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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN BIRDT,

Plaintiff,

v.

SAN BERNARDINO SHERIFF'S
DEPARTMENT,

Defendant.

Case No. EDCV 13-0673-VAP (JEM)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

The Court submits this Report and Recommendation to the Honorable Virginia A. Phillips, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

On April 12, 2013, Plaintiff Jonathan Birdt ("Plaintiff") filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 ("Complaint") against Defendant San Bernardino County Sheriff's Department ("SBSD"), alleging that Defendant's denial of Plaintiff's concealed weapon permit application on February 26, 2013, violated Plaintiff's Second Amendment rights.

On April 26, 2013, Defendant filed a Motion to Dismiss the Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). In a September 30, 2013 Report & Recommendation ("R&R"), this Court recommended denial of SBSD's Motion to Dismiss.

1 The Court, however, also recommended sua sponte dismissal of Plaintiff's Complaint with
2 leave to amend and ordered that Plaintiff file a First Amended Complaint ("FAC"). On
3 October 31, 2013 the District Court adopted this Court's Report and Recommendation.
4 Plaintiff filed his FAC on November 5, 2013.

5 On November 8, 2013 Defendant filed this Motion to Dismiss ("Motion" or "MTD") the
6 FAC. On the same day, November 8, 2013, Plaintiff filed his Opposition to the MTD and on
7 December 5, 2013, Defendant filed its Reply.

8 The Motion is ready for decision. For the reasons set forth below, the Court
9 recommends that the Motion be DENIED.

10 **FACTUAL ALLEGATIONS OF THE COMPLAINT**

11 Plaintiff alleges the following facts in the Complaint:

- 12 1. The California Legislature has mandated that the only method by which a
13 resident of the State can bear arms for the purpose of self-defense outside the
14 home is with a permit to carry a concealed weapon.
- 15 2. Plaintiff is a resident of San Bernardino County and sought a concealed
16 weapons permit and his application was denied on February 26, 2013 without
17 any statutory reason for the denial.
18 * * *
- 19 5. The Supreme Court has held that "the Second Amendment protects the right
20 to keep and bear arms for the purpose of self-defense." McDonald v. City of
21 Chicago, Ill. (2010) 130 S.Ct. 3020, 3021.
- 22 6. Plaintiff cannot exercise this right without a permit from Defendant.
- 23 7. Defendant refuses to issue a permit or provide a statutory basis for his refusal
24 to do so.
- 25 8. Plaintiff meets all State mandated requirements and has complied with all
26 Department procedures as instructed by the CCW coordinator for the SBSD.

1 9. Plaintiff submitted a complete application packet as provided to him by the
2 SBSD CCW Coordinator and was not advised of any deficiency in his
3 application.

4 10. Plaintiff was told an interview was to be scheduled, but Defendant did not
5 comply with their [its] own internal policy and simply sent the denial letter
6 without even interviewing the Plaintiff.

7 11. Despite having fully complied with all statutory requirements and procedural
8 requirements established by the SBSD, Defendant continues to refuse to issue
9 Plaintiff a permit necessary to exercise Second Amendment Rights outside the
10 home.

11 12. Upon receiving notice of this Court's ruling on Defendant's Motion to Dismiss,
12 Plaintiff again invited the Sheriff to issue his permit and end the litigation
13 without any additional expense.

14 13. Therefore, Defendant's policies and practices have infringed Plaintiff's Second
15 Amendment Right to Bear Arms for the purpose of self-defense as he has
16 complied with all legal obligations, but Defendant refuses to issue the permit
17 necessary to exercise that fundamental right without any legal basis.

18 (FAC at 1-3.) Plaintiff seeks a Court order requiring Defendant to issue a permit to Plaintiff,
19 and to pay Plaintiff's attorney's fees and costs. (FAC at 3.)

20 **DISCUSSION**

21 SBSD presents two contentions in its new Motion to Dismiss. First, it contends that
22 the FAC fails to state a claim for violation of Plaintiff's Second Amendment constitutional
23 rights. Second, SBSD contends that the FAC fails to state a claim that SBSD's policies and
24 practices infringe on Plaintiff's Second Amendment rights to keep and bear arms for self-
25 defense. Both of these contentions lack merit. The renewed Motion to Dismiss should be
26 DENIED.

