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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE M. RIOS and ELBA RIOS,  
Plaintiffs,  
v.  
CITY OF SAN DIEGO, BRUCE  
PORTERFIELD, LAURA SMITH, and  
DOES 1-20,  
Defendants.

Case No.: 13-CV-3004 JLS (DHB)

**ORDER GRANTING IN PART AND  
DENYING IN PART CITY  
DEFENDANTS’ MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

(ECF No. 26)

Presently before the Court is Defendant City of San Diego, Officer Bruce Porterfield, and Officer Laura Smith’s Motion for Partial Summary Judgment. (MSJ, ECF No. 26.) Also before the Court are Plaintiffs Jose M. Rios and Elba Rios’ Memorandum in Opposition to (Opp’n, ECF No. 32) and Defendants’ Reply in Support of (Reply, ECF No. 33) the MSJ. The Court held a hearing on the MSJ on October 1, 2015. Having considered the parties’ arguments and the law, the Court **GRANTS IN PART AND DENIES IN PART** Defendants’ MSJ.

**BACKGROUND**

At 11:34 p.m. on November 21, 2012, Mr. Joseph Caemeans reported to police dispatch that his “n[eigh]bor . . . tried to hit him with his SUV.” (Computer Assisted

1 Dispatch Report (“CAD”), ECF No. 26-9 at 2.<sup>1</sup>) There is no description of the SUV in the  
2 CAD. (*Id.*) Mr. Caemeans further reported that his attacker was a Hispanic male, in his  
3 50’s, 5’4”, stocky, and wearing a white shirt. (*Id.*) Mr. Caemeans added that the neighbor  
4 was in Apartment #1. (*Id.*)

5 Officer Porterfield and his partner, Officer Levi Harbin, were the first officers  
6 dispatched to the call. (Deposition of Bruce Porterfield (Porterfield Depo.) at 28:1-25, ECF  
7 No. 32-2 at 3.) They were dispatched for an assault with a deadly weapon under California  
8 Penal Code § 245 (“Section 245”). (*Id.*; *see also* Deposition of Levi Harbin (Harbin Depo.)  
9 at 66:1-4, ECF No. 32-4 at 4.) Officer Smith arrived later. (Porterfield Depo. at 33:15-17,  
10 ECF No. 26-4 at 5.)

11 Upon arriving at the scene, Officers Porterfield and Harbin saw a car that fit the  
12 description offered by Mr. Caemeans. (Porterfield Depo. at 33:22-34:7, ECF No. 26-4 at  
13 5-6.) However, they were not certain whether it was the car in question and they did not  
14 see anybody sitting inside it. (Porterfield Depo. at 34:8-17, ECF No. 32-2 at 4.)

15 Officers Porterfield and Harbin then saw Mr. Caemeans standing in front of the  
16 apartment complex, smoking a cigarette. (Porterfield Depo. at 34:18-35:4, ECF No. 32-2  
17 at 4-5.) Mr. Caemeans told them that he was having problems with his neighbor and that  
18 they had an ongoing dispute. (Porterfield Depo. at 35:25-36:8, ECF No. 32-2 at 5-6.) He  
19 also noted that somebody had slashed his tires earlier in the evening and that he had called  
20 the cops. (Porterfield Depo. at 36:14-15, ECF No. 32-2 at 6.) He informed the officers  
21 that he believed that Mr. Rios had slashed his tires, adding that Mr. Rios “[i]s the one that  
22 complaint to the manager and, you know, causes problems in the apartment for other  
23 tenants.” (Porterfield Depo. at 36:16-20, ECF No. 32-2 at 6.)

24 Mr. Caemeans then recounted his side of incident. He said that he had been smoking  
25 a cigarette when Mr. Rios drove down the street, saw Mr. Caemeans, revved his engine,  
26 accelerated towards Mr. Caemeans, drove up on the sidewalk, and turned away and parked.  
27

28 <sup>1</sup> For ease of reference, page citations to docketed materials refer to the CM/ECF page number.

1 (Porterfield Depo. at 36:22-37:3, ECF No. 32-2 at 6-7.)

2 Officer Smith was dispatched and arrived at the scene at some time while Officers  
3 Porterfield and Harbin were talking to Mr. Caemeans. (Porterfield Depo. at 37:4-8, ECF  
4 No. 32-2 at 7; Deposition of Laura Smith (Smith Depo.) at 21:17-25, ECF No. 26-5 at 3.)

5 After speaking to Mr. Caemeans, the officers did not look around for any evidence,  
6 such as tire marks on the sidewalk. (Porterfield Depo. at 37:24-38:3, ECF No. 32-2 at 7-  
7 8.) Mr. Caemeans never visually identified Mr. Rios as the man in the SUV. (Smith Depo.  
8 at 27:15-17, ECF No. 26-5 at 6.) Mr. Caemeans also never identified Mr. Rios' car to the  
9 officers. (Smith Depo. at 27:18-21, ECF No. 26-5 at 6.) The officers decided that they  
10 needed "[t]o go talk to the other side . . . [t]o investigate, to see what's going on, see if  
11 there's a crime." (Porterfield Depo. at 38:4-10, ECF No. 32-2 at 8.)

12 The three officers went to Apartment 1. (Porterfield Depo. at 38:11-13, ECF No.  
13 32-2 at 8.) There was no intention to arrest Mr. Rios at that time, because the officers  
14 wanted to "continue the investigation" and "giv[e Mr. Rios] the opportunity to give his side  
15 of the story," as was "[their] duty." (Smith Depo. at 37:24-38:8, ECF No. 32-5 at 3-4.)

16 One of the officers knocked at the door, and Mr. Rios opened the screen door.  
17 (Porterfield Depo. at 40:24-41:12, ECF No. 32-2 at 9-10; Deposition of Elba Rios (E. Rios  
18 Depo.) at 15:22-23, ECF No. 32-3 at 3.) There is no indication that Mr. Rios matched the  
19 description of the suspect given by Mr. Caemeans.

20 One of the officers asked Mr. Rios, "Can we talk to you?" (Porterfield Depo. at  
21 41:20-21, ECF No. 32-2 at 10.) Without any hostility or animosity, Mr. Rios replied,  
22 "Yes," and invited all three of the officers into the apartment. (Porterfield Depo. at 41:22-  
23 42:13, ECF No. 32-2 at 10-11.) The exchange was calm and cordial, and the officers had  
24 no concerns. (Porterfield Depo. at 43:1-7, ECF No. 32-2 at 12.)

