internet.

Based on this interpretation of the statute, Plaintiffs have made a sufficient showing that the City took affirmative actions that placed them into a position of danger that would not otherwise have occurred had the City not done so. In determining whether an official has affirmatively placed an individual in danger, courts "examine whether the officer[] left the person in a situation that was more dangerous than the one in which they found him." *Kennedy*, 439 F.3d at 1062 (alteration in original) (quoting *Munger*, 227 F.3d at 1086). That an individual was already in danger to some degree "does not obviate a state-created danger when the state actor enhanced the risks." *Martinez v. City of Clovis*, 943 F.3d 1260, 1272 (9th Cir. 2019). Although Plaintiffs' Tort Claims had become subject to disclosure as public records, Sections 7928.205 and 7928.10 limited the extent to which their addresses could be posted on the internet. There is no evidence that the information had been widely disseminated on the internet before the News Release was posted.

At least one district court in the Ninth Circuit has concluded that a police official's disclosure of an individual's address constituted affirmative conduct for purposes of the state-created danger analysis. *Hanigan v. City of Kent*, No. C06-176JLR, 2006 WL 3544603, at *3 (W.D. Wash. Dec. 8, 2006). In *Hanigan*, a police officer came to the plaintiff's home in response to her request for assistance. She informed the officer that she had a domestic violence protective order against her ex-boyfriend, and he had been violating the order. *Id.* at *1. The ex-boyfriend had not previously known the plaintiff's new address, and the plaintiff claimed that she asked the officer to keep her home address confidential. *Id.* The officer filed paperwork about the interaction, where he listed the plaintiff's address and declined to check a box stating not to disclose the plaintiff's information, i.e., new address. *Id.* After a sequence of intermediate steps, the plaintiff's ex-boyfriend gained access to the citation and learned of plaintiff's new address. *Id.* The court concluded that there was a triable issue whether the officer had affirmatively placed the plaintiff in danger by failing to keep her address confidential, although it ultimately found that the officer was not deliberately indifferent because there was no evidence that he knew that filing his paperwork would result in the disclosure of her address. *Id.* at *5.

As in *Hanigan*, Perez took an affirmative step that caused Plaintiffs' address to become widely disseminated to the public on the internet, which had not previously occurred. Plaintiffs provide evidence that, due to the publication of their address, their "safety and well-being was threatened, and [they] had to relocate to a different city for residential and work purposes." *See* Dkt. 71-1 ¶ 3; Dkt. 71-2 ¶ 3. This is sufficient to create a genuine issue of fact whether Perez's affirmative conduct exposed Plaintiffs to an actual danger that would not otherwise have occurred.

(2) Deliberate Indifference

The Ninth Circuit has explained deliberate indifference:

> Deliberate indifference is 'a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.' " *Patel*, 648 F.3d at 974 (quoting *Bryan Cty. v. Brown*, 520 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626

> (1997)). It "requires a culpable mental state," and the "standard [the Court] appl[ies] is even higher than gross negligence." *Id.* (citing *L.W. v. Grubbs (Grubbs II)*, 92 F.3d 894, 898–90 (9th Cir. 1996)). To claim deliberate indifference, the Attendees must allege facts demonstrating the Officers "recognize[d] [an] unreasonable risk and actually intend[ed] to expose [the Attendees] to such risks without regard to the consequences to [the Attendees]." *Id.* (quoting *Grubbs II*, 92 F.3d at 899). "In other words, the [Officers] [must] [have] 'known that something [*was*] going to happen but ignor[ed] the risk and expose[d] [the Attendees] to it [anyway].' " *Id.* (quoting *Grubbs II*, 92 F.3d at 900).

Hernandez, 897 F.3d at 1135 (alterations in original).

With respect to whether Perez was deliberately indifferent to the risk created by the publication of Plaintiffs' address, Defendants present evidence that Perez did not know that either of the Plaintiffs was a federal criminal investigator. PDMF ¶ 50. Perez testified that he "knew they were involved in law enforcement," and "knew them to be analysts of some sort," but "never knew if they were actual agents of the federal government in terms of police officer status." Dkt. 68-8, Ex. F at 8–9. Defendants also point out that the documents that Plaintiffs submitted to the City did not request that the City keep their information confidential. PDMF ¶ 18.[5] However, Plaintiffs present evidence that Defendants were aware as of December 23, 2019 that at least one of the two Plaintiffs was a "law enforcement officer" of some kind. Anderson stated that in his affidavit submitted to the City, which Perez reviewed on December 23, 2019. DDMF ¶ 10–11. These facts create a genuine issue of a material fact whether Perez was aware that Plaintiffs held a type of law enforcement position that would cause their safety to be compromised if their address was publicized on the internet.

Plaintiffs also present testimony from Perez's deposition when was asked for his own residential address. He responded: "I don't give the residential address out. During the protests and other things, there was a lot of activists who threatened myself, my family, my kids. So I keep that confidential . . . ." Dkt. 64-31 at 22:5–23:11. Plaintiffs also present the following colloquy from the deposition:

> Q: I mean, would you agree that with your address being out there in the public domain, there's a foreseeable danger?
> A: Always, for anybody.
> Q: When you say "for anybody," would you agree with law enforcement?
> A: Yes.

Dkt. 71 at 12.

This testimony supports a finding that Perez was aware of a substantial danger in publicizing Plaintiffs' address.

In light of the foregoing evidence, there is a triable issue of fact as to the extent to which Perez understood that Plaintiffs' safety would be threatened by the disclosure of their addresses, and, thus, as to whether Perez disregarded a known or obvious consequence of posting Plaintiffs' addresses online.

[5] Plaintiffs dispute other portions of this fact, but not that the Claim for Damages and affidavit did not request that the City keep their information confidential.

b) Whether the Right Was Clearly Established

Plaintiffs cite several cases to support the general proposition that an official who places an individual in obvious danger is deliberately indifferent and may be denied qualified immunity. Dkt. 64 at 16 (citing, inter alia, *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006); *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1086 (9th Cir. 2000)). However, Plaintiffs do not identify any cases with factual circumstances similar to those presented here.

Although there need not be a case directly on point for right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. at 741. Plaintiffs have cited no precedent establishing that an officer's public disclosure of a person's address may give rise to a state-created danger claim. The cases cited by Plaintiffs involve officers physical steering people into a crowd of protestors behaving violently; an officer informing a plaintiff's neighbor, who was known to have violent tendencies, of the plaintiff's allegations that the neighbor molested the plaintiff's child; and officers ejecting an intoxicated patron from a bar in below-freezing temperatures. *See Hernandez,* 897 F.3d at 1134; *Kennedy,* 439 F.3d at 1057; *Munger*, 227 F.3d at 1087. Each of those cases is factually distinct from this one, and each involved officials who subjected a person to a more immediate and specific danger of physical harm than what occurred here.

Plaintiffs also cite *Hernandez* to support their argument that qualified immunity should be denied even if there is no case with similar factual circumstances. *See* 897 F.3d at 1137. *Hernandez* determined that the facts presented there made it " 'one of those rare cases' in which the constitutional violation 'is so obvious that we must conclude . . . qualified immunity is inapplicable, even without a case directly on point." *Id.* at 1138 (quoting *A.D. v. Cal. Highway Patrol*, 712 F.3d 446, 455 (9th Cir. 2013)). *Hernandez* involved claims that police officers had actively prevented attendees at a rally for former President Trump from leaving the rally safely through alternative exits, and instead directed the attendees to leave from a single exit and thereby encounter a crowd of "violent anti-Trump protestors," who the officers had already witnessed attacking attendees of the rally earlier that night. *Id.* at 1133. The court reasoned that the constitutional violation was "so obvious" because the officers "shepherded" the attendees "into a violent crowd of protestors" and "continued to implement this plan even while witnessing the violence firsthand, and even though they knew the mob had attacked Trump supporters at the Convention Center earlier that evening, and that similar, violent encounters had occurred in other cities." *Id.* at 1137.