1 **I. APPLICABLE LEGAL STANDARDS**

2 **A. Motion to Dismiss**

3 Under Fed. R. Civ. P. 12(b)(6), a defendant may move to dismiss a complaint for
4 “failure to state a claim upon which relief can be granted.” Dismissal under Rule 12(b)(6) is
5 appropriate when the complaint lacks a cognizable legal theory or sufficient facts to support
6 a cognizable legal theory. Mendondo v. Centinela Hosp. Medical Center, 521 F.3d 1097,
7 1104 (9th Cir. 2008) (citing Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.
8 1990)). “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
9 accepted as true, ‘to state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,
10 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570
11 (2007)). A claim is facially plausible when the plaintiff pleads factual content that allows the
12 court to draw the reasonable inference that the defendant is liable for the misconduct
13 alleged. Id. Conclusory allegations are insufficient. Id. at 678-79. Although a complaint
14 challenged by a Rule 12(b)(6) motion does not need detailed factual allegations, “a
15 formulaic recitation of the elements of a cause of action will not do,” and the factual
16 allegations of the complaint “must be enough to raise a right to relief above the speculative
17 level.” Twombly, 550 U.S. at 555.

18 All allegations of material fact are accepted as true, “as well as all reasonable
19 inferences to be drawn from them.” Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001);
20 see also Twombly, 550 U.S. at 555. For an allegation to be entitled to the assumption of
21 truth, however, it must be well-pleaded; that is, it must set forth a non-conclusory factual
22 allegation rather than a legal conclusion. See Iqbal, 556 U.S. at 678-79. The Court need
23 not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory
24 legal allegations cast in the form of factual allegations. See id.; see also Adams v. Johnson,
25 355 F.3d 1179, 1183 (9th Cir. 2004) (“conclusory allegations of law and unwarranted
26 inferences are insufficient to defeat a motion to dismiss”); Sprewell v. Golden State
27 Warriors, 266 F.3d 979, 988 (9th Cir. 2001) (court not “required to accept as true allegations
28 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences”).

1 The Court also need not accept as true allegations that contradict matters properly subject
2 to judicial notice. Sprowell, 266 F.3d at 988. “In sum, for a complaint to survive a motion to
3 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content,
4 must be plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S. Secret
5 Service, 572 F.3d 962, 969 (9th Cir. 2009).

6 On a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the Court must limit its
7 review to the operative complaint and may not consider facts presented in briefs or extrinsic
8 evidence. See Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); William W.
9 Schwarzer, A. Wallace Tashima & James M. Wagstaffe, Federal Civil Procedure Before
10 Trial § 9:211 (2004) (“[T]he court cannot consider material outside the complaint (e.g., facts
11 presented in briefs, affidavits or discovery materials).”). Materials submitted as part of the
12 complaint are not “outside” the complaint and may be considered. Lee, 25 F.3d at 688; Hal
13 Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).
14 In addition, “[d]ocuments whose contents are alleged in a complaint and whose authenticity
15 no party questions, but which are not physically attached to the pleading, may be
16 considered in ruling on a Rule 12(b)(6) motion to dismiss.” In re Stac Elec. Sec. Litig., 89
17 F.3d 1399, 1405 n.4 (9th Cir. 1996) (internal quotations and citations omitted); see also Lee,
18 250 F.3d at 688 (documents not physically attached to the complaint may be considered if
19 their authenticity is not contested and “‘the plaintiff’s complaint necessarily relies’ on them”)
20 (citation omitted). The Court also may consider facts properly the subject of judicial notice.
21 Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir. 1994). Thus, courts may “consider certain
22 materials -- documents attached to the complaint, documents incorporated by reference in
23 the complaint, or matters of judicial notice -- without converting the motion to dismiss into a
24 motion for summary judgment.” United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)
25 (citations omitted).