25 Upon entering the apartment, the officers also saw Mrs. Rios and the Rios' two  
26 teenage children in the apartment. (Porterfield Depo. at 43:12-18, ECF No. 32-2 at 12.)  
27 Mrs. Rios was sitting in the dining room. (E. Rios Depo. at 15:16-21, ECF No. 32-3 at 3.)  
28 There were two couches in the Rios' home, one of which was close to the doorway, and

1 one that was not. (E. Rios Depo. at 45:20-25, ECF No. 32-2 at 11.) The children were on  
2 the other side of one of the two couches. (Porterfield Depo. at 43:12-44:7, ECF No. 32-2  
3 at 12-13.)

4 Officer Harbin asked Mr. Rios for his driver's license, and left to do a records check.  
5 (Porterfield Depo. at 44:12-16, ECF No. 32-2 at 13.) Officer Smith then performed a  
6 security check, finding nothing in the apartment that could be a weapon. (Smith Depo. at  
7 47:23-48:15, ECF No. 26-5 at 9-10.)

8 Meanwhile, Officer Porterfield began talking with Mr. Rios. (Smith Depo. at 48:16-  
9 23, ECF No. 26-5 at 10.) Around this point, Officer Porterfield recalled that he had  
10 previously been dispatched to the Rios' residence and that Mr. Rios had been arrested for  
11 domestic violence. (Porterfield Depo. at 119:19-120:25, ECF No. 26-4 at 20-21.) Officer  
12 Porterfield told Mr. Rios that he recognized him from the prior arrest and Mr. Rios  
13 informed Officer Porterfield that no charges were brought against him under the former  
14 arrest. (Deposition of Jose Rios (J. Rios Depo.) at 87:11-88:20, ECF No. 26-7 at 2-3.)

15 Mr. Rios told Officer Porterfield that he did not want to talk about the prior arrest,  
16 but instead wanted to know why the officers were at his house. (J. Rios Depo. at 88:16-  
17 19, ECF No. 26-7 at 3.) Officer Porterfield asked Mr. Rios, "Are you having problems  
18 with the neighbor?" to which Mr. Rios replied, "No. Why? What's going on?" (Porterfield  
19 Depo. at 47:2-8, ECF No. 32-2 at 14.) Officer Porterfield explained to Mr. Rios that one  
20 of his neighbors said that Mr. Rios had tried to run the neighbor over. (Porterfield Depo.  
21 at 47:12-14, ECF No. 32-2 at 14.) Mr. Rios replied, "What are you talking about?" then  
22 informed Officer Porterfield that he "ha[d] nothing to do with that." (Porterfield Depo. at  
23 47:12-19, 48:2-5, ECF No. 32-2 at 14, 15; *see also* Porterfield Depo. at 50:16-24, 53:1-7,  
24 ECF No. 32-2 at 16, 18.)

25 Mr. Rios then said in a loud voice that he did not want Officer Porterfield telling Mr.  
26 Rios what to do in Mr. Rios' house. (Porterfield Depo. at 67:8-11, ECF No. 32-2 at 21.)  
27 Officer Porterfield felt that Mr. Rios was within his rights to do so. (Porterfield Depo. at  
28 67:12-13, ECF No. 32-2 at 21.) Mr. Rios never put a hand up to Officer Porterfield. (J.

1 Rios Depo. at 88:24-89:7, ECF No. 26-7 at 3-4.)

2       Officer Porterfield did not arrest Mr. Rios at this time because he “was conducting  
3 an investigation” and “didn’t have all the facts at that time.” (Porterfield Depo. at 53:8-20,  
4 ECF No. 32-2 at 18.) Although Officer Porterfield felt that he had reasonable suspicion to  
5 be on the scene, he believed he lacked probable cause to arrest Mr. Rios. (Porterfield Depo.  
6 at 53:21-54:1, 67:5-7, ECF No. 32-2 at 18-19, 21.) He “hadn’t even been able to ask very  
7 many investigatory questions” of Mr. Rios yet. (Porterfield Depo. at 67:14-19, 71:6-10,  
8 ECF No. 32-2 at 21, 22.)

9       Mr. Rios then asked his son, Kevin, to use his iPad to record his conversation with  
10 the officers. (J. Rios Depo. at 89:15-25, ECF No. 26-7 at 4.) At this point, Officer  
11 Porterfield got upset and, without telling Mr. Rios that he was under arrest, grabbed Mr.  
12 Rios’ left wrist from behind. (*Id.*; Porterfield Depo. at 71:11-24, ECF No. 32-2 at 22; E.  
13 Rios Depo. at 25:17-26:4, ECF No. 32-3 at 5-6.)

14       Mr. Rios still “wasn’t under arrest . . . [b]ecause [Officer Porterfield] hadn’t  
15 determined whether he had committed a crime or not.” (Porterfield Depo. at 81:11-16,  
16 ECF No. 32-2 at 23.) Officer Porterfield felt that he “still d[id]n’t have probable cause yet  
17 to arrest [Mr. Rios]” because Officer Porterfield “hadn’t even gotten to the questions [he]  
18 needed to ask to determine whether [he] had probable cause to arrest.” (Porterfield Depo.  
19 at 81:17-21, ECF No. 32-2 at 23.)

20       Until Officer Porterfield grabbed her husband’s wrist, Mrs. Rios had remained  
21 seated in the dining room, but she stood up when Officer Porterfield carried Mr. Rios out  
22 the door. (E. Rios Depo. at 23:11-18, 33:5-8, ECF No. 32-3 at 4, 7.) Mrs. Rios saw that  
23 Mr. Rios was “totally pale” and “white.” (E. Rios Depo. at 23:7-8, ECF No. 32-3 at 4.)  
24 Mrs. Rios stepped toward Officer Porterfield and told him, “Please don’t take my husband  
25 because he’s diabetic.” (E. Rios Depo. at 23:3-6, 25:3-6, 33:20-34:7, ECF No. 32-3 at 4,  
26 5, 7-8.) At that time, Mrs. Rios did not move towards the door. (E. Rios Depo. at 23:19-  
27 20, ECF No. 32-3 at 4.) She made no attempt to get between Officer Porterfield and Mr.  
28 Rios or to put her hands on Officer Porterfield or Mr. Rios. (E. Rios Depo. at 26:10-18,

1 ECF No. 32-3 at 6.)

2 At this point Officer Smith pushed Mrs. Rios for the first time, pushing her toward  
3 the couch that was further away from the front door. (E. Rios Depo. at 25:7-8, 33:9-11,  
4 42:14-17, 45:19-21, ECF No. 32-3 at 5, 7, 9, 11.) Mrs. Rios got back up, but Officer Smith  
5 pushed her a second time back down on the same couch. (E. Rios Depo. at 42:18, ECF  
6 No. 32-3 at 9.) At this point, Officer Smith held Mrs. Rios down for a few seconds while  
7 Officer Porterfield took Mr. Rios outside. (Smith Depo. at 58:23-59:14, ECF No. 26-5 at  
8 14-15.) Officers Smith then went outside with Officer Porterfield and Mr. Rios, and Mrs.  
9 Rios was unable to see what was happening to her husband during the minutes that she  
10 remained seated on the couch. (E. Rios Depo. at 34:14-25, 42:19-21, ECF No. 32-3 at 8,  
11 9.)