Based on the facts presented, it has not been shown that this case is one of those "rare cases" described in *Hernandez* where the constitutional violation is so obvious that qualified immunity is inapplicable even without the existence of a factually similar case. This is, in part, because Plaintiffs' addresses appear to have become a matter of public record when they filed their Tort Claims. Thus, it cannot be determined that any reasonable officer in Perez's position would have known that publicizing Plaintiffs' addresses was unlawful, i.e., that it "exposed [them] to an actual, particularized danger that [they] would not otherwise have faced." *Martinez*, 943 F.3d at 1271. This is confirmed by the paucity of case law interpreting § 7928.205 and its interplay with other provisions in the CPRA. The danger that may have arisen from Perez's conduct was not so obvious as what was at issue in *Hernandez*. In light of the factual context of this case, a reasonable officer could have believed that posting Plaintiffs'

addresses did not place Plaintiffs in a position of danger in violation of their constitutional rights.

For the foregoing reasons, it has not been shown that Perez acted in violation of clearly established law. Therefore, Perez is entitled to qualified immunity with respect to the third cause of action for state-created danger. Consequently Plaintiffs' Motion is **DENIED** and Defendants' Motion is **GRANTED** as to the third cause of action.

4. Fourth Cause of Action: § 1983 *Monell* Claim Against City

Both Plaintiffs and Defendants have moved for summary judgment on the fourth cause of action for *Monell* liability against the City under § 1983. To prevail on a § 1983 claim against a local government entity, a plaintiff must establish the following: "(1) that he possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy 'amounts to a deliberate indifference' to the plaintiff's constitutional right; and (4) that the policy is the 'moving force behind the constitutional violation.' " *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388–89 (1989)). The Ninth Circuit has recognized three avenues pursuant to which municipal liability may be established:

> First, a local government may be liable if "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflict[ed] the injury." *Monell v. Dep't of Soc. Servs. of Cty. of New York*, 436 U.S. 658, 694 (1978). Second, a local government can fail to train employees in a manner that amounts to "deliberate indifference" to a constitutional right, such that "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Cty. of Canton v. Harris*, 489 U.S. 378, 390 (1989). Third, a local government may be held liable if "the individual who committed the constitutional tort was an official with final policy-making authority or such an official ratified a subordinate's unconstitutional decision or action and the basis for it." *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1097 (9th Cir. 2013) (internal quotation marks and citation omitted).

Rodriguez v. Cty. of Los Angeles, 891 F.3d 776, 802 (9th Cir. 2018).

Plaintiffs rely on the theory that the City is liable under *Monell* because Perez committed a constitutional tort as an official acting as a final policymaker. Dkt. 64 at 17. Plaintiffs argue that "[a]s the Chief of Police of the PPD during Plaintiffs' release of information incident and as the actor who released said information, Defendant Chief Perez was the final policymaker and had the final policymaking authority that caused Plaintiffs' harm here." Dkt. 71 at 17–18. Defendants argue that there can be no *Monell* liability because there is no underlying constitutional violation.

Plaintiffs have established triable issues of fact as to the constitutional violations alleged in the first three causes of action. That Perez is protected from liability by qualified immunity for the state-created danger claim does not insulate the City from *Monell* liability with respect to that claim. *See Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) ("Qualified immunity does not shield municipalities from liability."); *see also Richards v. Cty. of San Bernardino*, 39 F.4th 562, 574 (9th Cir. 2022) ("[I]f a

plaintiff established he suffered constitutional injury *by the County*, the fact that individual officers are exonerated is immaterial to liability under § 1983. This is true whether the officers are exonerated on the basis of qualified immunity, because they were merely negligent, or for other failure of proof.") (emphasis in original) (first quoting *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1250 n.12 (9th Cir. 2016); and then quoting *Fairley v. Luman*, 281 F.3d 913, 917 n.4 (9th Cir. 2002)) (internal citations omitted). Thus, there are genuine disputes of fact as to whether Plaintiffs were deprived of a constitutional right for purposes of *Monell* liability.

To determine whether an official is a final policymaker, courts "look first to state law," and "may also look to the way a local government entity operates in practice." *Lytle v. Carl*, 382 F.3d 978, 982–83 (9th Cir. 2004). "For a person to be a final policymaker, he or she must be in a position of authority such that a final decision by that person may appropriately be attributed to the" municipal entity. *Id.* The parties do not dispute that Perez was the final policymaker for the PPD. DDMF ¶ 2.

Because there are triable issues as to Plaintiffs' claims in the first three causes of action, Plaintiffs' Motion and Defendants' Motion are **DENIED** as to *Monell* liability.

5. Fifth Cause of Action: § 1983 Claim for Supervisory Liability as to Perez

A supervisor is liable under § 1983 for constitutional violations by a subordinate "if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them." *Maxwell v. Cty. of San Diego*, 708 F.3d 1075, 1086 (9th Cir. 2013). Plaintiff argues that Perez is liable under a theory of supervisory liability because he affirmatively posted their information online and "acted recklessly and with a callous indifference to Plaintiffs' rights." Dkt. 64 at 18.

This argument is unpersuasive. Plaintiffs do not claim that Perez was involved in constitutional violations committed by any other officers; Plaintiffs allege only that Perez violated their rights by publishing their address. There is no evidence to support a supervisory liability claim as to Perez. Therefore, Plaintiffs' Motion is **DENIED** and Defendants' Motion is **GRANTED** as to the fifth cause of action.

6. Ninth Cause of Action: Violation of Government Code Section 6254.21

Plaintiffs have moved for summary judgment on the ninth cause of action as to both Perez and the City. Defendants have moved for summary judgment only as to the City.[6]

Plaintiffs advance a cause of action pursuant to Section 6254.21 of the Government Code. As noted above, on January 1, 2023, the California Public Records Act, including Section 6254.21, was recodified and reorganized at Section 7920.000, *et seq*. *See* A.B. 472 (2022). The text of Section 7920.000 states that it "continues former Section 6251 without substantive change." The Law Revision Commission Comments to § 7920.100 clarify that the recodification of the California Public Records Act "has no substantive impact" and "is intended solely to make the California Public Records Act more user-friendly."

[6] Defendants state that they have not presently moved for summary judgment as to the claim against Perez -- and as to certain other claims -- because, at the hearing on the Anti-SLAPP Motion, "[t]he Court tentatively held that it would dismiss Chief Perez, but would take the City's liability under submission." Dkt. 68 at 22.

As discussed, Section 7928.205 of the Government Code (formerly Section 6254.21(a)) bars a "state or local agency" from posting "the home address or telephone number of any elected or appointed official on the internet without first obtaining the written permission of that individual." Section 7928.210 of the Government Code (formerly Section 6254.21(b)) prohibits any person from "knowingly post[ing] the home address or telephone number of any elected or appointed official . . . on the internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent bodily harm to that individual." Violation of this provision is a misdemeanor.

As noted, the statute includes "a public safety official" as an "elected or appointed official" who is protected by the law. Cal. Gov't. Code § 7920.500. Section 7920.535 includes "a federal criminal investigator" and a "peace officer" in its definition of "public safety official," whether active or retired. Cal. Gov't. Code § 6254.24(a), (h).

The text of the statute as well as the limited case law interpreting it supports the view that liability attaches even if the personal information posted online was already publicly available. *Publius* held that Section 6254.21(c) was likely unconstitutional for this reason if applied to a pseudonymous blog writer who compiled the names, home addresses, and phone numbers of California legislators who voted in favor of gun control measures. 237 F. Supp. 3d at 1018–1021. Section 6254.21(c)(1) prohibited a "person, business, or association" from publicly posting on the internet the home address or telephone number of an elected or appointed official if the official had made a written demand that the information not be disclosed. *Publius* held that the statute was not narrowly tailored because "it does not differentiate between acts that 'make public' previously private information and those that 'make public' information that is already publicly available" and "proscribes the dissemination of a covered official's home address and phone number only on the internet, regardless of the extent to which it is available or disseminated elsewhere." *Id.* at 1020–21. Section 6254.21(c)(1) is now codified at Section 7928.215.

a) Violation of Government Code Section 6254.21(a)

The parties do not dispute that the City posted Plaintiffs' home address on the internet.[7] Further, the parties do not appear to dispute that Plaintiffs were "federal criminal investigators." However, Defendants argue that the City did not violate Section 6254.21(a) because Perez did not know at the time he posted the News Release that Plaintiffs held that position. Dkt. 68 at 23.