26 In a pro se civil rights case, “the court must construe the pleadings liberally and must
27 afford the plaintiff the benefit of any doubt.” Karim-Panahi v. Los Angeles Police Dept., 839
28 F.2d 621, 623 (9th Cir. 1988) (citation omitted). Before dismissing a pro se civil rights

1 complaint for failure to state a claim, the plaintiff should be given a statement of the
2 complaint's deficiencies and an opportunity to cure. Id. Only if it is absolutely clear that the
3 deficiencies cannot be cured by amendment should the complaint be dismissed without
4 leave to amend. Id.; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995).

5 **B. Section 1983 Claims**

6 As to claims brought under 42 U.S.C. § 1983, a plaintiff must allege: (1) the
7 defendants were acting under color of state law at the time the complained of acts were
8 committed; and (2) the defendants' conduct deprived plaintiff of rights, privileges and
9 immunities secured by the Constitution or laws of the United States. See Karim-Panahi,
10 839 F.2d at 624. There must be an affirmative link between the defendant's actions and the
11 claimed deprivations. See Monell v. Dept. of Social Services of City of New York, 436 U.S.
12 658, 692 (1978) (" . . . Congress did not intend § 1983 liability to attach where . . . causation
13 [is] absent."); Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976) (no affirmative link
14 between incidents of police misconduct and adoption of plan or policy demonstration
15 authorization or approval of misconduct). "Section 1983 is not itself a source of substantive
16 rights, but merely provides a method for vindicating federal rights elsewhere conferred.
17 Albright v. Oliver, 510 U.S. 266, 271 (1994) (internal quotations and citation omitted). The
18 first step is to identify the specific constitutional or federal right allegedly infringed. Id.

19 **II. THE FAC ADEQUATELY STATES A SECOND AMENDMENT CLAIM**

20 Plaintiff's original complaint alleged that under California law the only lawful method
21 to bear arms outside the home is by concealed weapon. It further alleged SBSB denied his
22 application for a concealed weapon permit without any statutory reason. In its September
23 30, 2013 Report and Recommendation, the Court set forth the law in effect at that time,
24 repeated here.

25 The Second Amendment provides: "A well regulated Militia, being necessary to the
26 security of a free State, the right of the people to keep and bear Arms, shall not be
27 infringed." In District of Columbia v. Heller, 554 U.S. 570 (2008), the Supreme Court held
28 that the District of Columbia's "absolute prohibition of handguns held and used for self-

1 defense in the home” clearly violated the Second Amendment.¹ Id. at 628-636. In so
2 holding, the Supreme Court explained that the Second Amendment protects an individual
3 right to “keep and carry arms,” and further noted that “the inherent right of self-defense has
4 been central to the Second Amendment right.” Id. at 627-629. Thus, the Supreme Court
5 identified in Heller an unequivocal Second Amendment “individual right to possess and carry
6 weapons in case of confrontation.” 554 U.S. at 592. In McDonald v. City of Chicago, 130
7 S.Ct. 3020, 3026 (2010), the Court held that “the Second Amendment right is fully
8 applicable to the States.”

9 The Supreme Court further stated in Heller that, “[l]ike most rights, the right secured
10 by the Second Amendment is not unlimited.” Id. at 626. Thus, the Supreme Court also
11 made it clear that “the right was not a right to keep and carry any weapon whatsoever in any
12 manner whatsoever and for whatever purpose.” Id. For example, the Supreme Court noted
13 that:

14 the majority of the 19th-century courts to consider the question held
15 that prohibitions on carrying concealed weapons were lawful under the
16 Second Amendment or state analogues. Although we do not undertake
17 an exhaustive historical analysis today of the full scope of the Second
18 Amendment, nothing in our opinion should be taken to cast doubt on
19 longstanding prohibitions on the possession of firearms by felons and
20 the mentally ill, or laws forbidding the carrying of firearms in sensitive
21 places such as schools and government buildings, or laws imposing
22 conditions and qualifications on the commercial sale of arms.