12 Eventually, Mrs. Rios tried to go to the door to see what was happening to her  
13 husband outside. (E. Rios Depo. at 42:22-25, ECF No. 32-3 at 9.) At this point, Officer  
14 Porterfield was hitting Mr. Rios and Officer Smith was standing nearby. (*Id.*) When  
15 Officer Smith saw Mrs. Rios, Officer Smith told Mrs. Rios, “Go inside, go inside.” (E.  
16 Rios Depo. at 43:1-2, ECF No. 32-3 at 10.)

17 Mrs. Rios told Officer Smith that she wanted to call the manager or an officer that  
18 spoke Spanish, because Mrs. Rios did not understand English very well. (E. Rios Depo. at  
19 48:2-5, ECF No. 32-3 at 12.) Mrs. Rios dialed the manager, but Officer Smith yelled at  
20 her, “Get off the phone.” (E. Rios Depo. at 48:6-15, ECF No. 32-3 at 12.) Mrs. Rios left  
21 a message for the manager: “The police is here and I don’t know what is happening.” (E.  
22 Rios Depo. at 49:1-6, ECF No. 32-3 at 13.) Officer Smith then came inside and grabbed  
23 Mrs. Rios by the hair and threw Mrs. Rios onto a second couch located nearer to the front  
24 door. (E. Rios Depo. at 43:3-5, 45:19-21, ECF No. 32-3 at 10, 11.) Mrs. Rios never exited  
25 the apartment and had retreated from the doorway. (Smith Depo. at 74:13-24, ECF No.  
26 32-5 at 7.) According to Mrs. Rios, she never touched Officer Smith.

27 Meanwhile, Officer Porterfield was beating Mr. Rios and using force on him. (J.  
28 Rios Depo. at 92:15-17, 101:18-21, ECF No. 26-7 at 5, 6.) Officer Porterfield handcuffed

1 Mr. Rios, and then Officers Porterfield and Smith picked Mr. Rios up off the ground. (J.  
2 Rios Depo. at 101:22-24, ECF No. 26-7 at 6.) Mr. Rios was then arrested for obstructing  
3 and resisting arrest under California Penal Code § 148(a)(1) (“Section 148”). (Porterfield  
4 Depo. at 97:12-24, ECF No. 32-2 at 24.) Mr. Rios was never arrested under Section 245.  
5 (Harbin Depo. at 66:1-16, ECF No. 32-4 at 4.)

6 After Mr. Rios’ arrest, Mrs. Rios was still inside the house and outside Officer  
7 Smith’s line of sight. (Smith Depo. at 73:23-74:3, ECF No. 32-5 at 6-7.) Officer Smith  
8 told Officer Harbin, “I should fucking arrest her too for shoving me.” (Smith Depo. at  
9 72:13-73:12, ECF No. 32-5 at 6.) After some time had passed, Officer Smith went back  
10 inside the apartment and handcuffed and arrested Mrs. Rios under Section 148. (Smith  
11 Depo. at 74:25-75:3, 75:9-13, ECF No. 32-5 at 7-8.)

12 Although Mrs. Rios was released with a citation (Smith Depo. at 75:14-21, ECF No.  
13 32-5 at 8), Officer Porterfield wanted the detectives to issue a warrant for a second arrest  
14 of Mr. Rios, who had been released at the scene (Porterfield Depo. at 106:2-107:17, ECF  
15 No. 32-2 at 25-26). Officer Porterfield wanted Mr. Rios to be taken to jail “[b]ecause that’s  
16 [his] prerogative to arrest him. [Officer Porterfield] was injured and – so [Mr. Rios is]  
17 going to jail.” (Porterfield Depo. at 106:2-8, ECF No. 32-2 at 25.)

## 18 LEGAL STANDARD

19 Summary judgment, or partial summary judgment, is appropriate where the Court is  
20 satisfied that there is “no genuine dispute as to any material fact and the movant is entitled  
21 to judgment as a matter of law.” Fed. R. Civ. Pro. 56(a); *Celotex Corp. v. Catrett*, 477 U.S.  
22 317, 322 (1986). Material facts are those that may affect the outcome of the case. *Anderson*  
23 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists if  
24 “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”  
25 *Id.* When the Court weighs the evidence to be presented by the parties, “[t]he evidence of  
26 the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.”  
27 *Id.* at 255.

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1 The initial burden of establishing the absence of a genuine issue of material fact falls  
2 on the moving party. *Celotex*, 477 U.S. at 323. The movant can carry his burden in two  
3 ways: (1) by presenting evidence that negates an essential element of the nonmoving  
4 party’s case; or (2) by demonstrating to the Court that the nonmoving party “failed to make  
5 a sufficient showing on an essential element of her case with respect to which she has the  
6 burden of proof.” *Id.* at 322–23.

7 Once the moving party satisfies this initial burden, the nonmoving party must set  
8 forth specific facts showing that there is a genuine issue for trial. *Id.* at 324. To do so, the  
9 nonmoving party “must do more than simply show that there is some metaphysical doubt  
10 as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
11 586 (1986). Rather, to survive summary judgment, the nonmoving party must “make a  
12 showing sufficient to establish the existence of [every] element essential to that party’s  
13 case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at  
14 322. Furthermore, the nonmoving party cannot oppose a properly supported motion for  
15 summary judgment by “rest[ing] upon mere allegations or denials of his pleadings.”  
16 *Anderson*, 477 U.S. at 256. Rather, the nonmoving party must identify those facts of record  
17 that would contradict the facts identified by the movant. *Id.* at 256-57. While “the mere  
18 existence of *some* alleged factual dispute between the parties will not defeat an otherwise  
19 properly supported motion for summary judgment, . . . summary judgment is not warranted  
20 if a reasonable jury could return a verdict for the nonmoving party.” *United States v.*  
21 *Arango*, 670 F.3d 988, 992 (9th Cir. 2012) (emphasis in original; citations and internal  
22 quotation marks omitted).