Based on a review of the text of the statute, it is not established that knowledge of an individual's status as an elected or appointed official is a requirement of Section 7928.205 (formerly Section 6254.21(a)). That provision does not contain any language as to such knowledge. Instead, the statute provides that "[n]o state or local agency shall post the home address . . . ." By contrast, Section 7928.210 (formerly Section 6254.21(b)) provides: "No person shall *knowingly* post the home address or telephone number

[7] In support of the Anti-SLAPP Motion, Defendants argued that the City did not post the addresses; only Perez did so. This argument is unpersuasive. The audio recordings revealing Plaintiffs' address were posted directly to the City's website, www.cityofpasadena.net. Dkt. 20 at 8. The first paragraph of the News Release, which states that the recordings can be accessed at a link provided below, comes before Chief Perez's statement, which begins in paragraph three. Dkt. 20-7 at 1. Thus, by sharing Chief Perez's News Release and linking to the audio and video recordings, the City "post[ed] the home address" of Plaintiffs "on the internet." Cal. Gov't. Code § 6254.21(a).

of any elected or appointed official, or of the official's residing spouse or child, on the internet *knowing that person is an elected or appointed official* and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual." § 7928.210(a) (emphasis added). Given that these two provisions previously appeared within the same section of the Code, the omission of language as to knowledge from Section 7928.205 and the inclusion of such language in Section 7928.210 supports the view that knowledge is not required to establish a violation of Section 7928.205.

Based on the foregoing, Plaintiffs have shown that the City violated Section 7928.205 by posting Plaintiffs' home addresses on the internet. However, it is not clear what remedies, if any, are available for a violation of Section 7928.205. Although violation of Section 7928.210 is a misdemeanor or felony depending on whether bodily injury occurs, and violation of Section 7928.215 gives injured officials a right to seek injunctive or declarative relief as well as attorney's fees (*see* § 7928.225), no direct means for seeking redress for violations of Section 7928.205 have been provided. Whether Plaintiffs may obtain a remedy for this violation as part of the claim for negligence, which is premised on the violation of Section 6254.21(a), is discussed below.

Plaintiffs also contend that Perez is liable for the violation of Section 6254.21(a). However, this provision applies only to a "state or local agency."

b) Violation of Government Code Section 6254.21(b)

The Complaint can be interpreted as advancing a cause of action for a violation of Government Code Section 6254.21(b), now codified at Section 7928.210. Dkt. 1 ¶ 95. However, Plaintiffs have not moved for summary judgment on this claim; they address only Section 6254.21(a) in their discussion of the ninth cause of action. Nor do Plaintiffs present evidence in support of a violation of Section 6254.21(b).Therefore, Plaintiffs are not entitled to summary judgment on this cause of action.

For the foregoing reasons, Plaintiffs' Motion is **GRANTED** and Defendants' Motion is **DENIED** as to the City's liability under Section 6254.21(a), now codified at Section 7928.205. Plaintiffs' Motion is **DENIED** as to Perez's liability under either Section 6254.21(a) or Section 6254.21(b), now codified at Section 7928.205 and Section 7928.210.

7. Sixth Cause of Action: Negligence

Plaintiffs have advanced a negligence cause of action premised on Defendants' alleged violation of Section 6254.21, now codified, in relevant part, at Section 7928.205 and Section 7928.210.

a) City's Liability

Plaintiffs and Defendants both have moved for summary judgment as to the City's liability with respect to the sixth cause of action.

Plaintiffs argue that the City is directly liable for the posting of Plaintiffs' addresses under Section 815.6 of the Government Code. Dkt. 64 at 18–19. That statute provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind

of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Thus, to establish negligence under Section 815.6, a plaintiff must prove three elements: "(1) a mandatory duty was imposed on the public entity by an enactment; (2) the enactment was designed to protect against the particular kind of injury allegedly suffered; and (3) the breach of the mandatory statutory duty proximately caused the injury." *B.H. v. Cty. of San Bernardino*, 62 Cal. 4th 168, 179 (2015).

Plaintiffs argue the City is directly liable under Section 815.6 for its violation of Section 6254.21(a). Defendants do not dispute that Plaintiffs have satisfied the first two elements of the test for establishing the City's liability, although they note that "there is no case analyzing a public entity's liability for a violation of Section 6254.21 as a breach of mandatory duty under Section 815.6." Dkt. 76 at 19. Defendants instead argue that Plaintiffs suffered no injury. However, Plaintiffs declare that their "safety and well-being was threatened," and they "had to relocate to a different city for residential and work purposes." See Dkt. 71-1 ¶ 3; Dkt. 71-2 ¶ 3. This sufficient to establish a triable issue as to injury.

Defendants next argue that they are not liable under Section 815.6 because Perez acted with reasonable diligence, which, as stated, provides an exemption from liability. They argue that Perez did not know that Plaintiffs were federal criminal investigators, and that Perez "communicated with the City Attorney['s] office regarding whether or not the plaintiffs' addresses should be attached to the News Release by way of the links to the 911 call and body worn camera footage." Dkt. 68 at 24.

There is a triable issue as to whether Perez had reason to know that Plaintiffs were public safety officials covered under Section 6254.21(a). As discussed above, the parties dispute the extent of Perez's knowledge about Plaintiffs' law enforcement status. Perez testified that, as of December 23, 2019, he knew that at least one of the Plaintiffs was a "law enforcement officer." Plaintiffs' Ex. 35 at 35:25–22. However, he then testified that he knew "somehow they were employees of the federal government in a law enforcement setting," but that he "only knew them to be analysts of some sort. I didn't know if they were sworn or not. It really wasn't a concern if they were or weren't. It was just the fact I never knew if they were actual agents of the federal government in terms of police officer status. That I don't know. I still don't know." Dkt. 68-8 at 36:1–37:4. Defendants argue that, although Perez knew that Plaintiffs were law enforcement officers of some kind, he did not know that they fell into one of the specific categories that is included in the definition of "public safety official" in Government Code Section 7920.535. Those categories include, *inter alia*, a "federal prosecutor, a federal criminal investigator, and a National Park Service Ranger working in California;" certain categories of "nonsworn employee[s] of the Department of Justice or a police department or sheriff's office that" have certain duties related to crime evidence; and a "peace officer" as defined by certain sections of the Penal Code.

To support the contention that Perez did not act with reasonable diligence, Plaintiffs also submit evidence that Defendants had the ability to make redactions to sensitive information but did not do so. Dkt. 79 at 4–5.

In light of the evidence presented, there is a triable issue as to whether the City, through Perez, acted with reasonable diligence.

Defendants also contend that Perez is immune from liability for the News Release under Section 47(d)(1) of the California Civil Code. Section 47 describes certain publications that are privileged, including one made "by a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof . . . ." Cal. Civ. Code § 47(d)(1). The party seeking application of the privilege bears the burden of proving that it applies. *Carver v. Bonds*, 135 Cal. App. 4th 328, 348–49 (2005); *see also Gallagher v. Philipps*, 563 F. Supp. 3d 1048, 1083 (S.D. Cal. Sept. 27, 2021) ("The burden falls on Defendant to prove that each statement falls within the scope of the privilege.").