23 Id. at 626-627 (internal citations omitted). In a footnote, the Supreme Court explained: “We
24 identify these presumptively lawful regulatory measures only as example; our list does not
25 purport to be exhaustive.” Id. at 627 n. 26.

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28 ¹ The Supreme Court explained that the challenged law in Heller “totally bans handgun possession
in the home. It also requires that any lawful firearm in the home be disassembled or bound by a trigger
lock at all times, rendering it inoperable.” Heller, 554 U.S. at 628.

1 The Court rejected SBSB's argument in the prior MTD that there is no constitutional
2 right to carry a concealed weapon where open carry is prohibited. The Court also held that
3 California law and SBSB policies on concealed weapons do not address Plaintiff's
4 contention that SBSB denied him a permit without a statutory basis. Nonetheless, the Court
5 dismissed Plaintiff's original complaint sua sponte because it failed to allege Plaintiff had
6 satisfied statutory and procedural requirements for obtaining such a permit, and does not
7 contend that SBSB's policies are unconstitutional.

8 The FAC contains significant new allegations intended to address those deficiencies.
9 The FAC alleges that Plaintiff meets all State mandated requirements, submitted a complete
10 application packet and was not advised of any deficiency in the application, and fully
11 complied with all statutory and procedural requirements for a concealed weapon permit.
12 (FAC, ¶¶ 8, 9, 11.) SBSB, however, refuses to issue Plaintiff a permit to exercise his
13 Second Amendment right to carry a concealed weapon outside the home for his self-
14 defense. (FAC, ¶ 11.) The FAC further alleges that SBSB policies and practices infringe
15 his Second Amendment right to bear arms for self-defense by denying him a concealed
16 weapon permit without any legal basis. (FAC, ¶ 13.) Plaintiff plainly has addressed the
17 deficiencies identified by the Court in the original complaint. As of November 5, 2013 when
18 he filed the FAC, Plaintiff appears to have alleged all that was within his knowledge to
19 allege, in view of the County's silence about the reason for the denial of Plaintiff's
20 application.

21 SBSB, however, continues to assert that Plaintiff has failed to state a Second
22 Amendment claim. Its contention is hopelessly vague and conclusory, as SBSB never
23 explains the basis for the contention. SBSB appears to be arguing that there is no
24 constitutional right to a concealed weapon permit for self-defense outside the home "so long
25 as [its] denial is not inconsistent with [S]heriff or [S]tate policies." Reply, 3:23-24. As
26 Plaintiff points out, however, this Court in its September 30, 2013 R&R already rejected
27 SBSB's argument that there is no constitutional right to carry a concealed weapon.
28 Additionally, on February 13, 2014, the Ninth Circuit in Peruta v. County of San Diego, 742

1 F.3d 1144 (9th Cir. 2014) explicitly ruled that any responsible law abiding citizen has a right
2 under the Second Amendment to carry a gun in public for self-defense, either openly or
3 concealed. Id. at 1166. California law bars open carry, Cal. Penal Code § 26350, but will
4 grant a concealed weapon permit if an applicant demonstrates “good moral character,”
5 completes a specified training course and establishes “good cause.” Id. at 1147-1148, citing
6 Cal. Penal Code §§ 26150, 26155. The Ninth Circuit rejected the County of San Diego’s
7 policy that concern for one’s personal safety alone is not considered “good cause.” Id. at
8 1148.

9 Peruta, however, is hardly over. The dissent argued that the majority in effect is
10 challenging the constitutionality of California’s good cause requirement set forth in California
11 Penal Code § 26150 and that the State of California should be joined as a defendant. Id. at
12 1195-96. The State of California, as it happens, is intervening before the Ninth Circuit as
13 part of the en banc review process that could result in modification of Peruta. Additionally,
14 as the majority notes, three Circuits have issued contrary decisions, setting up the potential
15 for Supreme Court review. Id. at 1175. The District Court in this case found it prudent to
16 maintain the status quo and deny Plaintiff’s application and request for a preliminary
17 injunction hearing for the time being until Peruta becomes final. Nonetheless, for the time
18 being, Peruta is governing Ninth Circuit law that lower courts must follow. See Nichols v.
19 Hams, — F. Supp. 2d — , 2014 WL 1716135*1 (C.D. Cal.) (panel decision is binding on
20 lower courts as soon as it is published and remains binding even if the mandate is stayed,
21 citing Gonzalez v. Arizona, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc)).