### 23 ANALYSIS

24 Plaintiffs assert the following five claims: (1) 42 U.S.C. § 1983 Constitutional  
25 Violations Against Defendants Porterfield and Smith; (2) 42 U.S.C. § 1983 Constitutional  
26 Violations – Unlawful Policies, Customs or Habits Against Defendant City of San Diego;  
27 (3) Negligence – Against All Defendants; (4) Battery – Against All Defendants; and (5)  
28 Civil Code § 52.1 Civil Rights Violations – Against All Defendants. (ECF No. 1 at 5-9.)



1 Defendants argue that they are entitled to summary judgment on the Plaintiffs' unlawful  
2 arrest claims under their first claim (*see* MSJ 4:17-13:8, ECF No. 26-1 at 8-17), Plaintiffs'  
3 second claim (*see* MSJ 13:9-26, ECF No. 26-1 at 17) and Plaintiffs' third and fifth claims  
4 to the extent that they related to Plaintiffs' arrests (*see* MSJ 14:1-9, ECF No. 26-1 at 18).

5 **I. Claim One: 42 U.S.C. § 1983 Claim Against Officers Porterfield and Smith for**  
6 **Unlawful Arrest**

7 "A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth  
8 Amendment, provided the arrest was without probable cause or other justification."  
9 *Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001). "Probable  
10 cause for a warrantless arrest arises when the facts and circumstances within the officer's  
11 knowledge are sufficient to warrant a prudent person to believe 'that the suspect has  
12 committed, is committing, or is about to commit an offense.'" *Barry v. Fowler*, 902 F.2d  
13 770, 773 (9th Cir. 1990) (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979)); *accord*  
14 *United States v. Garza*, 980 F.2d 546, 550 (9th Cir. 1992).

15 "It is well-settled that the determination of probable cause is based upon the totality  
16 of the circumstances known to the officers at the time of the search." *Lacey v. Maricopa*  
17 *Cnty.*, 693 F.3d 896, 918 (9th Cir. 2012) (internal quotation marks omitted). "Although  
18 conclusive evidence of guilt is not necessary to establish probable cause, 'mere suspicion,  
19 common rumor, or even strong reason to suspect are not enough.'" *Edgerly v. City & Cnty.*  
20 *of San Francisco*, 599 F.3d 946, 953 (9th Cir. 2010) (quoting *United States v. Lopez*, 482  
21 F.3d 1067, 1072 (9th Cir. 2007)). "Probable cause is lacking if the circumstances relied  
22 on are susceptible to a variety of credible interpretations not necessarily compatible with  
23 nefarious activities." *Gasho v. United States*, 39 F.3d 1420, 1432 (9th Cir. 1994) (internal  
24 quotation marks omitted). "Where the facts or circumstances surrounding an individual's  
25 arrest are disputed, the existence of probable cause is a question for the jury." *Harper v.*  
26 *City of Los Angeles*, 533 F.3d 1010, 1022 (9th Cir. 2008) (citing *McKenzie v. Lamb*, 738  
27 F.2d 1005, 1008 (9th Cir. 1984).

28 ///

1           **A.     *Probable Cause for Arrest***

2                   *(i)     Mr. Rios*

3           Although Mr. Rios was arrested for violation of Section 148, Defendant’s MSJ  
4 argues only that there was probable cause to arrest Mr. Rios for violation of Section 245,  
5 assault with a deadly weapon. (MSJ at 6:23-28, ECF No. 26-1 at 10; Opp’n at 1:4-11 &  
6 n.1, ECF No. 32 at 5.) Courts may find probable cause for arrest for a crime that the officer  
7 did not charge at the time of the arrest. *Edgerly*, 599 F.3d at 954.

8           In general, “officers may not solely rely on the claim of a citizen witness that he was  
9 a victim of a crime, but must independently investigate the basis of the witness’ knowledge  
10 or interview other witnesses.” *Peng v. Hu*, 335 F.3d 970, 977-78 (9th Cir.  
11 2003) (quoting *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.  
12 2001)). “A sufficient basis of knowledge is established if the victim provides facts  
13 sufficiently detailed to cause a reasonable person to believe a crime had been committed  
14 and the named suspect was the perpetrator.” *Id.* at 978 (quoting *Fuller v. M.G. Jewelry*, 950  
15 F.2d 1437, 1444 (9th Cir. 1991)) (internal quotation marks omitted).

16           Here, the Defendants argue that the “officers tested the statements against physical  
17 elements at the scene.” (Reply at 7:5, ECF No. 33 at 7.) But Officer Porterfield admits  
18 that the officers did not look around for any evidence, such as tire marks on the sidewalk,  
19 to corroborate Mr. Caemeans’ statement. (Porterfield Depo. at 37:24-38:3, ECF No. 32-2  
20 at 7-8.) Mr. Caemeans’ statement was also contradicted by Mr. Rios, who repeatedly  
21 denied that he was “having problems with the neighbor” (*see, e.g.*, Porterfield Depo. at  
22 47:2-8, ECF No. 32-2 at 14) and explained to Officer Porterfield that he “ha[d] nothing to  
23 do with [the incident]” (Porterfield Depo. at 48:2-5, ECF No. 32-2 at 15). Additionally,  
24 Mr. Caemeans’ comments to the officers that he had an ongoing dispute with Mr. Rios  
25 (*see, e.g.*, Porterfield Depo. at 35:25-36:20, ECF No. 32-2 at 5-6) would leave a reasonable  
26 officer with too much doubt to provide a reasonable basis for probable cause. *See Gillan*  
27 *v. City of San Marino*, 147 Cal. App. 4th 1033, 1047 (2007) (finding no probable cause to  
28 arrest where witness’ accusations lacked credibility due to “strong antipathy” of witness

1 toward the accused).

2 The Defendants also argue that Officer Porterfield looked for a vehicle fitting Mr.  
3 Caemeans' description and found one parked across the street. (Reply at 4:16-17, ECF No.  
4 33 at 4.) But there is no indication that Defendants asked Mr. Caemeans to confirm that  
5 the vehicle was involved in the incident. The officers also did not ask Mr. Caemeans which  
6 vehicle Mr. Rios drove. (Smith Depo. at 27:18-21, ECF No. 26-5 at 6.) Officer Porterfield  
7 admitted that he "w[as]n't sure if it was or wasn't" the car in question. (Porterfield Depo.  
8 at 34:8-12, ECF No. 32-2 at 4.) And although the CAD described Mr. Caemeans' attacker  
9 as a Hispanic male, in his 50's, 5'4", stocky, wearing a white shirt (CAD, ECF No. 26-9 at  
10 2), there is nothing in the parties' papers to indicate that Mr. Rios fit that description.