Defendants argue that the "News Release was about a recently filed Claim, which Claim was the beginning of a judicial proceeding (a predicate to a lawsuit) and a legislative proceeding (the City's required review and response to the Claim)." Dkt. 68 at 24. However, Defendants do not explain how the recording of the 911 call, which contains Plaintiffs' address, falls within the scope of the privilege. It is not clear that providing this recording would be a "report of" a judicial proceeding because the 911 call itself is not the subject of the Tort Claims, or directly part of the Tort Claims; rather, it is evidence relevant to the Tort Claims. This raises a question of fact. Defendants also do not present specific argument or evidence showing that the News Release was "true and fair;" they only make the generalized statement that "the News Release is a fair summary of events." Dkt. 68 at 25. Defendants assert the privilege in only a conclusory fashion. They have not met their burden to establish the privilege in the context of their motion for summary judgment. Therefore, triable issues of fact remain with respect to the negligence claim against the City. Accordingly, both Plaintiffs' and Defendants' Motions are **DENIED** with respect to the City's liability.

b) Perez's Liability

Only Plaintiffs have moved for summary judgment with respect to Perez's liability. As stated, Perez may not be held individually liable under Section 6254.21(a) (now codified at Section 7928.205) because the provision applies only to public agencies, not to persons. Section 6254.21(b) (now codified at Section 7928.210) expressly provides a different standard of conduct for a "person." Plaintiffs argue that Perez is liable pursuant to Section 820(a) of the Government Code, which provides that "[e]xcept as otherwise provided by statute . . . , a public employee is liable for injury caused by his act or omission to the same extent as a private person." This provision does not establish liability, because Perez would not be liable under Section 6254.21(a) as a private person; it applies only to public agencies. Further, as discussed above, Plaintiffs have not moved for summary judgment on the claim that Perez violated Section 6254.21(b), nor have they presented evidence in support of such a claim. Therefore, Plaintiffs are not entitled to summary judgment as to Perez's negligence liability.

For these reasons, both Plaintiffs' and Defendants' Motions are **DENIED** as to the City's liability. Plaintiffs' Motion is **DENIED** as to Perez's liability.

8. Seventh Cause of Action: Intrusion into Private Affairs

Only Plaintiffs move for summary judgment on the seventh cause of action. A claim for intrusion into private affairs requires a showing the following: "(1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person." *Shulman v. Group W Productions, Inc.*, 18 Cal. 4th 200, 231 (1998). To show intrusion, a plaintiff must have "an objectively reasonable

expectation of seclusion or solitude in the place, conversation or data source," and the defendant must have "penetrated some zone of physical or sensory privacy surrounding, or obtained unwanted access to data about, the plaintiff." *Id.* at 232.

Plaintiffs identify two separate intrusive offenses: the disclosure of their residential address online, and publishing views of the interior of their residence through the body camera footage. Dkt. 64 at 21. As discussed above, Tort Claims are "public records . . . subject to disclosure to the public." *Bustos*, 2020 WL 4748166, at *10 (citing *Copley Press,* 62 Cal. App. 4th at 1501; *see also Buzayan*, 927 F. Supp. 2d at 904. Under California law, "generally, one who submits a tort claim has no reasonable expectation of privacy." *Copley Press*, 62 Cal. App. 4th at 1505; see also *Register Division of Freedom Newspapers, Inc.*, 158 Cal. App. 3d at 902.

As to the disclosure of their address, Plaintiffs argue again that § 6254.21 is an exemption to the CPRA, and they cite to the portion of *Copley Press* that states that "The Public Records Act specifies that any public record in the possession of a state or local agency must be disclosed to any citizen *unless an exemption applies*." *Copley Press*, 62 Cal. App. 4th at 1501 (emphasis added). However, as discussed above, Section 6254.21 (now codified at Sections 7928.205 and 7928.210) does not entirely exempt from the CPRA records that are otherwise public; rather, it provides restrictions on who may publish those records, where they may publish them and for what purpose.

Plaintiffs argue that *Register Division of Freedom Newspapers* is "no longer good law" because Section 6254.21(f)(13) (which includes public safety officials in the definition of "appointed officials" entitled to protection) was enacted after that opinion issued. Dkt. 64 at 21. This argument is not persuasive. *Register Division of Freedom Newspapers* held that an existing exemption to the CPRA for medical records did not apply because the owner of those records had "tacitly *waived* any expectation of privacy regarding [his] medical records" by "voluntarily submitting these records to the County" as part of his Tort Claim. 158 Cal. App. 3d at 902–903. That the Legislature amended the definition of "appointed officials" entitled to privacy in their home address does not affect the basic tenet in *Register Division of Freedom Newspapers* -- voluntarily submitting "private" information as part of a Tort Claim precludes any future expectation of privacy. Thus, because Plaintiffs' address became public record when they submitted their Tort Claims, they have not shown that they had an objectively reasonable expectation of privacy in that information.

With respect to the body camera footage, Defendants argue that "[o]nce the plaintiffs filed Tort Claims, the entirety of the July 22, 2019 incident became a 'public record,' and thus the plaintiffs themselves extinguished any privacy rights held in their 'address and information.' " Dkt. 76 at 22. However, neither *Copley Press* nor *Register Division* held that once an individual submits a Tort Claim, the person relinquishes all rights to privacy in any material that may be related to the subject of the Tort Claim. In *Register Division*, the court found that the plaintiff had waived any expectation of privacy in his medical records where he had attached them to his Tort Claim and submitted them to the county for the purpose of settling his tort claim. 158 Cal. App. 3d at 902. It is not clear that Plaintiffs here voluntarily waived any expectation of privacy in the body cam footage of the inside of their home simply because they filed a Tort Claim to which that footage was relevant.

Nevertheless, Plaintiffs have not proffered sufficient evidence or argument from which to conclude that they had a reasonable expectation of privacy in the appearance of the interior of their home, and that

disclosure of the body cam footage would have been highly offensive to a reasonable person. The only argument they offer with respect to this issue is that "as Defendant Chief Perez believed that an officer's address should be kept confidential for safety reasons, disclosing Plaintiffs' home address and depicting the inside of their residence online would be highly offensive to a reasonable person." Dkt. 64 at 2. It is not clear why a conclusion that an individual's address should be kept confidential for safety reasons necessarily means that disclosure of footage of the *inside* of someone's home would be offensive to a reasonable person. Plaintiffs have not shown that there is no triable issue of fact as to this theory of liability.

Therefore, Plaintiff's Motion is **DENIED** as to the seventh cause of action.

9. Eighth Cause of Action: Public Disclosure of Private Facts

Under California law, a plaintiff must show "(1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern" to state a claim for publication of private facts. *Shulman*, 18 Cal. 4th at 214.

As to the second element, a plaintiff must show that the public disclosure involved "intimate details of one's private life which are outside the realm of legitimate public interest." *Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040, 1047 (1984). "[T]here can be no privacy with respect to a matter which is already public." *Id.* "[T]here is no liability when the defendant merely gives further publicity to information about [the] plaintiff which is already public or when the further publicity relates to matters which the plaintiff leaves open to the public eye." *Id.*; *see also Moreno v. Hanford Sentinel, Inc.*, 172 Cal. App. 4th 1125, 1131 (2009), *modified*, (Apr. 30, 2009).

"With respect to the fourth element, the Supreme Court held in *Shulman*, and reaffirmed in *Taus*, that 'newsworthiness' is a complete bar to liability for publication of truthful information." *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1256–57 (2017), *modified*, (Apr. 19, 2017) (citing *Taus v. Loftus*, 40 Cal. 4th 683, 717 & n.14 (2007); *Shulman*, 18 Cal. 4th at 215).

> [N]ewsworthiness is not limited to "news" in the narrow sense of reports of current events. "It extends also to the use of . . . facts in giving information to the public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published."

Id. at 1257 (quoting *Shulman*, 18 Cal. 4th at 225).

For the reasons stated above, Plaintiffs have not shown that their home address remained a "private fact" by the time Perez penned his News Release. Plaintiffs made their address a public record when they filed their Tort Claim. Additionally, as is true with respect to the seventh cause of action, Plaintiffs have not established that disclosure of a depiction of the inside of their residence would be offensive to a reasonable person. Therefore, because Plaintiffs have not shown that there is no genuine issue of fact as to Defendants' liability, Plaintiff's Motion is **DENIED**.

10. Tenth Cause of Action: Bane Act

The Bane Act (Cal. Civ. Code § 52.1) provides in relevant part:

> (a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured....
> (b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages....

The Bane Act was adopted in response to hate crimes. *Bender v. Cty. of Los Angeles*, 217 Cal. App. 4th 968, 977 (2013) (citing Stats. 1987, ch. 1277, § 3, p. 4544). However, *Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 843 (2004), explained that the Bane Act applies to matters beyond hate crimes and that to state a claim, a plaintiff is not required to show "that [the municipality] or its officers had a discriminatory purpose . . . ."

A " '[t]hreat' . . . involves the intentional exertion of pressure to make another fearful or apprehensive of injury or harm." *Planned Parenthood League of Massachusetts, Inc. v. Blake*, 417 Mass. 467, 474 (interpreting the Massachusetts Civil Rights Act after which section 52.1 is modeled). Intimidation means "to make timid or fearful." *Ex parte Bell*, 19 Cal. 2d 488, 526 (1942). "Coercion is 'the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.' " *Meyers v. City of Fresno*, No. CV-10-2359-LJO, 2011 WL 902115, at *7 (E.D. Cal. Mar. 15, 2011) (quoting *Ex parte Bell*, 19 Cal. 2d at 526).

Plaintiffs assert that "[a]fter Plaintiffs submitted their governmental tort claims and before a lawsuit was filed for the warrantless entry, Defendants posted Plaintiffs' information online to the public, creating a clear threat, intimidation and coercion to keep Plaintiffs from filing suit after the June 11, 2020 governmental tort claims requirements had been met but before the required forty-five (45) day period had passed before suit could be filed." Dkt. 64 at 23. They claim that "[t]here is no other basis for the release of Plaintiffs' private information." *Id.* However, as discussed above, Defendants have proffered a declaration from Perez stating that the purpose of the News Release was to "provide transparency to the public regarding a matter of public concern." Dkt. 76 at 25; Dkt. 76-2 ¶ 10. Additionally, Defendants have pointed out that the News Release did not mention Plaintiffs by name, and it did not include their addresses in the body of the article. *Id.* ¶ 12. Defendants also point to the timing of the News Release and the Pasadena Now article as evidence that the purpose of the News Release was to respond to the Pasadena Now article, rather than to retaliate against Plaintiffs. Therefore, there is a triable issue as to Perez's purpose in posting Plaintiffs' address on the internet.

For these reasons, Plaintiffs' Motion is **DENIED** as to the tenth cause of action.

C. Conclusion as to MSJs

For the foregoing reasons, Plaintiffs' MSJ is **GRANTED IN PART** and **DENIED IN PART**. It is **GRANTED** as to the ninth cause of action with respect to the City only. Plaintiffs' MSJ is **DENIED** as to the first through eighth causes of action, the ninth cause of action with respect to Defendant Perez and the tenth cause of action. The issue whether Plaintiffs may obtain a remedy for the ninth cause of action as to the City is **DEFERRED** until after a final determination is made at trial on the merits of the negligence claim against the City.

Defendants' MSJ is **GRANTED IN PART** and **DENIED IN PART**. Defendants' MSJ is **GRANTED** as to the third cause of action and the fifth cause of action. It is **DENIED** as to the first through second causes of action, the fourth cause of action, the sixth cause of action as to the City's liability and the ninth cause of action as to the City's liability.

V. Anti-SLAPP Motion (Dkt. 20)

Because Defendants' MSJ has been denied as to the City's liability for the sixth and ninth causes of action, and Plaintiffs' MSJ has been granted as to the City's liability for the ninth cause of action, the Anti-SLAPP motion is moot with respect to the City's liability for the sixth and ninth causes of action. The foregoing rulings as to those causes of action necessarily rely on a determination that there is at least some merit to those claims. Therefore, the causes of action whose viability remains for determination pursuant to the Anti-SLAPP Motion are those for which Defendants did not move for summary judgment. The general legal standards stated above as to each cause of action apply to the following discussion, and are not repeated.

A. Analysis

1. Legal Standards

The term "SLAPP is an acronym for strategic lawsuit against public participation." *Simpson Strong-Tie Co. Inc. v. Gore*, 49 Cal. 4th 12, 16 n.1 (2010). Such an action "is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so." *Id.* at 21. Accordingly, the anti-SLAPP statute applies to any "cause of action against a person arising from any act . . . in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." Cal. Code Civ. Proc. § 425.16(b)(1).[8] It provides that such a cause of action "shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." *Id.* The statute "is designed to nip SLAPP litigation in the bud by striking offending causes of action[] which chill the valid exercise of the constitutional rights of freedom of speech and petition." *Braun v. Chronicle Publ'g Co.*, 52 Cal. App. 4th 1036, 1042 (1997) (internal

[8] Such acts include: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Cal. Code Civ. Proc. § 425.16(e).

quotation marks omitted).

A two-step analysis is used to determine whether a motion to strike under Section 425.16 should be granted. *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." *Id.* To make this showing, the defendant must demonstrate the alleged conduct " 'underlying the plaintiff's cause fits one of the categories spelled out in [S]ection 425.16.' " *Id.* (quoting *Braun*, 52 Cal. App 4th at 1043). Second, if the claim arises from protected conduct, the court "must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." *Id.* If the plaintiff cannot meet this burden, the claim must be stricken. *Id.* at 89.

"The prevailing party on a special motion to strike is entitled to attorney's fees and costs to compensate them for the expense of responding to the SLAPP suit and the motion." *U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, *Inc.*, 190 F.3d 963, 971 (9th Cir. 1999) (citing Cal. Code Civ. Proc. § 425.16(c)).

2. Application

a) Applicable Standard of Review

Courts in the Ninth Circuit "review anti-SLAPP motions to strike under different standards depending on the motion's basis," in an effort "to prevent the collision of California state procedural rules with federal procedural rules." *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 833 (9th Cir. 2018), *amended by* 897 F.3d 1224 (9th Cir. 2018). Accordingly, "when an anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated." *Id.* at 834. By contrast, "when an anti-SLAPP motion to strike challenges the factual sufficiency of a claim, then the Federal Rule of Civil Procedure 56 standard will apply." *Id.*

The briefing in support of the Anti-SLAPP Motion does not state whether it seeks to challenge the legal or factual sufficiency of Plaintiffs' claims. It was filed several days after Defendants filed their answer to the Complaint, and before discovery in this matter began. *See* Dkts. 18, 19, 20. The arguments presented in support of the Anti-SLAPP Motion focus primarily on the legal sufficiency of Plaintiffs' claims. *See* Dkt. 20 at 15–23. These considerations could support construing the Anti-SLAPP Motion as one that should be analyzed pursuant to the 12(b)(6) standard.

Defendants also have submitted evidence in connection with the Anti-SLAPP Motion, including a declaration by Perez. *See* Dkt. 20-2. Thus, the Anti-SLAPP Motion also seeks to contest certain of Plaintiffs' factual allegations. When an anti-SLAPP motion is considered as one that challenges the legal sufficiency of a plaintiff's claims, i.e. under the standard of Rule 12(b)(6), a court may not properly consider evidence outside of the pleadings; such evidence may only be considered when the Rule 56 standard is applied. *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1156 (9th Cir. 2021).
When the Rule 56 standard is applied to an anti-SLAPP motion to strike, "discovery must be allowed, with opportunities to supplement evidence based on the factual challenges, before any decision is made by the court." *Planned Parenthood*, 890 F.3d at 834.

Because discovery in this matter has now concluded, and each party has had the opportunity to present evidence in support of their respective MSJs, it is appropriate to consider the Anti-SLAPP Motion under the Rule 56 standard. Thus, the evidence presented by the parties in connection with their MSJs is considered, in addition to the arguments and information presented in connection with the Anti-SLAPP Motion.

Based on the foregoing standards, the outcome would be the same if the Rule 12(b)(6) standard were applied. Thus, the Ninth Circuit has held that "granting a defendant's anti-SLAPP motion to strike a plaintiff's initial complaint without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P. 15(a)'s policy favoring liberal amendment." *Verizon Del., Inc. v. Covad Commc'ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004). Accordingly, whether to allow leave to amend after an anti-SLAPP motion is granted is determined under the liberal standards of Fed. R. Civ. P. 15. These include:

> In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

Foman v. Davis, 371 U.S. 178, 182 (1962).

In complying with these principles, the application of the Rule 12(b)(6) standard would involve a determination whether, under Rule 15, leave to amend should be granted. Because discovery in this matter has closed, and the parties have submitted briefing and evidence in support of their respective MSJs, leave to amend would be futile for any of the causes of action, discussed below, for which there is no triable issue of fact as to Defendants' liability. *See Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 766 (9th Cir. 1986) (amendment futile where claim "could be defeated on a motion for summary judgment").

b) Step One: Whether the Challenged Causes of Action Each Arises from Protected Activity

(1) Legal Standards

As noted, a defendant who brings an anti-SLAPP motion must "ma[k]e a threshold showing that the challenged cause of action is one arising from protected activity," i.e., that the alleged conduct "underlying the plaintiff's cause fits one of the categories spelled out in [Cal. Code Civ. Proc. §] 425.16." *Navellier*, 29 Cal. 4th at 88. The statutory categories include "any written or oral statement or writing made in . . . a public forum in connection with an issue of public interest," and "any other conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest." Cal. Code Civ. Proc. § 425.16(e)(3)–(4).[9]

In evaluating whether the moving party has made the threshold showing that the claims arise from

[9] Because Defendants do not contend that the relevant conduct falls within Cal. Code Civ. Proc. § 425.16(e)(1)-(2), those categories are not addressed.

conduct in furtherance of free speech, the statute "shall be construed broadly." Cal. Code Civ. Proc. § 425.16(a). Further, whether the statute applies does not turn on how a challenged claim is labeled. If it arises from conduct that was undertaken in furtherance of free speech, it falls within the scope of the statute. *See Navellier*, 29 Cal. 4th at 92 (the "definitional focus [of Section 415.16] is not the form of the plaintiff's cause of action, but rather, the defendant's activity that gives rise to his or her asserted liability").

The California Supreme Court has clarified "that a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest, and that a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." *Rand Res., LLC v. City of Carson*, 6 Cal. 5th 610, 621 (2019) (internal quotation marks, brackets and citation omitted). It has also "identified three nonexclusive and sometimes overlapping categories of statements" that concern "a public issue" or "an issue of public interest;" "The first is when the statement or conduct concerns 'a person or entity in the public eye'; the second, when it involves 'conduct that could directly affect a large number of people beyond the direct participants'; and the third, when it involves 'a topic of widespread, public interest.' " *Id.* (quoting *Rivero v. American Fed'n of State, Cty., and Mun. Emps., AFL-CIO*, 105 Cal. App. 4th 913, 919 (2003)).

(2) Application

Defendants argue that Plaintiffs' state law claims arise from conduct in furtherance of free speech because the claims are all based on Chief Perez's News Release, published to the City of Pasadena's website, www.cityofpasadena.net. Dkt. 20 at 11. Defendants argue that this website is "a quintessential public forum." *Id.* (citing *Sonoma Media Invs. LLC v. Super. Ct. (Flater)*, 34 Cal. App. 5th 24, 33–34 (2019); *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468, 476–77 (2000)). Defendants also argue that the News Release centered on an issue of public interest because it "involved a police response to a 911 call, a false 911 call which is a matter of public safety, and the plaintiffs' allegations of police misconduct." Dkt. 20 at 13. Defendants argue that because the News Release was "reporting the news," it qualifies as "an exercise of free speech." *Id.* at 14.

In response, Plaintiffs argue that "there is no issue of public interest for the disclosure of federal law enforcement's address." Dkt. 25 at 12. Plaintiffs argue that Defendants' characterization of the issue as one of "police transparency" is too broad to qualify as a matter of public interest under the anti-SLAPP statute. *Id.* at 12–13 (citing *D.C. v. R.R.*, 182 Cal. App. 4th 1190, 1216 (2010)).

Defendants' position is persuasive. Although a statement "must in some manner itself contribute to the public debate" to receive protection under § 425.16(e)(3)–(4), the "inquiry does not turn on a normative evaluation of the substance of the speech." *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 151 (2019). Thus, the anti-SLAPP analysis is "not concerned with the social utility of the speech at issue, or the degree to which it propelled the conversation in any particular direction; rather, [courts] examine whether a defendant . . . participated in, or furthered, the discourse that makes an issue one of public interest." *Id.*

Defendants assert they were responding to a news article published by Pasadena Now about the police misconduct alleged in Plaintiffs' Tort Claim and the hoax 911 call that led to the July 22, 2019 incident. The public interests asserted by Defendants -- alleged police misconduct and public safety within the

Pasadena community -- are not "broad and amorphous." *D.C.*, 182 Cal. App. 4th at 1216. They are concrete and specific topics of public interest.

In light of Pasadena Now's June 29, 2020 news article, the public had an interest not just in alleged police misconduct or public safety generally, but in the specific facts of the July 22, 2019 incident, where an unknown caller placed a false 911 call that led police officers forcibly to enter a private residence in the community. Defendants' News Release, which included the bodycam videos and 911 and dispatch audio recordings, contributed to the public discourse on those events.

In addition, the mode of transmission of the challenged speech, i.e., a news release that is publicly available on the internet, constitutes a public forum within the meaning of Cal. Code Civ. Proc. § 425.16(e)(3). See *Kronemyer v. Internet Movie Database Inc.*, 150 Cal. App. 4th 941, 950 (2007) ("Web sites accessible to the public are 'public forums' for the purposes of the anti-SLAPP statute."); *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1107 (C.D. Cal. May 20, 2004) ("[C]ourts have uniformly held or, deeming the proposition obvious, simply assumed that internet venues to which members of the public have relatively easy access constitute a 'public forum' or a place 'open to the public' within the meaning of section 425.16."). In addition to being posted on the internet, the News Release was a communication to the public by its nature, with the intention of causing those who read it to engage in a dialogue and take other actions. Even if it were not made in a public forum, the speech at issue constitutes "conduct in furtherance of the exercise of . . . the constitutional right of free speech," thereby falling within the scope of the catch-all provision of the anti-SLAPP statute. Cal. Code Civ. Proc. § 425.16(e)(4).

For the foregoing reasons, the conduct underlying Plaintiffs' Complaint qualifies as a protected activity under the anti-SLAPP statute. Thus, Defendants have met their burden under the first step of the anti-SLAPP analysis.

c) Step Two: Whether Plaintiff Has Shown a Probability of Prevailing on the Challenged Claims

As noted, once it has been determined that the plaintiff's complaint arises from conduct covered by the anti-SLAPP statute, the burden shifts to the plaintiff to establish, through the submission of admissible evidence, a "probability" of prevailing on the claims challenged by the anti-SLAPP motion. *See* Cal. Code Civ. Proc. § 425.16(b); *Robertson v. Rodriguez*, 36 Cal. App. 4th 347, 355 (1995).

(1) Ninth Cause of Action: Violation of Government Code § 6254.21(a) and (b)

As a preliminary matter, the Anti-SLAPP Motion is moot with respect to the City's liability under Cal. Gov't Code § 6254.21(a) because Plaintiffs' MSJ was granted as to this claim. Therefore, the only issue remaining is the alleged liability of Perez.

The Complaint alleges that Defendants violated subdivisions (a) and (b) of Section 6254.21 by posting Plaintiffs' home address on the internet in connection with Chief Perez's News Release without first receiving written permission from Plaintiffs to do so. *See* Dkt. 1 ¶¶ 98–100; Dkt. 25 at 13. Defendants

argue that this claim lacks minimal merit because Chief Perez did not post Plaintiffs' home address with the intent to cause great bodily harm in violation of subdivision (b). Dkt. 20 at 19.

Plaintiffs' claim against Perez under § 6254.21(b), now codified at § 7928.210, does not have minimal merit. Plaintiffs allege that Chief Perez posted Plaintiffs' home address "knowing that imminent great bodily harm would likely occur." Dkt. 1 ¶ 18. Plaintiffs also allege that Chief Perez "used the posting as a threat to cause imminent great bodily harm to Plaintiffs if Plaintiffs proceeded forward with their lawful right to file a lawsuit." *Id.* Neither of these conclusory allegations is sufficient under § 6254.21(b)'s exacting standard for imposing criminal liability, which, as discussed above, requires Plaintiffs to show that Defendant Perez "*intend[ed]* to cause '*imminent great bodily harm* that is *likely to occur*' or must 'threat[en] to cause *imminent great bodily harm* to that individual.' " (emphasis added). Under California's Criminal Code, "[g]reat bodily injury 'means a significant or substantial physical injury,' " which is "more than a moderate harm." *People v. Medellin*, 45 Cal. App. 5th 519, 527–28, 531 (2020).

Moreover, as noted, Plaintiffs moved for summary judgment on their ninth cause of action solely on the ground that Perez violated § 6254.21(a); they did not assert a theory of liability under § 6254.21(b). A reasonable inference is that Plaintiffs have abandoned this claim.[10] Nor have Plaintiffs identified evidence to support the contention that Perez posted their address "intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm." *See* § 7928.210. Although it has been determined that Plaintiffs have presented sufficient evidence to establish a triable issue as to whether Perez acted with deliberate indifference as to a potential danger to Plaintiffs, this is a different standard from the one required by Section 6254.21(b). With respect to the claim under Section 6254.21(a), as noted, that provision applies only to public entities, not to individuals.

For the foregoing reasons, there is no genuine issue of fact as to Perez's liability. Therefore, Defendants' Motion to Strike is **GRANTED** with respect to Plaintiffs' claim against Perez.

(2) Sixth Cause of Action: Negligence

The Anti-SLAPP Motion is moot with respect to the City's liability for negligence because Defendants' MSJ was denied as to this claim. That conclusion relied on the determination that there were genuine disputes of fact as to this claim to be resolved by a jury, which necessarily means that the claim has minimal merit. Therefore, the only issue that remains is Perez's liability.

The Complaint advances several bases for Plaintiffs' negligence claim against Perez. However, as noted, in their briefing regarding their MSJ, Plaintiffs advance only a theory of negligence liability premised on Perez's violation of Section 6254.21(a). For the reasons stated above, Plaintiffs have not advanced a theory of liability as to Perez that has minimal merit. As noted, Perez may not be held individually liable under Section 6254.21(a) (now codified at Section 7928.205) because the provision applies only to public agencies, not to persons. Section 6254.21(b) (now codified at Section 7928.210) expressly provides a different standard of conduct for a "person." Nor may Perez be held liable pursuant to Government Code Section 820(a), which provides that "[e]xcept as otherwise provided by statute . . . , a public employee is liable for injury caused by his act or omission to the same extent as a

[10] Plaintiffs moved for "partial summary judgment" for "the claims for relief alleged in the operative complaint with damages only to be decided by the jury." Dkt. 64 at 8. Thus, although Plaintiffs' MSJ is styled as one for partial summary judgment, it sought summary judgment for all of their substantive claims.

private person." This provision does not establish liability here, because Perez would not be liable under Section 6254.21(a) as a private person; it applies only to public agencies.

For these reasons, Plaintiffs have not identified a theory of negligence under which Perez may be held liable. Therefore, there is no genuine dispute of fact as to Perez's liability.

Therefore, Defendants' Motion to Strike is **GRANTED** with respect to Plaintiffs' negligence claim against Perez.

(3) Seventh Cause of Action: Intrusion into Private Affairs

Plaintiffs allege that Defendants intentionally intruded into their private affairs by revealing their home address in the audio recordings attached to Chief Perez's news release. *See* Dkt. 1 ¶ 85. Plaintiffs allege that they had "a reasonable expectation of privacy in their address and information." *Id.* Defendants argue that Plaintiffs could not have had a reasonable expectation of privacy in their address and other information at the time that Chief Perez published his News Release.

Defendants' argument is persuasive. To state a claim for an intrusion into private affairs, Plaintiffs must allege that their expectation of privacy was "*objectively* reasonable." *Shulman*, 18 Cal. 4th at 232 (emphasis added). Plaintiffs' subjective belief that "their home address would remain private upon submitting their governmental tort claims," Dkt. 25 at 16 (citing Anderson Decl. ¶ 3; McCaigue Decl. ¶ 3) is insufficient. As discussed above, Plaintiffs waived any expectation in privacy regarding their address by filing their Tort Claims with the City. *See Register Div. of Freedom Newspapers, Inc.*, 158 Cal. App. 3d at 902–903; *Copley Press*, 62 Cal. App. 4th at 1505. Further, with respect to the tort of intrusion into private affairs, "[t]here is no liability for the examination of a public record concerning the plaintiff." Shulman, 18 Cal. 4th at 231.

Although Plaintiffs' MSJ identifies a more plausible intrusion based on the release of "the inside depiction of Plaintiffs' residence," Dkt. 64 at 21, Plaintiffs did not present adequate caselaw or evidence as to this theory of intrusion. Nor was it alleged in the Complaint. Plaintiffs have had ample opportunity to develop evidence to support this claim, and discovery is now closed. Defendants would be prejudiced if Plaintiffs were now permitted to amend the operative pleading to advance a new theory of liability for this cause of action, supported by different allegations. Therefore, although leave to amend may not have been futile based solely on the pleadings, it is not warranted at this stage of the litigation, and no genuine dispute of fact has been raised.

Therefore, Defendants' Motion to Strike is **GRANTED** with respect to the seventh cause of action.

(4) Eighth Cause of Action: Public Disclosure of Private Facts

The Complaint alleges that Defendants publicly disclosed a private fact when they revealed Plaintiffs' home address in the audio recordings attached to Chief Perez's news release. *See* Dkt. 1 ¶ 90. As discussed above, the allegations cannot show that their home address remained a "private fact" when it was published in the News Release.

As noted, Plaintiffs have advanced a theory of liability in support of their MSJ that is premised on the

disclosure of the footage of the inside of their residence. As also noted, Plaintiffs did not allege this theory in the Complaint and have not adequately supported it with evidence. In addition, with respect to a claim of public disclosure of private facts, " 'newsworthiness' is a complete bar to liability for publication of truthful information." *Jackson*, 10 Cal. App. 5th at 1256–57 (citing *Taus*, 40 Cal. 4th at 717 & n.14; *Shulman*, 18 Cal. 4th at 215). "[N]ewsworthiness is not limited to 'news' in the narrow sense of reports of current events. 'It extends also to the use of . . . facts in giving information to the public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published.' " *Id.* at 1257 (quoting *Shulman*, 18 Cal. 4th at 225).

For the reasons discussed in the context of the first step of the inquiry as to the Anti-SLAPP Motion, there is no genuine dispute that the public may reasonably have been expected to have an interest in the details of the July 22, 2019 incident. Plaintiffs contend that "there is definitely no public concern for how the inside of plaintiffs' residence is depicted on body worn cameras" because, since "the underlying case re[v]olv[ed] around a warrantless entry," "any concern should focus on the facts known by the officers before entering Plaintiffs' residence—not the layout of Plaintiffs' residence." Dkt. 64 at 22–23. This argument is unpersuasive. The Pasadena Now article reported that Plaintiffs' Tort Claims included allegations that "officers repeatedly searched drawers and rifled through documents and other personal items without a valid reason to do so." Dkt. 68-6 at 3. Thus, there is no genuine dispute that the public may reasonably have been expected to have had an interest in footage of the events that occurred inside Plaintiffs' residence. Therefore, even if this theory of liability were considered, there is no genuine dispute that the footage was "newsworthy," and cannot serve as the basis for liability for a claim of public disclosure of private facts.

Therefore, Defendants' Motion to Strike is **GRANTED** with respect to the eighth cause of action.

(5) Tenth Cause of Action: Bane Act Violation (Cal. Civ. Code § 52.1)

The Bane Act provides a cause of action against any person who "interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States." Cal. Civ. Code § 52.1(b).

The Complaint alleges that Defendants "interfered with, and/or attempted to interfere with, by use of threats, intimidation, and/or coercion, the exercise or enjoyment by Plaintiffs the rights secured to them by the California Constitution and otherwise by California law, in violation of California Civil Code § 52.1." Dkt. 1 ¶ 102.[11] The Complaint alleges that Perez used the News Release "as a threat to cause imminent great bodily harm to Plaintiffs if Plaintiffs proceeded forward with their lawful right to file a lawsuit based upon the facts alleged in their California Government Torts Claims submitted to Defendant CITY." *Id.* ¶ 18. Plaintiffs argue that because they had submitted Tort Claims before Defendants posted the News Release containing Plaintiffs' address, there is "a clear inference that Defendants intended to threaten, intimidate and coerce Plaintiffs from filing suit after the June 11, 2020 governmental tort claims requirements had been met but before the required forty-five (45) day period

[11] In their Opposition, Plaintiffs argue that "Defendants cannot challenge Plaintiffs' Bane Act claim" with respect to the violations of federal law alleged in Causes of Action One through Five. Dkt. 25 at 19. However, Plaintiffs did not bring a Bane Act claim with respect to such alleged violations of federal law.

had passed before suit could be filed." Dkt. 25 at 19.

Although the Complaint does not allege any facts to support the conclusory allegation that Perez used the News Release "as a threat" to prevent them from filing their lawsuit, Plaintiffs have presented evidence, which was discussed in connection with their First Amendment and state-created danger claims, to support the contention that Defendants posted their address online to intimidate and discourage them from exercising their First Amendment rights.

Defendants argue that the News Release cannot be considered a "threat" because it was posted online and not "directed at or sent to plaintiffs." Dkt. 76 at 25. However, "in evaluating the threatening or coercive conduct, the Court must consider 'whether a reasonable person, standing in the shoes of the plaintiff, would have been intimidated by the actions of the defendants and have perceived a threat of violence.' " *Muhammad v. Garrett*, 66 F. Supp. 3d 1287, 1296 (E.D. Cal. Dec. 11, 2014), *aff'd sub nom. Muhammad v. City of Bakersfield*, 671 F. App'x 982 (9th Cir. 2016) (quoting *Richardson v. City of Antioch*, 722 F. Supp. 2d 1133, 1147 (N.D. Cal. July 13, 2010)). A triable issue of fact is presented as to whether a reasonable person would have been intimidated by, and inferred a threat of violence from Defendants' publication of their address. Defendants also argue that the Bane Act claim lacks merit because "Chief Perez posted the News Release not in response to the plaintiffs' Tort Claims or in retaliation for the filing thereof, but instead posted the News Release to provide transparency to the public." Dkt. 76 at 25. However, as stated in the analysis of Plaintiffs' Section 1983 claims, there is a genuine issue of fact as to whether Perez acted with a retaliatory purpose in publishing Plaintiffs' address.

Because the allegations in the Complaint are insufficient, the claim would ordinarily be dismissed with leave to amend granted. However, because the Anti-SLAPP Motion is addressed under the Rule 56 standard, and because sufficient facts have been presented in support of the claim to show a triable issue of fact, amendment of the Complaint is unnecessary.

Therefore, Defendants' Motion to Strike is **DENIED** with respect to the tenth cause of action.

d) Attorney's Fees

Section 425.16(c)(1) provides that "a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs." However, when the motion is granted in a federal proceeding, district courts have concluded that such fees may not be recovered where leave to amend has been granted. *See Masimo Corp. v. Mindray DS USA, Inc.*, No. SACV 12-02206-CJC, 2014 WL 12597114, at *2 (C.D. Cal. Jan. 2, 2014) ("[D]istrict courts have denied defendants recovery of their attorney's fees and costs where the anti-SLAPP motion is granted, but the plaintiff is also given an opportunity to amend the complaint."); *Brown v. Elec. Arts, Inc.*, 722 F. Supp. 2d 1148, 1155–56 (C.D. Cal. July 13, 2010) (denying attorney's fees to the moving party under the anti-SLAPP statute where leave to amend was granted); *Stutzman v. Armstrong*, No. 2:13-CV-00116-MCE, 2013 WL 4853333, at *21 (E.D. Cal. Sept. 10, 2013) ("[W]hen a plaintiff is granted leave to amend the complaint, a defendant whose anti-SLAPP motion is granted is not a 'prevailing party' for purposes of the anti-SLAPP statutory framework.").

Here, leave to amend has not been granted as to any of the claims where the Anti-SLAPP Motion has

been granted. This is because the Rule 56 standard is applied. Further, even if the Rule 12(b)(6) standard were applied, leave to amend those claims would not be appropriate because the evidentiary record establishes that amendment would be futile.

Therefore, Defendants are entitled to an award of attorney's fees with respect to prevailing on the seventh and eighth causes of action, and as to Perez's liability under the sixth and ninth causes of action. *See Mann v. Quality Old Time Serv., Inc.*, 139 Cal. App. 4th 328, 340 (2006) ("[A] party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion . . . . [However,] a partially prevailing party is not necessarily entitled to all incurred fees even where the work on the successful and unsuccessful claims was overlapping.").

In connection with the Anti-SLAPP Motion, Defendants have submitted a declaration by their counsel, Dominic A. Quiller ("Quiller Declaration"), which states that counsel's "office has spent approximately 15 hours to complete this Anti-SLAPP motion," with an hourly rate of $200, which resulted in $5400 in fees in preparing the Motion. Defendants request an award in this amount. Dkt. 20-1.

" '[T]o calculate attorneys' fees for defendants who prevail on an anti-SLAPP motion,' courts utilize the lodestar method." *Prehired, LLC v. Provins*, No. 2:22-CV-00384-DAD-AC, 2023 WL 4187461, at *2 (E.D. Cal. June 26, 2023) (quoting *Shahid Buttar for Cong. Comm. v. Hearst Commc'ns, Inc.*, No. 21-cv-05566-EMC, 2023 WL 2989023, at *3 (N.D. Cal. Apr. 18, 2023)). " 'The most useful starting point for determining the amount of a reasonable [attorneys'] fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate,' which is referred to as the 'lodestar.' " *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

Defendants have not made a sufficient presentation to support the amount of fees requested, nor one that permits an allocation as to the matters on which they prevailed. Defendants may file a renewed motion for attorney's fees that includes a summary table of the hours worked on each relevant task, in accordance with this Court's Standing Order. *See* Standing Order at 18. The motion should also address how the attorney's fees should be determined given that Defendants have only prevailed on a portion of their Anti-SLAPP Motion.

B. Conclusion as to Anti-SLAPP Motion

For the foregoing reasons, the Anti-SLAPP Motion is **GRANTED IN PART**. It is **GRANTED** as to the seventh and eighth causes of action, and as to Defendant Perez's liability under the sixth and ninth causes of action. It is **DENIED** as to the tenth cause of action. The Anti-SLAPP Motion is **MOOT** as to the City's liability under the sixth and ninth causes of action, in light of the rulings on the MSJs.

VI. Conclusion

For the reasons stated in this Order, Plaintiffs' MSJ (Dkt. 64) is **GRANTED IN PART** and **DENIED IN PART**, Defendants' MSJ (Dkt. 68) is **GRANTED IN PART** and **DENIED IN PART,** and the Anti-SLAPP Motion (Dkt. 20) is **GRANTED IN PART**.

Specifically, Plaintiffs' MSJ is **GRANTED** as to the ninth cause of action with respect to Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV21-04290 JAK (GJSx)	Date
Title	Keith Anderson et al. v. Chief John E. Perez et al.	

Perez only. Plaintiffs' MSJ is **DENIED** as to the first through eighth causes of action, the ninth cause of action with respect to the City and the tenth cause of action.

Defendants' MSJ is **GRANTED** as to the third cause of action and the fifth cause of action. It is **DENIED** as to the first through second causes of action, the fourth cause of action, the sixth cause of action as to the City's liability and the ninth cause of action as to the City's liability.

Defendants' Anti-SLAPP Motion is **GRANTED IN PART**. It is **GRANTED** as to the seventh and eighth causes of action, and as to Defendant Perez's liability under the sixth and ninth causes of action. It is **DENIED** as to the tenth cause of action. The Anti-SLAPP Motion is **MOOT** as to the City's liability under the sixth and ninth causes of action, in light of the rulings on the MSJs.

IT IS SO ORDERED.

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