22 Based on the new allegations in the FAC, the Court’s prior ruling and Peruta’s
23 proclamation that responsible citizens have a Second Amendment constitutional right to
24 carry arms outside the home for self-defense, the Court rejects SBSD’s contention that
25 Plaintiff fails to state a Second Amendment claim and finds that Plaintiff has adequately
26 stated a claim for violation of the Second Amendment. The Court therefore recommends
27 that SBSD’s MTD be DENIED.

28

1 Alas, the matter does not end there. In its February 25, 2014 opposition to Plaintiff's
2 Application for TRO and a hearing on a preliminary injunction, SBSB for the first time
3 asserts that Plaintiff's request for a concealed weapon permit was denied on "moral
4 standing" grounds, not lack of "good cause" grounds. The declaration of Sarah Hendrick
5 states the application was denied on "moral character" reasons. Neither the opposition nor
6 the declaration provide any explanation or factual basis for SBSB's lack of moral character
7 assertion. In reply, Plaintiff admits he was once disciplined by the Bar but since has been
8 admitted to practice before the Supreme Court, was found to possess good moral character
9 sufficient to remain a member of the Bar in California, is a member of the Bar in Nevada and
10 Texas, has no criminal history, frequently passes background checks for weapons
11 purchases and is licensed to carry a concealed weapon in the States of Nevada and Utah.
12 Plaintiff does not indicate why he was disciplined by the California Bar.

13 The Court, of course, cannot consider facts outside the complaint when ruling on a
14 12(b)(6) motion to dismiss. Lee, 250 F.3d at 688. SBSB perhaps could have attached
15 and/or sought judicial notice of Plaintiff's permit application file or filed a motion for summary
16 judgment, indicating the reason for denying Plaintiff's application for a concealed weapon
17 permit. In any event, SBSB's unexplained silence from February 26, 2013 when Plaintiff's
18 application was denied to February 25, 2014 when it first asserted a moral character basis
19 for the denial appears to have led the Plaintiff and the Court down the wrong rabbit hole. At
20 the very least, Plaintiff should have the opportunity to amend his complaint to address these
21 new facts revealed only after the FAC was filed. The FAC already alleges that the Plaintiff
22 meets all statutory requirements for the issuance of a concealed weapon permit, which may
23 be sufficient to encompass and put in issue SBSB's moral standing denial, but the Court
24 believes that it would be appropriate for Plaintiff to file an amended complaint now that
25 SBSB has stated a statutory reason for denial of Plaintiff's application.

26 By separate minute order, the Court is ordering SBSB to file under seal and serve a
27 certified copy of Plaintiff's permit application file and all records concerning the reasons for
28 denial of his application, identifying the personnel who made the decision and indicating

1 what hearing or procedure, if any, exists for an applicant to challenge the denial of his
2 application. Additionally, the Court is ordering SBSB to produce any readily available
3 statistics for the last two years indicating the number of concealed weapon permit
4 applications granted and denied and the reasons the applications were granted or denied.
5 Plaintiff should file his second amended complaint after this information is produced. The
6 Court also has issued an Order To Show Cause why Plaintiff is not entitled to a hearing or
7 appeal procedure to challenge the denial of his application for a concealed weapon permit.

8 The Court notes that on May 7, 2014 Plaintiff filed a Motion for Summary Judgment
9 ("MSJ"). Plaintiff may wish to withdraw his MSJ and refile it after SBSB produces the
10 records the Court is ordering it to produce, and after the completion of any hearing or
11 appeal procedure that is offered. Plaintiff also may wish to depose the SBSB person most
12 knowledgeable about the denial of his application before refiling the MSJ.