11 Finally, the Defendants argue that Officer Porterfield's previous arrest of Mr. Rios  
12 for domestic violence corroborated Mr. Caemeans' report. (See MSJ at 7:5-7, 8:16-18,  
13 ECF No. 26-1 at 11, 12; Reply at 5:2-4, ECF No. 33 at 5.) "While the use of prior arrests  
14 . . . can be *helpful* in establishing probable cause, especially where the previous arrest . . .  
15 involves a crime of the same general nature," *Greenstreet v. County of San Bernadino*, 41  
16 F.3d 1306, 1309 (9th Cir. 1994) (emphasis added), even Officer Porterfield did not believe  
17 that Mr. Rios' prior arrest provided sufficient corroboration to establish probable cause, as  
18 he continued to believe that he lacked probable cause to arrest Mr. Rios under Section 245  
19 (see, e.g., Porterfield Depo. at 81:11-21, ECF No. 32-2 at 23).

20 Although the probable cause standard is objective, *Edgerly*, 599 F.3d at 954, Officer  
21 Porterfield and Officer Smith's independent testimony that they believed further  
22 investigation was required to arrest Mr. Rios under Section 245 weighs against granting  
23 summary judgment in their favor.<sup>2</sup> After speaking with Mr. Caemeans, Officer Porterfield  
24

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25  
26 <sup>2</sup> Although Officer Smith testified later in her deposition that Mr. Rios "had an obligation to let [the  
27 officers] come in the apartment" because "we had probable cause to arrest him[, s]o based on that, he  
28 ha[d] the obligation to let us in" (Smith Depo. at 114:9-15, ECF No. 26-5 at 24), she testified earlier that  
she "did [not] feel like he was legally obligated to allow [them] to come in" and that "when [she] first  
knocked on the door, [she was not] planning to arrest Mr. Rios" because she "wanted to continue the  
investigation" and "felt that giving him the opportunity to give his side of the story was [her] duty." (Smith

1 explained that the officers needed “[t]o go talk to the other side . . . [t]o investigate, to see  
2 what’s going on, see if there’s a crime.” (Porterfield Depo. at 38:4-10, ECF No. 32-2 at  
3 8.) Officer Smith explained that there was no intention to arrest Mr. Rios when they first  
4 knocked on the Rios’ door because the officers “wanted to continue the investigation” and  
5 fulfill their “duty” of “giving [Mr. Rios] the opportunity to give his side of the story.”  
6 (Smith Depo. at 37:24-38:8, ECF No. 32-5 at 3-4.) Even after asking Mr. Rios some  
7 questions, Officer Porterfield did not arrest Mr. Rios because Officer Porterfield “was  
8 conducting an investigation” and “didn’t have all the facts at that time.” (Porterfield Depo.  
9 at 53:8-20, ECF No. 32-2 at 18.) Officer Porterfield had not yet arrested Mr. Rios when  
10 he grabbed Mr. Rios’ wrist “[b]ecause he wasn’t under arrest . . . because [Officer  
11 Porterfield] hadn’t determined whether he had committed a crime or not.” (Porterfield  
12 Depo. at 81:11-16, ECF No. 32-2 at 23.) At that point Officer Porterfield felt that he “still  
13 d[id]n’t have probable cause yet to arrest [Mr. Rios]” because he “hadn’t even gotten to  
14 the questions [he] needed to ask to determine whether [he] had probable cause to arrest.”  
15 (Porterfield Depo. at 81:17-21, ECF No. 32-2 at 23.)

16 In conclusion, a reasonable juror could believe that Officer Porterfield lacked  
17 probable cause to arrest Mr. Rios for violating Section 245. Additionally, because there  
18 remain genuine issues of material fact as to whether Officer Porterfield had probable cause  
19 to arrest Mr. Rios under Section 245, there remain genuine issues of material fact as to  
20 whether Officer Porterfield had probable cause to arrest Mr. Rios under Section 148. *See*  
21 *Velazquez v. City of Long Beach*, 793 F.3d 1010, 1018-19 (9th Cir. 2015) (“[F]or a §  
22 148(a)(1) conviction to be valid, a criminal defendant must have resist[ed], delay[ed], or  
23

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24 Depo. at 37:14-38:17, ECF No. 32-5 at 3-4). Officer Harbin testified that he believed the officers “had  
25 probable cause to arrest Mr. Rios . . . before [they] made contact with him” because “[w]e had a reporting  
26 party giving us the details of an incident and he could identify who the suspect was and where he was”  
27 (Harbin Depo. at 27:16-24, ECF No. 26-6 at 8), but he also testified that “[w]e didn’t have a plan to arrest  
28 [Mr. Rios]” because “[w]e wanted to speak to him first . . . [t]o get his side” for “[t]horough investigation.  
. . . [to s]peak to all parties involved” (Harbin Depo. at 27:1-15, ECF No. 26-6 at 8). These self-  
contradictory statements must be construed in the favor of the Rioses, as the non-movants. *Anderson*, 477  
U.S. at 255.

1 obstruct[ed] a police officer in the *lawful* exercise of his duties. . . . [A]n officer is not  
2 lawfully performing her duties when she detains an individual without reasonable suspicion  
3 or arrests an individual without probable cause.”) (emphasis in original; internal quotation  
4 marks removed); *Blankenhorn v. City of Orange*, 485 F.3d 463, 472 (9th Cir. 2007) (“If  
5 there was no probable cause to arrest [plaintiff] for trespassing in the first place, it makes  
6 no difference for present purposes if he resisted arrest.”); *Arpin*, 261 F.3d at 920 (“If the  
7 officers could not lawfully arrest [plaintiff] for battery, the officers could also not lawfully  
8 arrest [plaintiff] for resisting arrest.”); *see also In re Manuel G.*, 16 Cal. 4th 805, 815 (1997)  
9 (“The longstanding rule in California and other jurisdictions is that a defendant cannot be  
10 convicted of an offense against a peace officer *engaged in . . . the performance of . . .* [his  
11 or her] *duties* unless the officer was acting lawfully at the time the offense against the  
12 officer was committed.”) (emphasis in original; internal quotation marks omitted).

13 (ii) *Mrs. Rios*

14 Mrs. Rios was arrested for violation of Section 148. The elements for a violation of  
15 Section 148 are “(1) the defendant willfully resisted, delayed, or obstructed a peace officer,  
16 (2) when the officer was engaged in the performance of his or her duties, and (3) the  
17 defendant knew or reasonably should have known that the other person was a peace officer  
18 engaged in the performance of his or her duties.” *Velazquez*, 793 F.3d at 1018 (quoting  
19 *Garcia v. Superior Court*, 177 Cal. App. 4th 803, 818 (2009)) (internal quotation marks  
20 omitted); *Smith v. City of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005).

21 Defendants argue that probable cause existed for Mrs. Rios’ arrest for violation of  
22 Section 148 because she “ignored commands to not interfere with the arrest of Mr. Rios.”  
23 (MSJ at 3:11-12, ECF No. 26-1 at 7.) Defendants also note that Mrs. Rios “got up out [of]  
24 a chair in the apartment one time and also twice got up off the couch.” (MSJ at 9:6-7, ECF  
25 No. 26-1 at 13.)

26 Viewing the evidence in the light most favorable to Mrs. Rios, *see Anderson*, 477  
27 U.S. at 255, there remain genuine issues of material fact as to whether Mrs. Rios “willfully  
28 resisted, delayed, or obstructed a peace officer.” *Velazquez*, 793 F.3d at 1018. With regard

1 to Officer Porterfield, although Mrs. Rios stepped toward him, it was only to tell him,  
2 “Please don’t take my husband because he’s diabetic.” (E. Rios Depo. at 23:3-6, 25:3-6,  
3 33:23-34:7, ECF No. 32-3 at 4, 5, 7-8.) Mrs. Rios claims that she “didn’t try to get between  
4 [Officer Porterfield] and [her] husband” (E. Rios Depo. at 26:10-13, ECF No. 32-3 at 6;  
5 *see also* E. Rios Depo. at 34:3-5, ECF No. 32-3 at 8) or try to put her hands between Officer  
6 Porterfield or Mr. Rios (E. Rios Depo. at 26:14-18, ECF No. 32-3 at 6). This evidence  
7 does not indicate a willful delay or obstruction of Officer Porterfield’s arrest of Mr. Rios.

8 Although not specifically addressed by Defendants, there also remain genuine issues  
9 of material fact as to whether Mrs. Rios wilfully delayed or obstructed Officer Smith. For  
10 example, Officer Smith told Mrs. Rios to “[g]o inside, go inside” when Mrs. Rios went to  
11 the door to see what was happening to her husband outside (E. Rios Depo. at 42:22-43:2,  
12 ECF No. 32-3 at 9-10), but even Officer Smith admits that Mrs. Rios never actually exited  
13 the apartment (Smith Depo. at 74:13-24, ECF No. 32-5 at 7). Additionally, Officer Smith  
14 yelled at Mrs. Rios, “Get off the phone. Get off the phone,” but Mrs. Rios explained to  
15 Officer Smith in advance that she needed to call somebody to help her understand what  
16 was going on. (E. Rios Depo. at 48:2-15, ECF No. 32-3 at 12.) It does not appear that  
17 Mrs. Rios’ actions of coming to the window or attempting to call somebody to translate for  
18 her in any way obstructed the arrest of Mr. Rios.

19 Furthermore, “[i]t is well established under California law that even ‘an outright  
20 refusal to cooperate with police officers cannot create adequate grounds for [police]  
21 intrusion’ without more. . . . Here the officers had no grounds on which to arrest [the  
22 plaintiff] other than [her] disobedience, which is insufficient.” *Mackinney v. Nielsen*, 69  
23 F.3d 1002, 1006 (9th Cir. 1995) (citation omitted) (quoting *People v. Bower*, 24 Cal. 3d  
24 638, 649 (1979)); *see also People v. Quiroga*, 16 Cal. App. 4th 961, 964, 966 (1993)  
25 (“find[ing] nothing in appellant’s conduct before his arrest that might justify a charge of  
26 violating Penal Code section 148” where plaintiff failed to sit back down on a couch and  
27 “refus[ed] several times” to stand up when ordered to do so by an officer because “[i]t is  
28 true that he complied slowly with Officer Stefani’s orders, but it surely cannot be supposed

1 that Penal Code section 148 criminalizes a person’s failure to respond with alacrity to  
2 police orders.”). While Mrs. Rios may have disobeyed the orders of Officer Smith, these  
3 alleged acts of disobedience – without more – are an insufficient basis on which to arrest  
4 her under Section 148. *See Mackinney*, 69 F.3d at 1006.

5 Additionally and as discussed above, because there remain genuine issues of  
6 material fact as to whether Officer Porterfield had probable cause to arrest Mr. Rios under  
7 Section 245, there remain genuine issues of material fact as to whether Mrs. Rios was  
8 lawfully arrested under Section 148. *See Velazquez*, 793 F.3d at 1018-19.

### 9 ***B. Qualified Immunity***

10 Whether a party should be afforded qualified immunity is a question of law. *Johnson*  
11 *v. Cnty. of Los Angeles*, 340 F.3d 787, 791 (9th Cir. 2003); *Nunez v. Davis*, 169 F.3d 1222,  
12 1229 (9th Cir. 1999). “[T]he basic purpose of qualified immunity . . . is to spare individual  
13 officials the burdens and uncertainties of standing trial in those instances where their  
14 conduct would strike an objective observer as falling within the range of reasonable  
15 judgment.” *Gooden v. Howard Cnty.*, 954 F.2d 960, 965 (4th Cir. 1992) (citing *Anderson*  
16 *v. Creighton*, 483 U.S. 635, 638 (1987)). “The doctrine of qualified immunity protects  
17 government officials ‘from liability for civil damages insofar as their conduct does not  
18 violate clearly established statutory or constitutional rights of which a reasonable person  
19 would have known.’” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v.*  
20 *Fitzgerald*, 457 U.S. 800, 818 (1982)).

21 The test for determining whether a defendant is entitled to qualified immunity has  
22 two prongs: (1) taken in the light most favorable to the party asserting the injury, do the  
23 facts alleged show the officer’s conduct violated a constitutional right, and (2) was that  
24 constitutional right clearly established in the context faced by the defendant? *Saucier v.*  
25 *Katz*, 533 U.S. 194, 201 (2001). “The relevant, dispositive inquiry in determining whether  
26 a right is clearly established is whether it would be clear to a reasonable officer that his  
27 conduct was unlawful in the situation he confronted.” *Id.* at 202. “In this case, because  
28 [defendants] claim qualified immunity from [plaintiffs’] challenge to their probable cause

1 to arrest [them], we must ask whether a reasonable officer could have believed that  
2 probable cause existed to arrest the plaintiff[s].” *Franklin v. Fox*, 312 F.3d 423, 437 (9th  
3 Cir. 2002) (quoting *Mendocino Envtl. Ctr. v. Mendocino Cnty.*, 14 F.3d 457, 462 (9th Cir.  
4 1994)) (internal quotation marks omitted); *see also Rosenbaum v. Washoe Cnty.*, 663 F.3d  
5 1071, 1076 (9th Cir. 2011).

6 If the plaintiff fails to establish these two prongs, the official is entitled  
7 to qualified immunity. *See Pearson*, 555 U.S. at 236 (courts can evaluate either of the two  
8 prongs first). However, “[i]f . . . there is a material dispute as to the facts regarding what  
9 the officer or the plaintiff actually did, the case must proceed to trial, before a jury if  
10 requested.” *Torres v. City of Los Angeles*, 548 F.3d 1197, 1210 (9th Cir. 2008) (quoting  
11 *LaLonde v. Cnty. of Riverside*, 204 F.3d 947, 953 (9th Cir. 2000)); *see also Wilkins v. City*  
12 *of Oakland*, 350 F.3d 949, 956 (9th Cir. 2003) (“Where the officers’ entitlement to  
13 qualified immunity depends on the resolution of disputed issues of fact in their favor, and  
14 against the non-moving party, summary judgment is not appropriate.”).

15 For the reasons stated above, the evidence taken in the light most favorable to the  
16 Rioses shows the officers’ conduct violated a constitutional right. The Court therefore  
17 addresses below only the second prong, *i.e.*, whether the constitutional right was clearly  
18 established.

19 (i) *Officer Porterfield*

20 Defendants argue that Officer Porterfield is entitled to qualified immunity for the  
21 arrest of Mr. Rios under Section 245. (MSJ at 11:17-18, ECF No. 26-1 at 15.)

22 In 2012, it was clearly established that an arrest constitutes a seizure for the purposes  
23 of the Fourth Amendment. *See Hopkins v. Bonvicino*, 573 F.3d 752, 774 (9th Cir. 2009)  
24 (“Numerous precedents from this court and others, including the United States Supreme  
25 Court, make it clear that the officers’ treatment of [plaintiff] inside his home constituted a  
26 seizure. There can be no doubt that the law in this respect was clearly established prior to  
27 2003 and thus should have been known by a reasonable officer.”) (citing *Florida v.*  
28 *Bostick*, 501 U.S. 429, 437 (1991); *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988); *INS*



1 *v. Delgado*, 466 U.S. 210, 215 (1984); *United States v. Chan-Jimenez*, 125 F.3d 1324, 1326  
2 (9th Cir. 1997)). It was also clearly established that a warrantless arrest requires that the  
3 officer have probable cause to believe the person has committed a crime. *See, e.g.*,  
4 *Dunaway v. New York*, 442 U.S. 200, 208 (1979); *McKenzie*, 738 F.2d at 1008. Finally, it  
5 was clearly established that an officer has a duty to investigate a witness' report of a crime  
6 in order to establish probable cause. *See, e.g.*, *Hopkins*, 573 F.3d at 771-72 (“[T]his court  
7 determined as early as 1991 that ‘police officers ha[ve] a duty to conduct an investigation  
8 into the basis of [a] witness’ report’ and that absent such investigation the report alone does  
9 not support probable cause.”); *Arpin*, 261 F.3d at 925 (“In establishing probable cause,  
10 officers may not solely rely on the claim of a citizen witness that he was a victim of a crime,  
11 but must independently investigate the basis of the witness’ knowledge or interview other  
12 witnesses.”); *Fuller*, 950 F.2d at 1444 (“We decline to adopt Appellees’ argument that  
13 merely because citizen witnesses are presumptively reliable, the officers in this situation  
14 had no duty to examine further the basis of the witness’ knowledge or talk with any other  
15 witnesses.”).

16 Construing the facts in the light most favorable to the Rioses, *see Saucier*, 533 U.S.  
17 at 201, a reasonable officer could not have believed that probable cause existed to arrest  
18 Mr. Rios under Section 245. As explained above, both Officer Porterfield and Officer  
19 Smith believed that further investigation was warranted before Mr. Rios could be arrested.  
20 (*See, e.g.*, Porterfield Depo. at 38:4-10, 53:8-20, 81:11-21, ECF No. 32-2 at 8, 18, 23;  
21 Smith Depo. at 37:24-38:8, ECF No. 32-5 at 3-4.) The officers did not look for any  
22 corroborating evidence, such as tire marks on the sidewalk. (Porterfield Depo. at 37:24-  
23 38:3, ECF No. 32-2 at 7-8.) The officers “didn’t have all the facts” (Porterfield Depo. at  
24 53:8-20, ECF No. 32-2 at 18), did not have an opportunity to fulfill their “duty” of “giving  
25 [Mr. Rios] the opportunity to give his side of the story” (Smith Depo. at 37:24-38:8, ECF  
26 No. 32-5 at 3-4), and “hadn’t even gotten to the questions [they] needed to ask to determine  
27 whether [they] had probable cause to arrest [Mr. Rios]” (Porterfield Depo. at 81:17-21,  
28 ECF No. 32-2 at 23). There is no evidence that Mr. Rios matched the description of the

1 perpetrator given by Mr. Caemeans or that Mr. Rios owned a vehicle matching Mr.  
2 Caemeans' description of the SUV. In short, Officer Porterfield's only basis for probable  
3 cause was Mr. Caemeans' uncorroborated statements. Under *Hopkins* and the authorities  
4 cited therein, no reasonable officer could have believed that probable cause existed to arrest  
5 Mr. Rios under Section 245 on this basis.

6 A reasonable officer also could not have believed that he had probable cause to arrest  
7 Mr. Rios under Section 148. It has long been clearly established that a suspect cannot be  
8 arrested for violating Section 148 because he evaded an officer's attempt to arrest him  
9 unlawfully. *See, e.g., Blankenhorn*, 485 F.3d at 472; *Arpin*, 261 F.3d at 920. Because the  
10 Court finds that Officer Porterfield is not entitled to qualified immunity for his arrest of  
11 Mr. Rios under Section 245, it also finds that Officer Porterfield is not entitled to qualified  
12 immunity for his arrest of Mr. Rios under Section 148.

13 Because genuine issues of material fact exist as to whether Officer Porterfield had  
14 probable cause to arrest Mr. Rios under either Section 245 or Section 148 and because  
15 Officer Porterfield is not entitled to qualified immunity for arresting Mr. Rios on either of  
16 those grounds, the Court **DENIES** Defendants' MSJ with respect to Plaintiffs' claim one  
17 against Officer Porterfield for the unlawful arrest of Mr. Rios.

18 (ii) *Officer Smith*

19 Defendants argue that Officer Smith is entitled to qualified immunity because "there  
20 was probable cause to arrest Mrs. Rios for battery or for interfering or obstructing a police  
21 officer." (MSJ at 12:23-24, ECF No. 26-1 at 16.) As noted previously, it has long been  
22 clearly established that a warrantless arrest requires that the officer have probable cause to  
23 believe the person has committed a crime, *see, e.g., Dunaway*, 442 U.S. at 208; *McKenzie*,  
24 738 F.2d at 1008, and that probable cause requires "facts and circumstances within the  
25 officers' knowledge . . . sufficient in themselves to warrant a man of reasonable caution in  
26 the belief that an offense has been or is being committed by the person to be arrested."  
27 *McKenzie*, 738 F.2d at 1008 (quoting *Dunaway*, 442 U.S. at 208 n.9) (internal quotation  
28 marks omitted).

1 With regard to Officer Smith’s probable cause to arrest Mrs. Rios for battery, “[a]  
2 battery is any willful and unlawful use of force or violence upon the person of another.”  
3 Cal. Penal Code § 242. “The elements of a battery claim in California are that (1) the  
4 defendant intentionally did an act that resulted in harmful or offensive contact with the  
5 plaintiff’s person, (2) the plaintiff did not consent to the contact, and (3) the contact caused  
6 injury, damage, loss or harm to the plaintiff.” *Tekle v. United States*, 511 F.3d 839, 855  
7 (9th Cir. 2006).

8 Here, because the facts needed to determine whether there was probable cause to  
9 arrest Mrs. Rios for battery are disputed, Officer Smith is not entitled to qualified  
10 immunity. *See Torres*, 548 F.3d at 1210. Defendants concede that Mrs. Rios denies  
11 touching Officer Smith (MSJ at 12:18, ECF No. 26-1 at 18), and Officer Smith admits that  
12 Mrs. Rios never injured her (Smith Depo. at 75:22-24, ECF No. 32-5 at 8). Mrs. Rios also  
13 testified that she did not try to interfere in Officer Porterfield’s arrest of Mr. Rios and that  
14 she did not try to put her hands between Officer Porterfield and Mr. Rios. (E. Rios Depo.  
15 at 26:10-18, ECF No. 32-3 at 6.) Under these facts, a reasonable officer could not have  
16 believed that she had probable cause to arrest Mrs. Rios for battery.

17 With regard to Officer Smith’s probable cause to arrest Mrs. Rios for violation of  
18 Section 148, as discussed previously, Mrs. Rios only stepped toward Officer Porterfield to  
19 inform him that her husband was diabetic. (E. Rios Depo. at 23:3-6, 25:3-6, 33:23-34:7,  
20 ECF No. 32-3 at 4, 5, 7-8.) She “didn’t try to get between [Officer Porterfield] and [her]  
21 husband” (E. Rios Depo. at 26:10-13, ECF No. 32-3 at 6; *see also* E. Rios Depo. at 34:3-  
22 5, ECF No. 32-3 at 8) or try to put her hands between Officer Porterfield and Mr. Rios (E.  
23 Rios Depo. at 26:10-18, ECF No. 32-3 at 6). Given these facts, a reasonable officer could  
24 not have believed that Mrs. Rios was willfully delaying or obstructing Officer Porterfield’s  
25 arrest of Mr. Rios.

26 Similarly, a reasonable officer could not have believed that Mrs. Rios was willfully  
27 delaying or obstructing Officer Smith during Mr. Rios’ arrest. Officer Smith told Mrs.  
28 Rios to “go inside” (E. Rios Depo. at 42:22-43:2, ECF No. 32-3 at 9-10), but Mrs. Rios

1 had not actually exited the apartment (Smith Depo. at 74:13-24, ECF No. 32-5 at 7).  
2 Similarly, Mrs. Rios told Officer Smith that she intended to call somebody to help her  
3 understand what was happening, and she placed a call from inside the apartment, while  
4 Officers Porterfield and Smith were still outside with Mr. Rios. (E. Rios Depo. at 48:2-  
5 49:24, ECF No. 32-3 at 12-13.) A reasonable officer could not have believed that Mrs.  
6 Rios – who was inside the apartment – was willfully delaying or obstructing her husband’s  
7 arrest outside under these circumstances.

8 Finally, as discussed above, it has long been clearly established that a suspect cannot  
9 be arrested for violating Section 148 because she obstructed an officer’s unlawful arrest.  
10 *See, e.g., Blankenhorn*, 485 F.3d at 472; *Arpin*, 261 F.3d at 920. Because no reasonable  
11 officer could have believed that Officer Porterfield had probable cause to arrest Mr. Rios  
12 under Section 245, Officer Smith is not entitled to qualified immunity for arresting Mrs.  
13 Rios under Section 148.

14 Because genuine issues of material fact exist as to whether Officer Smith had  
15 probable cause to arrest Mrs. Rios under Section 148 and because Officer Smith is not  
16 entitled to qualified immunity for arresting Mrs. Rios, the Court **DENIES** Defendants’  
17 MSJ with respect to Plaintiffs’ claim one against Officer Smith for the unlawful arrest of  
18 Mrs. Rios.

## 19 **II. Claim Two: 42 U.S.C. § 1983 Claim Against the City of San Diego**

20 The parties agree that Plaintiffs have elected not to pursue their second claim – a  
21 *Monell* claim arising under 42 U.S.C. § 1983 – against the City of San Diego. (MSJ 13:22-  
22 23, ECF No. 26-1 at 17; Opp’n 16:3-4, ECF No. 32 at 20.) Accordingly, the Court  
23 **GRANTS** Defendants’ MSJ with respect to Plaintiffs’ claim two.

## 24 **III. Claims Three and Five: State Law Claims for Negligence and Violation of** 25 **California Civil Code § 52.1**

26 Defendants argue that, to the extent Plaintiffs’ state law claims of negligence and  
27 California Civil Code § 52.1 civil rights violations relate to their arrests, these claims  
28 should be precluded if the Court finds probable cause to arrest as a matter of law. (*See*

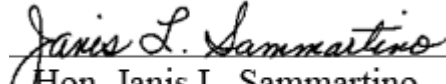
1 MSJ at 14:1-9, ECF No. 26-1 at 18; Opp'n at 16:8-10, ECF No. 32 at 20.) Because the  
2 Court determined above that partial summary judgment on Plaintiffs' first claim for  
3 unlawful arrest is not warranted, the Court **DENIES** Defendants' MSJ as to Plaintiffs'  
4 claims three and five.

5 **CONCLUSION**

6 For the reasons stated above, the Court **GRANTS IN PART AND DENIES IN**  
7 **PART** Defendants' MSJ. The Court **GRANTS** summary judgment as to Plaintiffs' claim  
8 two. The Court **DENIES** summary judgment as to Plaintiffs' claims one, three, and five.

9 **IT IS SO ORDERED.**

10  
11 Dated: October 13, 2015

  
12 Hon. Janis L. Sammartino  
13 United States District Judge  
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