13 **III. THE FAC ADEQUATELY STATES A MONELL CLAIM**

14 SBSB next argues that the FAC fails to state a claim that its policies and practices
15 infringe on Plaintiff's Second Amendment right to bear arms outside the home for self-
16 defense. The Court disagrees but once again, in light of SBSB's recent lack of moral
17 character assertion Plaintiff may wish to amend the FAC to name as a defendant the person
18 who denied his application.

19 When claims under § 1983 are brought against a local government entity, such as
20 the City, the entity "may not be sued under § 1983 for an injury inflicted solely by its
21 employees or agents. Instead, it is only when execution of a government's policy or custom,
22 whether made by its lawmakers or by those whose edicts or acts may fairly be said to
23 represent official policy, inflicts the injury that the government as an entity is responsible
24 under § 1983." Monell, 436 U.S. at 694. The City is not liable for the alleged actions of its
25 officers unless "the action that is alleged to be unconstitutional implements or executes a
26 policy statement, ordinance, regulation, or decision officially adopted or promulgated by that
27 body's officers," or if the alleged constitutional deprivation was "visited pursuant to a
28 governmental 'custom' even though such a custom has not received formal approval

1 through the body's official decision-making channels." Monell, 436 U.S. at 690-91; see also
2 Redman v. County of San Diego, 942 F.2d 1435, 1443-44 (9th Cir. 1991). Thus, in order to
3 state a Section 1983 claim against the City, Plaintiff must establish: (1) a constitutional
4 violation; and (2) a policy, custom, or practice of the City that was the "moving force" behind
5 the violation. See Monell, 436 U.S. at 694-95. There must be "a direct causal link between
6 a municipal policy or custom and the alleged constitutional deprivation." City of Canton v.
7 Harris, 489 U.S. 378, 385 (1989).

8 At the time Plaintiff filed his FAC on November 5, 2013, SBSB had not disclosed any
9 reason for its denial of Plaintiff's concealed carry application. The FAC explicitly alleges that
10 "Defendant's policies and practices have infringed Plaintiff's Second Amendment Right to
11 Bear Arms for the purpose of self-defense as he has complied with all legal obligations but
12 Defendant refuses to issue the permit necessary to exercise that fundamental right without
13 any legal basis." (FAC, ¶ 13 (emphasis added).) SBSB mentions this paragraph in its MTD
14 but does not discuss it or explain why it is insufficient to satisfy the pleading requirements
15 for a Monell claim. Taken together with other allegations in the FAC, Paragraph 13
16 adequately states that SBSB's policies and practices infringe on his right to bear arms for
17 self-defense outside the home. SBSB's contention that Plaintiff failed to meet the pleading
18 requirements for a Monell claim is rejected.

19 Again, however, SBSB now asserts that Plaintiff's application for a concealed
20 weapon permit was denied on moral character grounds, although it has yet to provide any
21 explanation or factual basis for its decision. Although the Court may not consider this fact in
22 ruling on the instant MTD, nonetheless the case may turn into an individual "moral
23 character" case vulnerable to rejection on Monell grounds. Again, however, because of
24 SBSB's unexplained silence on the reason for its denial of Plaintiff's application until after
25 the FAC was filed, Plaintiff is entitled to amend the FAC to name appropriate SBSB
26 personnel necessary to state an individual claim for relief. This is another reason why
27 Plaintiff might wish to withdraw his pending motion for summary judgment for the time
28 being.

RECOMMENDATION

THE COURT, THEREFORE, RECOMMENDS that the District Court issue an Order:
(1) accepting this Report and Recommendation and (2) denying Defendant's Motion to
Dismiss.

DATED: May 12, 2014

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE

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PROPOSED

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

JONATHAN BIRDT,

Plaintiff,

v.

SAN BERNARDINO SHERIFF'S
DEPARTMENT.,

Defendant.

Case No. EDCV 13-0673-VAP (JEM)

ORDER ADOPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the pleadings, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. The Court concurs with and adopts the findings, conclusions, and recommendations of the Magistrate Judge.

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss be denied.

DATED: _____

VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE