

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BARBARA E. BROWN,

Plaintiff-Appellant,

v.

SCOTT BURTON, Deputy Sheriff, in his  
individual capacity; et al.,

Defendants-Appellees.

No. 17-55698

D.C. No. 5:15-cv-00294-CJC-E

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Cormac J. Carney, District Judge, Presiding

Submitted December 10, 2018\*\*

Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges

Barbara E. Brown appeals pro se from the district court's summary judgment in her 42 U.S.C. § 1983 action alleging Fourth Amendment violations for improper detention and arrest. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Szajer v. City of Los Angeles*, 632 F.3d 607, 610 (9th Cir. 2011),

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

and we affirm.

The district court properly granted summary judgment on Brown's Fourth Amendment claim for improper detention and arrest because Brown failed to raise a genuine dispute of material fact as to whether defendants (1) had a reasonable suspicion to detain Brown while investigating a 911 call for a domestic disturbance, and (2) had probable cause to arrest her pursuant to California Penal Code § 148(a)(1). *See Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1076 (9th Cir. 2011) ("An officer has probable cause to make a warrantless arrest when the facts and circumstances within his knowledge are sufficient for a reasonably prudent person to believe that the suspect has committed a crime."); *United States v. Palos-Marquez*, 591 F.3d 1272, 1274 (9th Cir. 2010) ("An investigatory stop does not violate the Fourth Amendment if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot." (citations and quotations omitted)); *see also Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for the purposes of ruling on a motion for summary judgment."). The audio recordings of the officers' interaction with and handling of the plaintiff demonstrate that her claims against them are spurious. We agree with the district court that the recordings "refute by blatant contradiction" most of

Brown's assertions. The officers' treatment of her as captured on the recordings was professional, respectful, and courteous.

The district court properly dismissed Brown's claims against unnamed John Doe defendants because Brown failed to make any factual allegations as to these claims. *See Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir. 2008) (dismissal is proper when plaintiff fails to allege facts sufficient to support a claim).

We reject Brown's meritless contentions that the district court was biased against her, improperly transferred her case to the district court in Los Angeles, and improperly denied her request for appointment of counsel.

We do not consider matters not specifically and distinctly raised in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *see also United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

Brown's motion for appointment of counsel (Docket Entry No. 15) is denied.

**AFFIRMED.**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BARBARA BROWN, ) NO. ED CV 15-294-CJC(E)  
 )  
 )  
 Plaintiff, )  
 )  
 )  
 v. ) ORDER ADOPTING FINDINGS,  
 )  
 )  
 COUNTY OF SAN BERNARDINO, ) CONCLUSIONS AND RECOMMENDATIONS  
 et al., )  
 )  
 ) OF UNITED STATES MAGISTRATE JUDGE  
 Defendants. )

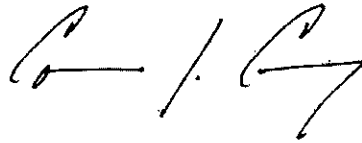
Pursuant to 28 U.S.C. section 636, the Court has reviewed the Third Amended Complaint, all of the records herein and the attached Report and Recommendation of United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report and Recommendation to which any objections have been made. The Court accepts and adopts the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that Judgment shall be entered in favor of Defendants.

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1 IT IS FURTHER ORDERED that the Clerk serve forthwith a copy of  
2 this Order, the Magistrate Judge's Report and Recommendation and the  
3 Judgment of this date on Plaintiff and counsel for Defendants.  
4

5 DATED: April 17, 2017.  
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9 CORMAC J. CARNEY  
10 UNITED STATES DISTRICT JUDGE  
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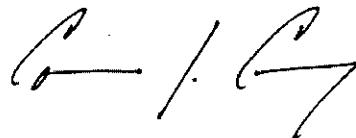
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BARBARA BROWN,	)	NO. ED CV 15-294-CJC(E)
	)	
Plaintiff,	)	
	)	
v.	)	JUDGMENT
	)	
COUNTY OF SAN BERNARDINO,	)	
et al.,	)	
	)	
Defendants.	)	

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IT IS ADJUDGED that summary judgment in favor of Defendants is granted.

DATED: April 17, 2017.



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CORMAC J. CARNEY  
UNITED STATES DISTRICT JUDGE

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 BARBARA BROWN, ) NO. ED CV 15-294-CJC(E)  
12 Plaintiff, )  
13 v. ) REPORT AND RECOMMENDATION OF  
14 COUNTY OF SAN BERNARDINO, ) UNITED STATES MAGISTRATE JUDGE  
15 et al., )  
16 Defendants. )  
17

18 This Report and Recommendation is submitted to the Honorable  
19 Cormac J. Carney, United States District Judge, pursuant to 28 U.S.C.  
20 section 636 and General Order 05-07 of the United States District  
21 Court for the Central District of California.  
22

23 BACKGROUND  
24

25 On February 19, 2015, Plaintiff filed a pro se civil rights  
26 Complaint for damages pursuant to 42 U.S.C. section 1983. The  
27 Complaint named as Defendants the County of San Bernardino, the San  
28 Bernardino Sheriff's Department Big Bear Lake Station, Deputy Sheriff

1 Scott Burton, Deputy Sheriff Travis Wijnhamer, Deputy Sheriff Tom  
2 Hollenbaugh and five "John Doe" Defendants. Plaintiff purported to  
3 sue the individual Defendants in their individual and official  
4 capacities.

5  
6 On March 9, 2015, the Court issued an "Order Dismissing Complaint  
7 With Leave to Amend." On April 8, 2015 Plaintiff filed a First  
8 Amended Complaint.

9  
10 On April 16, 2015, the Court issued an "Order Dismissing Certain  
11 Claims From First Amended Complaint." The April 16, 2015 Order  
12 dismissed without leave to amend and with prejudice Plaintiff's Monell  
13 claims<sup>1</sup> against the County of San Bernardino and the San Bernardino  
14 Sheriff's Department Big Bear Lake station, as well as Plaintiff's  
15 official capacity claims against the individual Defendants.

16  
17 On June 29, 2015, Defendants Burton, Wijnhamer and Hollenbaugh  
18 filed a "Motion to Dismiss for Failure to State a Claim, etc." On  
19 August 3, 2015, Plaintiff filed an Opposition to the Motion to  
20 Dismiss. On August 19, 2015, the moving Defendants filed a Reply. On  
21 August 25, 2015, the Court issued an "Order Dismissing First Amended  
22 Complaint With Leave to Amend." On September 24, 2015, Plaintiff  
23 filed a Second Amended Complaint.

24  
25 On October 7, 2015, Defendants filed a Motion to Dismiss the  
26 Second Amended Complaint. On December 11, 2015, Plaintiff filed an

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27  
28 <sup>1</sup> See Monell v. New York City Dep't of Social Services,  
436 U.S. 658 (1978).



1 Opposition to the Motion to Dismiss. On December 26, 2015, the Court  
2 issued an "Order re Defendants' Motion to Dismiss Second Amended  
3 Complaint." The Order: (1) dismissed Plaintiff's state law claims  
4 without leave to amend but without prejudice; (2) dismissed  
5 Plaintiff's Second Amendment claims and Eighth Amendment claims  
6 without leave to amend and with prejudice; and (3) otherwise dismissed  
7 the Second Amended Complaint with leave to amend.

8  
9 On January 25, 2016, Plaintiff filed a Third Amended Complaint,  
10 the operative pleading. The Third Amended Complaint names as  
11 Defendants Scott Burton, Tom Hollenbaugh and Travis Wijnhamer, sued in  
12 their individual capacities only ("Defendants"). On February 17,  
13 2016, Defendants filed an Answer.

14  
15 On October 31, 2016, Defendants filed a "Motion for Summary  
16 Judgment on Plaintiff's Third Amended Complaint" ("Motion for Summary  
17 Judgment"). On November 30, 2016, Plaintiff filed an "Opposition to  
18 Defendants['] Motion for Summary Judgment, etc." ("Opposition"). On  
19 December 14, 2016, Defendants filed a "Reply to Opposition, etc."

20  
21 On January 3, 2017, Plaintiff filed "Plaintiff's Corrected  
22 Opposition to Defendants' Motion for Summary Judgment, etc."  
23 ("Corrected Opposition"). On January 9, 2017, Plaintiff filed a  
24 "Submission of Evidence in Support of Plaintiff's Corrected  
25 Opposition, etc." ("Plaintiff's Submission of Evidence"). On  
26 January 10, 2017, Defendants filed an "Objection to Plaintiff's  
27 Corrected Opposition, etc."

28 ///

1                   **SUMMARY OF ALLEGATIONS OF THIRD AMENDED COMPLAINT**

2

3           The unverified Third Amended Complaint alleges:

4

5                   On February 16, 2013, at 9:30 p.m. Plaintiff went to

6           the apartment of her then boyfriend in Sugarloaf, California

7           (Third Amended Complaint, p. 4, ¶ 7). Upon Plaintiff's

8           arrival, an ex-boyfriend of Plaintiff who lived in a

9           basement apartment at the same location began to argue with

10          Plaintiff (id.). Plaintiff's then boyfriend, the apartment

11          tenant, allegedly called the Big Bear Lake Sheriff's

12          Department to have Plaintiff's ex-boyfriend escorted from

13          the home for Plaintiff's protection "due to incident two

14          days prior. . . ."

15

16                  At 10:15 p.m. Deputies Burton, Wijnhamer and

17          Hollenbaugh arrived. Plaintiff and the tenant explained to

18          the deputies that the man who had caused the disturbance had

19          already fled and that "there was no problem anymore and

20          plaintiff had a ride home when needed." Defendant Burton

21          grabbed Plaintiff by the right arm and, assisted by

22          Defendants Wijnhamer and Hollenbaugh, forcibly dragged

23          Plaintiff outside of the residence, placed Plaintiff under

24          arrest and handcuffed Plaintiff, "without plaintiff's

25          consent nor boyfriend's command" and without a search

26          warrant or court order. Plaintiff was not on probation or

27          parole and was not a danger or threat to herself or others.

28          ///

1           Burton, the arresting officer, drove Plaintiff to the  
2           San Bernardino main jail. Subsequently, while at the jail  
3           overnight, Plaintiff was stripped naked, strapped into a low  
4           chair and injected with an unknown drug. Plaintiff was left  
5           alone all night, strapped naked to the chair. Plaintiff did  
6           not consent to anything done to her during this ordeal.

7  
8           The next morning, a deputy whom Plaintiff "believes"  
9           was Defendant Burton drove Plaintiff to the Arrowhead  
10          Regional Medical Center ["ARMC"] mental ward. Plaintiff was  
11          held at the hospital until February 21, 2013, without need  
12          and without Plaintiff's consent.

13  
14          Defendant Burton had arrested Plaintiff for a violation  
15          of California Penal Code section 138(a)(1), obstructing or  
16          delaying an officer. The court dismissed the charge in the  
17          interest of justice.

18  
19          Plaintiff alleges Defendant Burton violated Plaintiff's  
20          constitutional rights by arresting Plaintiff "without  
21          probable cause, a search warrant or court order, nor [sic]  
22          plaintiff's consent, nor (at) [sic] tenant's command."  
23          Deputies Wijnhamer and Hollenbaugh assisted Burton in the  
24          unlawful arrest. Plaintiff seeks damages for the cost of  
25          transportation back to her home and damages for mental and  
26          emotional distress, including nightmares, fear of driving at  
27          night and fear of law enforcement, in the total sum of  
28          \$5,000,050.

**DEFENDANTS' CONTENTIONS**

Defendants contend that probable cause existed to arrest Plaintiff and to detain and refer Plaintiff for mental health treatment. Defendants Burton and Hollenbaugh contend they were not involved in the decision to place Plaintiff in a "safety chair," to medicate her or to transport her to ARMC. Defendant Wijnhamer contends that he had no involvement in Plaintiff's arrest, her transportation to jail, the decision to restrain her, the decision to medicate her or the decision to transport her to ARMC. Defendants also contend they are entitled to qualified immunity.

**STANDARDS GOVERNING MOTION FOR SUMMARY JUDGMENT**

Summary judgment is appropriate if the evidence, viewed in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The party moving for summary judgment bears the initial burden of offering proof of the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party's burden is met, the party opposing the motion is required to go beyond the pleadings and, by the party's own affidavits or by other evidence, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Miller v. Glenn Miller Productions, Inc., 454 F.3d 975, 987 (9th Cir. 2006). The party opposing the motion must submit evidence sufficient to establish the elements that are essential to that party's case, and for which that party will bear

1 the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at  
2 322.

3  
4 The Court must "view the facts in the light most favorable to the  
5 non-moving party and draw reasonable inferences in favor of that  
6 party." Scheuring v. Traylor Bros., Inc., 476 F.3d 781, 784 (9th Cir.  
7 2007). Where different ultimate inferences reasonably can be drawn,  
8 summary judgment is inappropriate. Miller v. Glenn Miller  
9 Productions, Inc., 454 F.3d at 988. "At the summary judgment stage,  
10 the court does not make credibility determinations or weigh  
11 conflicting evidence." Porter v. California Dep't of Corrections, 419  
12 F.3d 885, 891 (9th Cir. 2005) (citation omitted).

13  
14 A factual dispute is "genuine" only if there is a sufficient  
15 evidentiary basis upon which a reasonable jury could return a verdict  
16 for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S.  
17 242, 248 (1986). A factual dispute is "material" only if it might  
18 affect the outcome of the lawsuit under governing law. Id.

19  
20 "Evidence may be offered 'to support or dispute a fact' on  
21 summary judgment only if it could be presented in an admissible form  
22 at trial." Southern California Darts Ass'n v. Zaffina, 762 F.3d 921,  
23 925-26 (9th Cir. 2014) (citing Fraser v. Goodale, 342 F.3d 1032, 1036-  
24 37 (9th Cir. 2003), cert. denied, 541 U.S. 937 (2004)) (internal  
25 quotations omitted); see also Fonseca v. Sysco Food Servs. of Arizona,  
26 Inc., 374 F.3d 840, 846 (9th Cir. 2004) ("Even the declarations that  
27 do contain hearsay are admissible for summary judgment purposes  
28 because they 'could be presented in an admissible form at trial.'")

(citations omitted). Conclusory statements are insufficient to defeat summary judgment. Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 950 n.9 (9th Cir. 2011) (en banc), cert. denied, 565 U.S.1200 (2012).

## SUMMARY OF EVIDENCE

### I. Defendants' Evidence

With respect to the events in Sugarloaf, Defendants rely on their declarations and on audio recordings retrieved from the recording belts worn by Defendants Burton and Hollenbaugh. With respect to the events at the West Valley Detention center and ARMC, Defendants rely on Defendants' declarations, the declaration of San Bernardino County Deputy Sheriff Gennifer Livingston and excerpts from the deposition of Dr. Mailan Pham. All of this evidence, which is overlapping and somewhat repetitive, is summarized below.

#### A. Declaration of Scott Burton

In his Declaration, Defendant Burton states:

On February 16, 2013, at approximately 9:46 p.m., Burton responded to a report of a domestic disturbance at the residence of Jonathan Sprecher in Sugarloaf, California. When Burton arrived, he heard a female and a male arguing inside the residence. The female spoke loudly in an argumentative tone to the male and called him a "faggot."

1 The door was ajar and, through the doorway, Burton saw a  
2 woman later identified as Plaintiff standing over Sprecher,  
3 who was seated on the couch.  
4

5 Burton asked Plaintiff to come outside so that Burton  
6 could separate her from Sprecher and get their respective  
7 stories separately. Plaintiff responded: "I'm not going to  
8 jail. Fuck you." Deputy Hollenbaugh arrived and Burton  
9 asked Plaintiff to go outside and talk to Hollenbaugh so  
10 Burton could interview Sprecher. Plaintiff said, "I'm not  
11 going nowhere." Burton attempted to explain again that  
12 Burton needed to get Sprecher's report concerning his 911  
13 call. Plaintiff refused to leave or to permit Burton to  
14 speak to Sprecher alone. Plaintiff said Sprecher had not  
15 asked her to leave, but Sprecher said he had done so and  
16 wished she had left sooner.  
17

18 Burton asked Plaintiff for her name, but she refused to  
19 speak to him or to provide her name. Plaintiff began  
20 telling Sprecher loudly to take her home. Burton asked  
21 Plaintiff several times for her name, but she refused and  
22 continued to tell Sprecher to take her home. Plaintiff was  
23 smoking a cigarette and Burton asked her several times to  
24 put it out because she was gesturing so elaborately Burton  
25 was concerned he could get burned. Sprecher brought an  
26 ashtray, but Plaintiff initially refused to put the  
27 cigarette out even then. Plaintiff put the cigarette out  
28 only after Defendant Hollenbaugh came close and gave her a

1 "stern order" to do so.

2  
3 Plaintiff then began making paranoid statements,  
4 accusing Burton of killing Christopher Dorner<sup>2</sup> and saying  
5 Burton would kill Plaintiff like he killed Dorner. Sprecher  
6 tried to coax Plaintiff to calm down, but she became  
7 increasingly more agitated and continued to refuse to  
8 cooperate. When Burton put his hand on Plaintiff's shoulder  
9 to direct her out of the residence, Plaintiff pulled away.  
10 Burton explained to Plaintiff she would have to leave the  
11 residence so the deputies could talk to her. Burton told  
12 Plaintiff to calm down. Plaintiff refused to leave the  
13 residence unless Sprecher gave her a ride home. Sprecher  
14 told Plaintiff that he could not take Plaintiff home because  
15 she would not stop screaming and that she needed to calm  
16 down. Burton and Hollenbaugh repeatedly asked Plaintiff to  
17 calm down so they could get her information and take her  
18 home, but she refused to calm down and she continued  
19 screaming. Because Plaintiff continued to resist and  
20 disobey Burton's commands, Burton placed her in a rear wrist  
21 lock and removed her from the residence. Burton told  
22 Plaintiff she was not being arrested, but she was not

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23  
24 <sup>2</sup> In February of 2013, former Los Angeles police officer  
25 Christopher Dorner shot four people and wounded three others in a  
26 series of shootings generally aimed at law enforcement personnel.  
27 On February 12, 2013, Dorner died during a standoff with police  
28 at a cabin near Big Bear Lake, California, during which Dorner  
shot and killed a San Bernardino Deputy Sheriff. See  
"Christopher Dorner shootings and manhunt," Wikipedia, [https://  
en.wikipedia.org/wiki/Christopher\\_Dorner\\_shootings\\_and\\_manhunt](https://en.wikipedia.org/wiki/Christopher_Dorner_shootings_and_manhunt)  
(last visited March 1, 2017).



1 cooperating and the deputies needed to get her outside to  
2 speak with her separately. Plaintiff was handcuffed and  
3 allowed to sit on a retaining wall outside Sprecher's front  
4 door.

5  
6 Burton then spoke to Sprecher while Hollenbaugh tried  
7 to get Plaintiff's side of the story. Burton heard  
8 Plaintiff yelling at Hollenbaugh, cursing him, telling him  
9 to shut up and screaming at the top of her lungs. Sprecher  
10 told Burton that Plaintiff had been drinking and had drunk  
11 too much, and that she became like this when she drank too  
12 much. Sprecher said Plaintiff was bi-polar or "fucking  
13 schizo." Sprecher said Plaintiff had been slapping Sprecher  
14 and that Sprecher's roommate Rodger, who was Plaintiff's  
15 former boyfriend, had tried to stop Plaintiff. Sprecher  
16 said Rodger left when Sprecher called police. During the  
17 entire time Burton was trying to talk to Sprecher, Plaintiff  
18 was yelling at Sprecher to take her home, screaming loudly  
19 and creating a disturbance. Sprecher asked Plaintiff to be  
20 quiet and calm down, but Plaintiff either could not calm  
21 herself or refused to do so. Burton would have allowed  
22 Sprecher to take Plaintiff home, but Plaintiff would not  
23 calm down and increasingly became louder, more agitated and  
24 more aggressive. Although Sprecher repeatedly asked  
25 Plaintiff to calm down, she just kept yelling that the  
26 deputies were going to kill her and kept insisting that  
27 Sprecher take her home. Sprecher told Burton Plaintiff's  
28 name because Plaintiff had refused to give her name to

1       Burton. Sprecher told Plaintiff that he could not take her  
2       home in the condition she was in and that he would not take  
3       her to his car. Plaintiff kept yelling at Sprecher. Burton  
4       asked Sprecher if Sprecher wanted to try to walk with  
5       Plaintiff, and Sprecher responded: "Well look at her."  
6       Plaintiff was completely out of control and could not, or  
7       would not, calm down. Burton considered submitting  
8       Plaintiff for a "5150 application."<sup>3</sup> Because Plaintiff's  
9       behavior was so irrational, Burton believed Plaintiff  
10      presented a danger to herself or others and appeared unable  
11      to control herself to the point that she could not care for  
12      herself.

13  
14       Burton, Hollenbaugh and Sprecher continued to attempt  
15      to calm Plaintiff down. Burton asked Plaintiff what she had  
16      been drinking, but Plaintiff refused to answer the deputies'  
17      questions and repeatedly accused them of trying to kill her.  
18      At one point, Sprecher suggested taking Plaintiff home to  
19      "sleep it off," but then Sprecher said that no one was at  
20      her home and that sometimes she went out and yelled in the  
21      street, which caused Burton further concern for Plaintiff's  
22      safety and the safety of others. Burton asked Sprecher to  
23      try to get Plaintiff to calm down, but Sprecher was unable  
24

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25       <sup>3</sup> California Welfare and Institutions Code section  
26      5150(a), discussed below, authorizes a peace officer, among  
27      others, to take a person into custody for up to 72 hours for  
28      assessment and evaluation if there is probable cause to believe  
    that the person, as a result of a mental health disorder, is "a  
    danger to others, or to himself or herself, or gravely disabled."

1 to do so. Burton could not take Plaintiff home and leave  
2 her in that condition.

3  
4 Burton, Hollenbaugh and Sprecher walked Plaintiff down  
5 to Burton's patrol car. Sergeant Mariedth arrived at some  
6 point as the other three were trying to put Plaintiff into  
7 the patrol car. Plaintiff was resisting and pleading with  
8 Sprecher, saying the deputies were going to kill her.  
9 Plaintiff appeared to be unable to control herself.  
10 Sprecher said Plaintiff could not stay at his house.

11  
12 Burton arrested Plaintiff for a violation of California  
13 Penal Code section 148(a)(1). Plaintiff, already  
14 handcuffed, was placed in the patrol car. Burton  
15 transported Plaintiff to the Big Bear jail for booking, but  
16 upon arrival Plaintiff was still agitated and uncooperative.  
17 The Big Bear jail could not accept Plaintiff due to her  
18 behavior and her prior history of an "unusual behavior  
19 classification." The Big Bear jail is not authorized to  
20 accept individuals with this classification. Burton told  
21 Plaintiff he would have to take Plaintiff to the West Valley  
22 Detention Center. Plaintiff then attempted to kick out the  
23 patrol car window, which necessitated placing her in leg  
24 restraints.

25  
26 At the West Valley Detention Center, Burton intended to  
27 book Plaintiff and cite her, but she continued to be  
28 physically resistive and uncooperative and refused to sign

1 the citation, so Burton completed a probable cause  
2 declaration concerning Plaintiff. Burton then left  
3 Plaintiff in the custody of the jail deputies and nurses and  
4 thereafter had no further contact with Plaintiff. Burton  
5 has no personal knowledge concerning Plaintiff's allegations  
6 that she allegedly was placed in a restraint chair, that her  
7 clothes allegedly were removed, that she allegedly was  
8 administered medication or that she allegedly was  
9 transported to ARMC.

10  
11 At the time Burton arrived at the scene of the  
12 incident, he activated his belt recorder. Attached to  
13 Burton's declaration is a CD of the recording, as well as a  
14 transcript which accurately reflects what was captured on  
15 the recording.

16  
17 **B. Declaration of Tom Hollenbaugh**

18  
19 In his Declaration, Defendant Hollenbaugh states:

20  
21 On February 16, 2013, Hollenbaugh responded to a 911  
22 call from a man reporting a domestic disturbance in  
23 Sugarloaf, California. Upon arrival, Hollenbaugh  
24 encountered Defendant Burton at the residence, a small cabin  
25 with a very small front room. Hollenbaugh and Burton  
26 approached the residence and saw Plaintiff standing over  
27 Sprecher, the reporting party, who was seated on a couch.  
28 Plaintiff was arguing with Sprecher. The deputies attempted

1 to interview Plaintiff and Sprecher separately. Burton told  
2 Plaintiff to go outside and speak with Hollenbaugh, but  
3 Plaintiff refused to do so. Plaintiff was smoking a  
4 cigarette and both deputies asked her to put it out because  
5 she was flailing her arms and risked burning herself or the  
6 deputies. The deputies had to tell Plaintiff several times  
7 to put out the cigarette because she ignored their  
8 directives.

9  
10 Plaintiff impeded the investigation of the 911 call by  
11 refusing to allow Burton to speak to Sprecher in private.  
12 Plaintiff ignored Burton's verbal commands to cooperate.  
13 When Burton placed his hand on Plaintiff's shoulder to  
14 direct her outside, she pulled away. Burton then handcuffed  
15 Plaintiff for her own safety to remove her from the  
16 residence and take her outside so she could speak to  
17 Hollenbaugh. Burton told Plaintiff that he was not  
18 arresting her and that he just needed to get her outside so  
19 he could speak to Sprecher. Plaintiff sat on a block wall  
20 while Hollenbaugh attempted to interview her. Hollenbaugh  
21 asked Plaintiff her name, and she said, "None of your damn  
22 business." When Hollenbaugh repeated his request, Plaintiff  
23 said, "None of your Goddamn business, I'm not driving  
24 Asshole." Plaintiff yelled at Hollenbaugh to leave her  
25 alone and began screaming loudly for Sprecher to give her a  
26 ride home. When Hollenbaugh attempted to get Plaintiff's  
27 side of the story, Plaintiff said, "Fuck you." At one point  
28 as Hollenbaugh was trying to speak to Plaintiff, Plaintiff

1 said, "Fucking shut up, fucking shut up you motherfucker  
2 Goddamn fucker." Plaintiff then said to Hollenbaugh in a  
3 whisper tone, "I hate you; I hate you Bitch, I'll kill you."  
4 When Hollenbaugh asked Plaintiff how much she had had to  
5 drink, Plaintiff loudly said, "Fuck you."

6  
7 Plaintiff was continually uncooperative and would not  
8 answer Hollenbaugh's questions. Plaintiff's behavior was  
9 irrational and belligerent, and she became increasingly  
10 paranoid. She began accusing Burton and Hollenbaugh of  
11 trying to kill her. The deputies responded by saying they  
12 were not going to kill Plaintiff or hurt her, but nothing  
13 they said or did calmed her down. Sprecher also was  
14 unsuccessful at calming Plaintiff down. Sprecher vacillated  
15 between wanting to take Plaintiff home and not wanting her  
16 in his car. Sprecher told Plaintiff he did not want her in  
17 his house and wanted her to leave. Sprecher told the  
18 deputies that Plaintiff lived alone and there was no one at  
19 her house to look after her. Sprecher said that, even if he  
20 took Plaintiff home, he would not remain with her. He also  
21 said that, when Plaintiff drank too much, she went out into  
22 the street and yelled.

23  
24 It was dark and very late, and Plaintiff was in no  
25 condition to be left home alone. Plaintiff had refused to  
26 cooperate and had impeded the investigation and the  
27 performance of the deputies' lawful duties. Finally, Burton  
28 arrested Plaintiff for wilfully resisting, interfering and

1       delaying an officer in the performance of his duties.  
2

3               Hollenbaugh followed in his patrol car as Burton drove  
4       Plaintiff to the Big Bear station. The station said that  
5       they could not book Plaintiff there due to her prior history  
6       of unusual behavior and that she would have to be booked at  
7       the West Valley Detention Center. When Burton told  
8       Plaintiff he had to take her to the West Valley Detention  
9       Center, Plaintiff became physically combative and began  
10      kicking at the windows of the patrol car. Hollenbaugh  
11      assisted Burton in placing a restraint on Plaintiff's legs  
12      "so she wouldn't kick out the windows." Burton then left  
13      with Plaintiff.  
14

15              Hollenbaugh did not escort Plaintiff to the West Valley  
16      Detention Center or to ARMC. Hollenbaugh was not present at  
17      the West Valley Detention Center when Plaintiff was taken  
18      there, or at any other time that night or morning.  
19

20              At the time of Hollenbaugh's initial contact with  
21      Plaintiff, Hollenbaugh activated his belt recorder.  
22      Attached to Hollenbaugh's declaration is a CD of the  
23      recording, as well as a transcript which accurately reflects  
24      what was captured on the recording.

25     ///

26     ///

27     ///

28     ///

1       **C. The Belt Recordings**

2  
3       The Court has listened to the CD's of the belt recordings and has  
4 reviewed the transcripts. The recording from Burton's belt recorder  
5 is approximately 21 minutes long, and that from Hollenbaugh's belt  
6 recorder is approximately 10 minutes long. The transcripts accurately  
7 reflect the audio on the recordings. The recordings correlate  
8 substantially with the declarations of Defendants Burton and  
9 Hollenbaugh.

10  
11       The recordings directly contradict Plaintiff's statements in  
12 opposition to the Motion for Summary Judgment in various respects, as  
13 discussed herein. The recordings reveal Plaintiff to have been  
14 abusive, irrational and out of control during the encounter with the  
15 deputies. In tone, Plaintiff alternated between screaming  
16 inappropriately and muttering and wailing unresponsively. In tone,  
17 the deputies remained calm at all times.

18  
19       **1. Burton's Recording**

20  
21       Burton's recording begins with the following exchange between  
22 Plaintiff ("BB") and Sprecher ("JS"):

23  
24       BB:   \_\_ admit it faggot. . . No . . you became upset at me.

25  
26       JS:   You're way better at manipulating \_\_ ...

27  
28       BB:   \_\_ .. why tell him instead of me?



1 JS: No

2  
3 Burton then asked, "What's going on you guys?" Plaintiff said  
4 that Sprecher had beaten her up a few months before and that she had  
5 done nothing wrong. Burton told Plaintiff to go outside so he could  
6 get her story. Plaintiff responded that she was not going to jail.  
7 Burton said, "I'm not saying you're going to jail." Plaintiff  
8 responded, "Fuck you. He's gonna give me a ride home right now."  
9 Burton again asked Plaintiff to step outside so Burton could talk to  
10 Sprecher and Burton's partner could talk to Plaintiff. Burton said he  
11 was giving Plaintiff "one more chance." Plaintiff countered that she  
12 was not going anywhere and that Sprecher had not asked her to leave.  
13 Sprecher said, "I was asking you to leave. I wish you'd have left  
14 sooner."

15  
16 When Burton asked Plaintiff's name, she said she was "okay" and  
17 "fine" and told Sprecher to take her home. Burton said Plaintiff was  
18 "testing [his] patience" and told Plaintiff to come outside and to put  
19 her cigarette out. The officers obtained an ashtray from Sprecher and  
20 repeatedly told Plaintiff to put the cigarette out. Plaintiff said  
21 that she wanted a ride home and that the officers had killed Dorner.  
22 When Plaintiff repeatedly asked Sprecher for a ride home, Sprecher  
23 told her to "chill out" and said it was up to the officers. Plaintiff  
24 said, "Don't arrest me" and Burton responded, "We aren't arresting  
25 you." Burton told Plaintiff she was "freaking out" and Hollenbaugh  
26 told her she was not cooperating. Burton said, "You're freaking out,  
27 I told you to step outside to get your story and you won't even tell  
28 me your name." Hollenbaugh added, "We're trying to figure out what's

1 going on and you won't speak to us." Plaintiff shouted, "I NEED A  
2 RIDE HOME!"

3  
4 Sprecher told the deputies that Plaintiff had had too much to  
5 drink while with a friend, and that, when Plaintiff drank too much,  
6 "she goes like this." Sprecher said, "It's just bi-polar or fucking  
7 schizo I don't know, but it has to do with booze and it wasn't with  
8 me. . . ." Plaintiff said to Hollenbaugh, "None of your Goddamn  
9 business" and "I'm not driving Asshole."

10  
11 Sprecher told Burton where Plaintiff lived. Burton said, "Well,  
12 she's probably gonna be for drunk in public at least." Burton asked  
13 Sprecher, "Did it get physical?" to which Sprecher replied, "Oh Jesus  
14 Christ." Burton said that the deputies could not even talk to  
15 Plaintiff and that Plaintiff was "gonna make us arrest her." Sprecher  
16 said, "She was slapping us and he [Plaintiff's ex-boyfriend Rodger]  
17 was helping me to keep her from slapping me." Sprecher said that  
18 Rodger was Sprecher's roommate and Plaintiff's former boyfriend and  
19 that Rodger had left because "he didn't wanna obviously have the cops  
20 come. . . ."

21  
22 Burton said he was going to help his partner get Plaintiff in the  
23 car. Plaintiff loudly demanded that Sprecher drive her home. Burton  
24 asked Plaintiff what she had drunk that night and whether she had  
25 taken medication. Plaintiff said, "Take these damn things off me he's  
26 giving me a ride home right now please." Burton said Plaintiff was  
27 not listening and Sprecher told her to calm down and listen to the  
28 officers. Burton started to say, "All we're trying to do is - "when

1 Plaintiff interrupted, screaming that the officers had killed Dorner  
2 and she was "not gonna go down like he did." Plaintiff screamed,  
3 "BEFORE THEY KILL ME JONATHAN! GIVE ME A RIDE HOME!"<sup>4</sup> Plaintiff said  
4 the officers had guns and tasers and would kill her.

5  
6 Sprecher said he would take Plaintiff home if she would "shut  
7 up." Plaintiff repeatedly yelled that the officers would kill her.  
8 Hollenbaugh told Plaintiff, "Barbara, we don't wanna hurt you."  
9 Burton said, "We didn't come to hurt you Barbara" and told Plaintiff  
10 she needed to calm down and that all he was trying to do was get her  
11 name. Burton said, "The only reason you are in cuffs is because  
12 you're not cooperating."

13  
14 Plaintiff continued to demand a ride home. When Plaintiff said  
15 she broke no law, Burton said, "It's either gonna be drunk in public  
16 or it's gonna be a 5150." Plaintiff said, "I'm not in public I'm in a  
17 man's house." Sprecher offered to take Plaintiff home so she could  
18 "sleep it off." However, Sprecher said there was no one at  
19 Plaintiff's home but her cats and that, when Plaintiff was like this,  
20 she went out and yelled in the street. Hollenbaugh said, "We can't  
21 leave her at her house by herself like this - "Burton asked Sprecher  
22 to try to "talk some sense into her." Sprecher said he could drive  
23 Plaintiff home, but she would have to "stop with all the noise."  
24 Plaintiff said "they killed Dorner" and would kill her.

25 ///

26 ///

---

27  
28 <sup>4</sup> Capitals original in transcript.

1       Burton asked Plaintiff if she was "okay in the head" or  
2 "suicidal." Plaintiff responded that the officers would kill her.  
3 Burton said, "We are not gonna hurt you," and "[t]he only reason we  
4 hurt people is if they're trying to hurt us." Plaintiff said she and  
5 Sprecher had just broken up recently and that she tried to talk things  
6 out but just wanted a ride home.

7  
8       Sprecher and the officers began to lead Plaintiff down the back  
9 steps. Plaintiff again said the officers had killed Dorner and were  
10 going to kill her and demanded that Sprecher give her a ride home.  
11 Burton told Plaintiff that the deputies were trying to get Plaintiff  
12 to calm down, that Plaintiff had to walk and that the deputies did not  
13 want Plaintiff falling so she should watch her step. Burton asked  
14 Plaintiff for her identification, to which Plaintiff replied, "Damn  
15 it!" Plaintiff continued to protest that the officers had killed  
16 Dorner and would kill her. Plaintiff said she did not want to go to  
17 jail and had broken no law. Burton said the problem was that  
18 Plaintiff was not calming down and that Sprecher would not be driving  
19 her home. Burton said, "If anyone's taking you home, it's us."  
20 Plaintiff cried repeatedly to Sprecher that the officers were taking  
21 her to jail. Burton warned several times that Plaintiff was on ice  
22 and that they did not want her to fall.

23  
24       The deputies tried to get Plaintiff to enter the patrol car.  
25 Mariedth said, "Stop resisting." When Plaintiff claimed that Sprecher  
26 would take her home, Mariedth said, "We're way past that hun, so you  
27 might as well chill." Mariedth said having Sprecher take Plaintiff  
28 home "was not gonna happen." Plaintiff said, "Why? What law am I

1 breaking." Mariedth said, "Uh, you're drunk in public." Plaintiff  
2 said, "I was in his house. I was in his house." Hollenbaugh said,  
3 "But he didn't want you in his house. That's the problem." Plaintiff  
4 resumed begging Sprecher to take her home. Mariedth said, "Not gonna  
5 do you any good Hun." Sprecher said, "You could have been at my house  
6 but you're making too much trouble."

7  
8 Mariedth directed Plaintiff to get into the car. Plaintiff told  
9 Sprecher to come get her out of jail and said, "Wait." Burton twice  
10 told Plaintiff to get into the car. Mariedth said, "Stop resisting or  
11 you're gonna get another charge." Plaintiff said, "My pants are  
12 falling down first of all, please pull my pants up first, you Faggot,  
13 pull my Goddamn pants up." Burton apparently pulled Plaintiff's pants  
14 up. Sprecher said, "Barbara quit resisting, they're gonna hurt you."  
15 Plaintiff told Sprecher, "they'll kill me." Burton again told  
16 Plaintiff to step into the car. Plaintiff cried repeatedly to  
17 Sprecher that the officers would kill her. Hollenbaugh said, "Step  
18 into the car" and Mariedth said, "Stop it." Plaintiff entered the car  
19 and the door closed.

## 20 21 **2. Hollenbaugh's Recording**

22  
23 Hollenbaugh's recording partially overlaps that of Burton.  
24 Hollenbaugh's recording begins later, when Hollenbaugh asked Plaintiff  
25 her name and Plaintiff loudly responded, "None of your damn business."  
26 The recording reflects that Plaintiff loudly repeated that her name  
27 was none of his "Goddamn business" and yelled, "Fuck you." Plaintiff  
28 said "Leave me alone, need a Goddamn ride home!" When Hollenbaugh

1 asked Plaintiff how much she had had to drink, Plaintiff responded,  
2 "None." Hollenbaugh said, "Are you sure about that?" and Plaintiff  
3 countered, "Fuck you!" Hollenbaugh said Plaintiff was not cooperating  
4 or giving her name, to which Plaintiff yelled, "I'm gonna tell you the  
5 whole Goddamn truth real soon bitch so SHUT UP!" When Hollenbaugh  
6 said, "Okay," Plaintiff said, "Fucking shut up" and "Fucking shut up  
7 motherfucker." Plaintiff whispered to Hollenbaugh, "Goddamn fucker I  
8 hate you; I hate you Bitch, I'll kill you." Plaintiff responded to  
9 Hollenbaugh's questions by yelling "FUCK YOU!" and "Okay, shut up then  
10 Bitch!" Plaintiff continually demanded that Sprecher give her a ride  
11 home and said that the deputies had guns and tasers and would kill  
12 her. The deputies asked her to calm down and said that they were not  
13 there to hurt her and that they just wanted to find out who she was.  
14 Burton said he had handcuffed Plaintiff because she was not  
15 cooperating.

16  
17 Plaintiff repeatedly accused the deputies of killing Christopher  
18 Dorner and said she had broken no laws. The deputies both said they  
19 could not leave Plaintiff at her home in her condition and Burton  
20 asked Sprecher to talk some sense into Plaintiff. Plaintiff responded  
21 that the deputies had killed Dorner and repeatedly said the deputies  
22 would kill her. Burton asked whether Plaintiff was "okay in the head"  
23 or suicidal, but, instead of responding to the questions, Plaintiff  
24 kept repeating that the deputies would kill her.

25 ///

26 ///

27 ///

28 ///

1        When Sergeant Mariedth arrived, Hollenbaugh said Plaintiff was  
2 intoxicated or "fifty one forty nine point five."<sup>5</sup> Plaintiff said she  
3 had just broken up with her boyfriend and had come to talk things out  
4 with him but he did not want her any more. Plaintiff told Sprecher  
5 she would not bother him any more and asked him to take her home. As  
6 the group began to walk down from the house, Sprecher said he probably  
7 could take her home. Plaintiff said the officers had killed Dorner  
8 and were going to kill her. Burton told Plaintiff to watch her step  
9 and said they were trying to calm her down. Plaintiff repeatedly  
10 yelled that she had broken no law and wanted Sprecher to take her  
11 home. As the officers guided Plaintiff over icy patches, Plaintiff  
12 wailed repeatedly for Sprecher to take her home. Plaintiff asked what  
13 law she had broken. Mariedth responded, "Uh, you're drunk in public."  
14 Plaintiff said she had been in Sprecher's house. Hollenbaugh  
15 responded, "But he didn't want you in his house. That's the problem."  
16 Sprecher said, "You could have been at my house but you're making too  
17 much trouble."

18  
19        Burton told Plaintiff to step into the car. Mariedth told  
20 Plaintiff to stop resisting "or you're gonna get another charge."  
21 Plaintiff said, "My pants are falling down first of all, please pull  
22 my pants up first, you Faggot, pull my Goddamn pants up." Burton  
23 apparently pulled Plaintiff's pants up. Sprecher said, "Stop  
24

---

25        <sup>5</sup> California Welfare and Institutions Code section  
26 5150.05 governs the determination of probable cause to take a  
27 person into custody pursuant to section 5150. However,  
28 Hollenbaugh's reference to "5149.5" may have been intended to  
communicate to Mariedth that Plaintiff was on the brink of being  
taken into custody pursuant to section 5150.

1 resisting or they're gonna hurt you." Plaintiff said, "They're gonna  
2 kill me." Burton and Hollenbaugh both told Plaintiff to step into the  
3 car.

4  
5 **D. Declaration of Travis Wijnhamer**

6  
7 In his Declaration, Defendant Wijnhamer states:

8  
9 On February 16, 2013, at approximately 9:45 p.m.,  
10 Wijnhamer responded to a 911 call reporting a domestic  
11 disturbance at a residence in Sugarloaf, California. By the  
12 time Wijnhamer arrived, deputies Burton and Hollenbaugh had  
13 handled the call and Plaintiff was already under arrest.  
14 Wijnhamer soon received another call and left the location.  
15 He was not involved in Plaintiff's arrest or the  
16 transportation of Plaintiff to jail.

17  
18 Wijnhamer had no further contact with Plaintiff  
19 regarding the incident(s) and did not transport Plaintiff to  
20 ARMC for a 5150 evaluation or any other purpose.

21  
22 **E. Declaration of Gennifer Livingston**

23  
24 In her Declaration, San Bernardino County Deputy Sheriff Gennifer  
25 Livingston states:

26  
27 Livingston was on duty at the West Valley Detention  
28 center when, close to midnight, Defendant Burton brought



1 Plaintiff for booking on a charge of violating California  
2 Penal Code section 148(a)(1). Jail staff initially were  
3 unable to book Plaintiff because she was uncooperative and  
4 belligerent. Plaintiff cursed and screamed at the staff and  
5 physically refused to cooperate with booking. She appeared  
6 out of control and unable to calm down, and displayed  
7 symptoms of disorganized thoughts and delusional behavior.  
8 She screamed things such as "kill them" and "Dorner kill  
9 them all." Due to her combative behavior, Plaintiff was  
10 placed in a "speciality cell" shortly after midnight. The  
11 cell had large windows through which jail personnel could  
12 continuously observe Plaintiff.

13  
14 In the speciality cell, Plaintiff screamed and banged  
15 on the windows, but refused or was unable to control  
16 herself. This went on for half an hour, as Plaintiff's  
17 blows to the windows became increasingly more violent.  
18 Plaintiff appeared to be under the influence of a controlled  
19 substance and unable to calm down on her own.

20  
21 Jail staff contacted the nurse on duty for assistance.  
22 At approximately 1 a.m., the nurse ordered Plaintiff to be  
23 placed in a restraint chair to prevent Plaintiff from  
24 injuring herself. Plaintiff continued to scream and yell  
25 "kill them."

26  
27 Jail staff contacted the medical professional on duty  
28 at ARMC and described Plaintiff's behavior. The medical

1 professional, a physician's assistant, ordered a "calming  
2 medication" to be given to Plaintiff by injection. The  
3 nurse on duty administered the injection. Despite the  
4 injection, Plaintiff continued screaming, cursing and  
5 yelling threats until approximately 3 a.m. Plaintiff was  
6 offered water, and jail staff exercised her limbs while she  
7 was in the chair.

8  
9 Once Plaintiff calmed down, Plaintiff was removed from  
10 the chair and placed back in the speciality cell. Plaintiff  
11 refused liquids and refused the morning meal at 5:45 a.m.  
12 Plaintiff finally cooperated with the booking process at  
13 approximately 6:30 a.m. However, Plaintiff still did not  
14 appear rational. Plaintiff could not answer health  
15 questions, including whether she was taking any medications.  
16 Jail staff was concerned about Plaintiff's mental health due  
17 to her behavior during the night and her continued paranoid  
18 delusions in the morning. Jail staff members noted from  
19 prior bookings that Plaintiff had a history of mental health  
20 issues and were concerned that Plaintiff would be unable to  
21 care for herself if released from custody. Staff members  
22 believed it necessary to ask a medical and psychiatric  
23 professional to evaluate Plaintiff. Livingston completed an  
24 application for a 72-hour detention for evaluation and  
25 treatment pursuant to California Welfare and Institutions  
26 Code section 5150. Staff then contacted the jail  
27 transportation unit to take Plaintiff to ARMC for the  
28 evaluation. After the transportation deputy escorted

1 Plaintiff from the jail, Livingston had no further contact  
2 with Plaintiff.  
3

4 Livingston does not remember herself or anyone else at  
5 the jail removing Plaintiff's clothing. The only time  
6 clothing is removed from an inmate is when the inmate  
7 displays suicidal behavior or there is a suicide concern.  
8 In such cases, jail staff remove the inmate's clothing and  
9 provide the inmate with a privacy gown. Livingston has  
10 never seen or allowed any inmate to sit naked or be left  
11 naked, and did not do so in this case.  
12

13 **F. Deposition of Dr. Mailan Pham**  
14

15 Dr. Malian Pham testified at deposition as follows:  
16

17 Dr. Pham reviewed the February 17, 2013 section 5150  
18 application concerning Plaintiff. After conducting an  
19 independent evaluation of Plaintiff, Pham and ARMC staff  
20 made the determination to put Plaintiff on the section 5150  
21 hold. Pham assessed Plaintiff as manic, paranoid, hyper-  
22 religious, disorganized, easily agitated and illogical, with  
23 "rapid pressured speech." Plaintiff was suffering from bi-  
24 polar disorder manifesting as psychosis. Pham attempted to  
25 prescribe an antipsychotic medication for Plaintiff. On  
26 February 20 Plaintiff refused Risperdal, an antipsychotic  
27 medication.  
28

///

1 If, at the end of a 72-hour hold, a patient has not  
2 made progress, the patient is placed on a 14-day hold.  
3 Plaintiff was placed on an extended hold and left the  
4 hospital on February 21.

5  
6 **II. Plaintiff's Evidence**

7  
8 Plaintiff relies on her unverified Opposition, a declaration  
9 attached to the Opposition, Plaintiff's unverified Corrected  
10 Opposition, unsworn statements made in responses to Defendants'  
11 Separate Statement of Undisputed Material Facts and Contentions of  
12 Law, Plaintiff's "Corrected/Amended Declaration attached to her  
13 "Submission of Evidence," and exhibits. Despite the fact that some of  
14 Plaintiff's statements are unsworn, the Court will consider the  
15 statements to the extent Plaintiff has shown that the matter contained  
16 therein could be presented in an admissible form at trial. See  
17 Southern California Darts Ass'n v. Zaffina, 762 F.3d 921, 925-26 (9th  
18 Cir. 2014); Fraser v. Goodale, 342 F.3d 1032, 1036-37 (9th Cir. 2003),  
19 cert. denied, 541 U.S. 937 (2004).

20  
21 **A. Plaintiff's Statements**

22  
23 **1. Plaintiff's Unsworn Opposition**

24  
25 Plaintiff's unsworn Opposition is confused and conclusory.  
26 Plaintiff states that she will prove that Defendants' actions  
27 purportedly were "illegal, malicious, immoral, unjust and possible  
28 sexual offenses during the drugging of Plaintiff at West Valley

1 Detention Center. . . ." (Opposition, p. 2). Plaintiff appears to  
2 allege she was the victim of mental taunts, torture, "possibly sexual  
3 abuse" and a "hate crime" based on her gender and race (id., pp. 2-3).  
4 The Third Amended Complaint contains no allegations that Plaintiff was  
5 subjected to any form of sexual abuse during the Sugarloaf incident or  
6 during Plaintiff's stay at the West Valley Detention Center, or that  
7 Plaintiff was the victim of any taunts, torture, gender discrimination  
8 or race discrimination. "A party may not circumvent [Federal Rule of  
9 Civil Procedure] Rule 8's pleading requirements by asserting a new  
10 allegation in response to a motion for summary judgment." Ward v.  
11 Clark County, 285 Fed. App'x 412, 413 (9th Cir. 2008) (district court  
12 did not err by granting summary judgment on claim which plaintiff did  
13 not allege in her pleading but only in her opposition to summary  
14 judgment). Hence, the Court will disregard these unpleaded  
15 allegations.

## 16 17 **2. Plaintiff's Declaration Attached to Her Opposition**

18  
19 In a one-page Declaration attached to her Opposition, Plaintiff  
20 states that, on February 16, 2013, Plaintiff allegedly was invited to  
21 Sprecher's home to talk things over regarding Roger's [sic] attempt to  
22 sever his asserted relationship with Plaintiff. Plaintiff alleges  
23 that, two days before, Roger assertedly had come to Plaintiff's home,  
24 abused Plaintiff verbally and threatened Plaintiff's life. Roger  
25 allegedly told Plaintiff he wanted her back. The discussion on  
26 February 16 allegedly escalated into shouting and pushing, and  
27 Sprecher called 911, assertedly fearing that Plaintiff and Roger would  
28 kill each other.

1 Plaintiff alleges that Defendants arrived and "immediately"  
2 arrested Plaintiff. Plaintiff allegedly feared for her life due to  
3 injuries she purportedly suffered in an alleged encounter with  
4 California Highway Patrol officers and Big Bear sheriffs on  
5 November 30, 2011. Plaintiff mentions that the 2011 incident  
6 supposedly included a "blood letting," a breathalyzer test,  
7 Plaintiff's first lawsuit against law enforcement and the killing of  
8 Christopher Dorner. Plaintiff contends she was "innocent." (These  
9 allegations are not directly material to any issue presented here).  
10

11 In notations made to a partial copy of Defendants' Separate  
12 Statement of Undisputed Material Facts and Conclusions of Law,  
13 Plaintiff states that the deputies purportedly concluded that  
14 Plaintiff was "mentally ill, 'like all Blacks'" (Opposition, p. 8).  
15 Plaintiff denies that she was fighting with Sprecher when the deputies  
16 arrived, denies screaming, and says she was crying for fear of her  
17 life. The audio recordings belie Plaintiff's statements that she was  
18 not arguing with Sprecher when the deputies arrived, as well as her  
19 statements that she was not screaming during the incident.  
20

### 21 **3. Plaintiff's Corrected Opposition**

22

23 In her unsworn Corrected Opposition, Plaintiff contends she has  
24 experienced a recovered memory of alleged sexual abuse at the West  
25 Valley Detention Center (Corrected Opposition, p. 2). Plaintiff  
26 contends she now can recall the face and attire of a man whom  
27 Plaintiff supposedly could identify at a lineup (id.). Purportedly,  
28 Plaintiff now realizes that this man wore a green jacket, such as that

1 worn by jail staff or deputies, and asserts that she was left alone in  
2 a cell with the man while Plaintiff allegedly was naked, sedated by  
3 two injections, passed out and strapped in the "restraint chair" (id.,  
4 pp. 2-3). Plaintiff allegedly does not recall what happened, but  
5 speculates that sexual abuse occurred (id., p. 3).<sup>6</sup> Plaintiff states  
6 an intent to report the alleged incident to the FBI (id., pp. 3-4).  
7 Plaintiff mentions an alleged wrongful death lawsuit against Defendant  
8 Wijnhamer and describes her supposed depression and fear of Big Bear  
9 sheriff's deputies (id., p. 4). Plaintiff accuses Defendants of  
10 attempting to discredit Plaintiff and justify her commitment to a  
11 mental ward every time "Big Bear Law Enforcement" encounters  
12 Plaintiff, supposedly by deeming Plaintiff to be crazy, paranoid,  
13 delusional, "stark raving mad" and/or drunk (id.).  
14

15 Plaintiff alleges that Defendants did not follow proper  
16 procedures concerning the arrest and detention of persons appearing to  
17 suffer from "acute medical conditions, which includes Plaintiff . . ."  
18 (id.). Plaintiff apparently asserts Defendants should have taken  
19 Plaintiff to a hospital rather than to jail (id., pp. 4-5).  
20

21 In an unsworn attachment, Plaintiff purports to respond to  
22 Defendants' Statement of Undisputed Material Facts and Contentions of  
23 Law with commentary and occasional references to anticipated, and  
24 undescribed, future testimony. Plaintiff references alleged audio and  
25 video recordings and documents which are not in evidence, including an  
26 alleged 911 call recording, Wijnhamer's alleged audio recording,  
27

---

28 <sup>6</sup> These new allegations of purported sexual abuse are not  
directly material to the issues presented here.

1 Marriedth's alleged audio recording and undescribed texts, tweets,  
 2 emails, videos and "lists."<sup>7</sup> Plaintiff does not describe the contents  
 3 of this alleged evidence or show its materiality to the issues  
 4 presented here. Plaintiff refers to other alleged matters such as sex  
 5 abuse, other lawsuit(s), a purported FBI investigation and race and  
 6 religious discrimination, all of which are not at issue in this case.

7  
 8 Plaintiff additionally contends she was never asked to leave  
 9 Sprecher's residence but was a "welcomed guest." She claims she could  
 10 not "impede" anything while in handcuffs and under arrest. Plaintiff  
 11 asserts that Burton "yanked" Plaintiff outside, where it was 10  
 12 degrees. She also states that she is "disabled."

13  
 14 **4. Plaintiff's Declaration Attached to Her**  
 15 **"Submission of Evidence"**  
 16

17 Plaintiff's Declaration attached to her "Submission of Evidence,  
 18 etc." appears to concern events other than the incident at issue here.  
 19 Plaintiff complains that officers assertedly have pulled her son over  
 20 repeatedly and that deputies allegedly towed Plaintiff's car  
 21 ("Corrected/Amended Declaration, etc.," attached to "Submission of  
 22 Evidence," p. 1). Plaintiff references two supposed car crashes,  
 23

---

24 <sup>7</sup> Plaintiff alleges she was "too afraid to do discovery"  
 25 (see Corrected Opposition, p. 23). To the extent this allegation  
 26 might be construed as a request for leave to conduct belated  
 27 discovery pursuant to Rule 56(d) of the Federal Rules of Civil  
 28 Procedure, Plaintiff has failed to meet her burden under that  
 Rule "to proffer sufficient facts to show that the evidence  
 sought exists, and that it would prevent summary judgment." See  
Chance v. Pac-Tel Teletrac, Inc., 242 F.3d 1151, 1161 n.6 (9th  
 Cir. 2001) (citation omitted).



1 alleged retaliation, the alleged loss of her driver's license,  
2 Plaintiff's alleged heritage and living situation and Plaintiff's  
3 alleged general dissatisfaction with Sugarloaf (id., pp. 2-3).  
4 Plaintiff alleges that she was "wrongfully arrested because Plaintiff  
5 lives alone" (id., p. 3). Plaintiff asserts that she was "not  
6 homicidal" and "not a threat to anyone" on the night of the incident  
7 (id., p. 4). Plaintiff contends that she supposedly was trying to  
8 reconnect with Sprecher and to avoid getting beaten up by Sprecher's  
9 roommate and Plaintiff's ex-boyfriend Roger (id.). Plaintiff contends  
10 the Defendants never did any investigation, but intended simply to  
11 arrest Plaintiff (id.).  
12

13 According to Plaintiff, Defendant Wijnhamer was dispatched and  
14 arrived first at the scene, followed by Defendant Hollenbaugh and then  
15 Defendant Burton (id.). Plaintiff contends Wijnhamer left after her  
16 arrest. Plaintiff contends Burton showed up because he heard  
17 Plaintiff's name over the dispatch radio. Burton allegedly showed  
18 animosity and hatred for Plaintiff.  
19

20 Plaintiff challenges Defendant Wijnhamer's statement that he was  
21 not involved in Plaintiffs' arrest, citing dispatch records.  
22 Plaintiff contends that Wijnhamer did not follow proper procedures or  
23 "stop the injustice & malicious acts of his co-workers" (p. 5).  
24 Plaintiff contends she told Wijnhamer that no crime had been  
25 committed, that everything was "good" between Plaintiff and Sprecher  
26 and that the "perpetrator," "Roger Tierce," had already left (id.).  
27 Plaintiff contends none of the Defendants conducted an investigation,  
28 "they only wanted me, my name, my cooperation and for me to not object

1 to sexual abuse or deputies pulling plaintiff's pants down during  
2 arrest" (id., pp. 5-6). Plaintiff also speculates that Hollenbaugh  
3 may have pulled Plaintiff's pants down or raped Plaintiff (id., p. 6).  
4

5 **B. Plaintiff's Documentary Evidence**  
6

7 Plaintiff attaches to her Corrected Opposition various documents  
8 which appear to be immaterial to the issues in this case, including  
9 documents purporting to be Plaintiff's birth certificate, driver's  
10 license, a tort claim concerning a different incident, documents  
11 concerning an automobile insurance policy, documents filed in  
12 different lawsuits concerning a different incident or incidents, an  
13 application for social services, and purported medical records, the  
14 relevance of which is unclear and unexplained. Some of the records  
15 appear to concern Plaintiff's mental health issues both before and  
16 after the incident at issue here. However, Plaintiff also submits a  
17 police report allegedly authored by Defendant Burton (see Corrected  
18 Opposition, Ex. 20) which is consistent with Burton's declaration and  
19 Burton's belt recording, both described above.  
20

21 Plaintiff also attaches to her Corrected Opposition an alleged  
22 dispatch log which shows that a domestic disturbance dispatch  
23 assertedly went out at 21:44:34 on February 16, 2013 (Corrected  
24 Opposition, Ex. 16). According to the log, a male caller who was "out  
25 of breathing" reported the disturbance and advised that "he was trying  
26 not to get involved." The dispatch gives a phone number and the name  
27 "Johnathan," and states: "RP'S GF AND FEM SUBJ EX BF AT LOC 415V SUBJS  
28 ARE HBD." A "CLARFY" dispatch then states: "RP ADVS HE IS TRYING TO

1 GET SUBJS TO LEAVE LOC. . . ." The dispatch identifies a "SUBJ" as  
2 Plaintiff.

3  
4 The log records alleged "COMBATIVE/HOBBLING." At 23:07:57 Burton  
5 ("E4540/M764") allegedly reported: "BROWN STARTED TO KICK WINDOW OUT  
6 OF UNIT WHEN I STARTED TO LEAVE BIG BEAR JAIL TO WVDC. BROWN WAS  
7 HOBBLED [sic] AND SEAT BELTED INTO THE BACK OF THE UNIT." A "CLEAR"  
8 entry at 01:54:34 reads:

9  
10 BROWN REFUSED TO OBEY COMMANDS AT THE SCENE AND NEEDED TO BE  
11 PLACED IN A REAR WRIST LOCK TO REMOVER [sic] HER FROM HER  
12 BOYFRIENDS, JONATHAN, HOME. WHEN DEPUTIES ASKED BROWN WHAT  
13 HER NAME WAS SHE REFUSED TO GIVE HER NAME MULT TIMES AND  
14 SAID FUCK YOU. DO [sic] TO BROWN BEING A PRIOR UB SHE  
15 COULDN'T BE BOOKED INTO BB JAIL AND WAS TAKEN TO WVDC.  
16 BROWN TRIED TO KICK OUT THE WINDOW IN THE UNIT SO SHE WAS  
17 HOBBLED [sic]. BROWN WAS COMBATIVE AND WVDC WAS ADVISED.  
18 BROWN REFUSED TO SIGN HER CITATION SO I COMPLETED A PC DEC  
19 FOR HER.

20  
21 Plaintiff also has submitted an "Application for 72-Hour  
22 Detention for Evaluation and Treatment" (Corrected Opposition, Ex.  
23 30). The Application, allegedly prepared by Deputy Livingston and  
24 signed on February 17, 2013, states that during the booking process  
25 Plaintiff reportedly showed signs of multiple personality disorder,  
26 disorganized thoughts and delusional and disoriented behavior. The  
27 Application records that, while in a holding cell, Plaintiff allegedly  
28 screamed uncontrollably and talked to herself, and that she assertedly

1 was verbally assaultive and physically combative with staff, allegedly  
2 yelling things like "Dorner kill them all." The Application indicates  
3 that there assertedly was probable cause to believe that, as a result  
4 of a mental disorder, Plaintiff was a danger to herself and/or others.  
5

6 Plaintiff also has submitted a purported copy of a "Specialty  
7 Cell Log" which records that Plaintiff allegedly was placed in the  
8 cell at "103" on February 17, apparently by Deputy Livingston  
9 (Plaintiff's Ex. 26). The log states, "Privacy Gown Provided." The  
10 box next to the list of "Restraints" is checked. The Shift Supervisor  
11 and Health Services nurse allegedly approved the placement. The log  
12 states that, while in the cell, Plaintiff continuously hit the cell  
13 window violently, refusing commands to stop. The log states that the  
14 nurse placed Plaintiff in the restraint chair for Plaintiff's safety.  
15 The log reflects that, after Plaintiff was placed in the restraint  
16 chair, she yelled, screamed and refused water. At 2:24 a.m.,  
17 Plaintiff reportedly received water and an exercising of her  
18 extremities. Several entries thereafter report that Plaintiff was  
19 still yelling and screaming. At 3:13 a.m., Plaintiff allegedly was  
20 taken out of the restraint chair and moved to a safety cell. At 7:11  
21 a.m., Plaintiff reportedly was transferred to ARMC on a "5150 hold."  
22

23 **C. Limitations on Consideration of Plaintiff's Evidence**  
24

25 In determining whether Plaintiff's evidence raises a genuine  
26 issue of material fact, the Court will not consider unsupported  
27 allegations in Plaintiff's unverified Third Amended Complaint. See  
28 Assoc. Gen. Contractors of America, San Diego Chapter, Inc. v. Calif.

1 Dep't of Transp., 713 F.3d 1187, 1195 (9th Cir. 2013) ("An unverified  
 2 complaint cannot form the basis of evidence considered at summary  
 3 judgment.") (citation omitted). Nor will the Court consider  
 4 conclusory statements or speculation that some future testimony or  
 5 other hypothetical evidence not in the record<sup>8</sup> might conceivably raise  
 6 a genuine issue of material fact. See Aerotec Internat'l, Inc. v.  
 7 Honeywell Internat'l, Inc., 836 F.3d 1171, 1175 (9th Cir. 2016)  
 8 ("anecdotal speculation and supposition are not a substitute for  
 9 evidence" on summary judgment); Loomis v. Cornish, 836 F.3d 991, 997  
 10 (9th Cir. 2016) ("mere allegation and speculation do not create a  
 11 factual dispute for purposes of summary judgment") (citation and  
 12 internal quotations omitted); Columbia Pictures Industries, Inc. v.  
 13 Funq, 710 F.3d 1020, 1043 (9th Cir.), cert. denied, 134 S. Ct. 624  
 14 (2013) ("conclusory allegations, standing alone, are insufficient to  
 15 prevent summary judgment") (citation, internal quotations and footnote  
 16 omitted).

17  
 18 As indicated above, the Court also declines to consider claims  
 19 Plaintiff did not plead in the Third Amended Complaint. See Ward v.  
 20 Clark County, 285 Fed. App'x 412, 413 (9th Cir. 2008). The Court also  
 21 will not consider evidence concerning irrelevant matters. See Arpin  
 22 v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir.  
 23 2001) ("Factual disputes whose resolution would not affect the outcome  
 24

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25 <sup>8</sup> For example, as indicated above, Plaintiff alludes to  
 26 alleged audio recordings of Defendant Wijnhamer and Sergeant  
 27 Mariedth, alleged emails, text messages, notes, declarations, an  
 28 alleged 911 call recording and alleged audio and video recordings  
 of the West Valley Detention Center. None of these items are in  
 the record.

1 of the suit are irrelevant to the consideration of a motion for  
2 summary judgment.") (citation omitted).

3  
4 The Court will consider Plaintiff's various statements submitted  
5 in opposition to the Motion for Summary Judgment to the extent  
6 Plaintiff states "facts that would be admissible evidence" rather than  
7 "only conclusions." See Manley v. Rowley, 847 F.3d 705, 710-11 (9th  
8 Cir. 2017) (citation omitted).

9  
10 However, the audio recordings of the Sugarloaf incident clearly  
11 refute by blatant contradiction many of Plaintiff's assertions, such  
12 as her assertion that she was not screaming during the incident.  
13 "When opposing parties tell two different stories, one of which is  
14 blatantly contradicted by the record, so that no reasonable jury could  
15 believe it, a court should not adopt that version of the facts for the  
16 purposes of ruling on a motion for summary judgment." Scott v.  
17 Harris, 550 U.S. 372, 380 (2007) ("Scott") (on summary judgment,  
18 improper to credit party's version of events which was "so utterly  
19 discredited by the record [a police cruiser video recording] that no  
20 reasonable jury could have believed him"); see also United States v.  
21 Various Slot Machines on Guam, 658 F.2d 697, 701 (9th Cir. 1981)  
22 ("Even on a motion for summary judgment, a court is not compelled to  
23 give weight to an allegation that is uncontrovertedly demonstrated to  
24 be false."). Hence, the Court disregards those portions of  
25 Plaintiff's evidence which are "blatantly contradicted" by the audio  
26 recordings. See Gaddy v. Sherman, 588 Fed. App'x 564 (9th Cir. 2014)  
27 (affirming summary judgment for defendants on prisoner's excessive  
28 force claim where video recording showed prisoner did not comply with

1 prison officials' orders to exit his cell and submit to restraints);  
2 Pierson v. Bassett, 534 Fed. App'x 768, 771 (10th Cir. 2013) (applying  
3 Scott where audiotapes showed plaintiff was argumentative with police,  
4 in spite of his allegations that he was compliant); Nails v. Haid,  
5 2016 WL 4180973, at \*7-9 (C.D. Cal. Apr. 6, 2016) (on summary  
6 judgment, audio recordings, medical records and booking photographs  
7 "blatantly contradicted" the plaintiff's version of events, rendering  
8 the plaintiff's version "so utterly discredited by the record that no  
9 reasonable jury could believe him") (citation, internal quotations and  
10 ellipses and footnote omitted).

## 11 12 DISCUSSION

### 13 14 I. The Detention and Arrest of Plaintiff Were Lawful.

#### 15 16 A. The Detention

17  
18 The Fourth Amendment permits brief investigative stops  
19 . . . when a law enforcement officer has "a particularized  
20 and objective basis for suspecting the particular person  
21 stopped of criminal activity." [citations]. The "reasonable  
22 suspicion" necessary to justify such a stop "is dependent  
23 upon both the content of information possessed by police and  
24 its degree of reliability." [citation]. The standard takes  
25 into account "the totality of the circumstances - the whole  
26 picture." [citation]. Although a mere "'hunch'" does not  
27 create reasonable suspicion, [citation], the level of  
28 suspicion the standard requires is "considerably less than

1 proof of wrongdoing by a preponderance of the evidence," and  
2 "obviously less" than is necessary for probable cause.  
3 [citation].  
4

5 Navarette v. California, 134 S. Ct. 1683, 1687 (2014); see Terry v.  
6 Ohio, 392 U.S. 1, 21-22 (1968).  
7

8 In the present case, the undisputed facts show that the initial  
9 detention of Plaintiff was lawful. At the time Deputies Burton and  
10 Hollenbaugh arrived at the residence, the deputies knew that the  
11 resident (Sprecher) had reported a domestic disturbance involving his  
12 girlfriend and an ex-boyfriend. Sprecher was out of breath and said  
13 he wanted to stay "out of it." Sprecher said the female and male had  
14 been drinking. Upon arrival at Sprecher's residence, through an open  
15 door, the deputies saw Plaintiff standing over Sprecher yelling.  
16 Indeed, in the Declaration attached to her Opposition, Plaintiff  
17 states that the incident at Sprecher's residence had escalated into  
18 shouting and pushing, and that Sprecher had called 911 because he  
19 assertedly feared that Plaintiff and Roger would kill each other.  
20 Sprecher said he had asked Plaintiff to leave, and he wished Plaintiff  
21 would have left. The deputies reasonably could have suspected that  
22 Plaintiff was involved in a domestic assault<sup>9</sup> or that, at a minimum,  
23 Plaintiff's refusal to leave the residence had constituted a

24 ///

25 ///

---

26  
27 <sup>9</sup> See Cal. Penal Code § 240 ("An assault is an unlawful  
28 attempt, coupled with a present ability, to commit a violent  
injury on the person of another.").



1 trespass.<sup>10</sup> The deputies had reasonable suspicion to detain Plaintiff  
2 and to investigate the situation. See Navarette v. California, 134 S.  
3 Ct. at 1688-90 (911 call provided reasonable suspicion for detention,  
4 where caller had eyewitness knowledge of the event, the report was  
5 contemporaneous with reported event, and caller used the 911 system,  
6 which provides safeguards against false reports); see also Muehler v.  
7 Mena, 544 U.S. 93, 101 (2005) ("[E]ven when officers have no basis for  
8 suspecting a particular individual, they may generally ask questions  
9 of that individual . . . and ask to examine the individual's  
10 identification . . .") (citation and internal quotations omitted).  
11

12 The subsequent handcuffing of Plaintiff did not convert the  
13 detention into an arrest. "The totality of the circumstances  
14 determines whether and when an investigatory stop becomes an arrest."  
15 United States v. Edwards, 761 F.3d 977, 981 (9th Cir. 2013) (citation  
16 omitted).  
17

18 In looking at the totality of the circumstances, we  
19 examine two main components of the detention. [citation].  
20 First is "the intrusiveness of the stop, i.e., the  
21 aggressiveness of the police methods and how much the  
22 plaintiff's liberty was restricted." Id. Under this  
23 component, we "review the situation from the perspective of  
24 the person seized," assessing whether "a reasonable innocent  
25 person in these circumstances would . . . have felt free to  
26 leave after brief questioning." [citation]. Second is "the  
27

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28 <sup>10</sup> See Cal. Penal Code § 602(o) (discussed below).

1 justification for the use of such tactics, i.e., whether the  
2 officer had sufficient basis to fear for his safety to  
3 warrant the intrusiveness of the action taken." [citation].  
4 This "inquiry is undertaken . . . from the perspective of  
5 law enforcement," while bearing in mind that "the purpose of  
6 a Terry stop is to allow the officer to pursue his  
7 investigation without fear of violence." [citation]. "The  
8 second inquiry frequently proves determinative." [citation].  
9

10 Id.  
11

12 The audio recordings do not indicate precisely when Burton  
13 handcuffed Plaintiff. However, the declarations of Defendants  
14 indicate that Burton handcuffed Plaintiff after: (1) Plaintiff refused  
15 Burton's order to come outside so that Burton could get her story  
16 separately and Plaintiff said "I'm not going to jail. Fuck you.";  
17 (2) Plaintiff again refused an order to come outside to talk to  
18 Hollenbaugh, used profanity and said "I'm not going nowhere.";  
19 (3) Plaintiff thus impeded the deputies' ability to interview Sprecher  
20 outside of Plaintiff's presence; (4) Plaintiff refused to give Burton  
21 her name; (5) Plaintiff refused several orders to put her cigarette  
22 out and was waving the cigarette around in such a way as to cause the  
23 deputies to fear that Plaintiff would harm herself or the deputies;  
24 (6) Plaintiff made paranoid statements concerning Christopher Dorner  
25 and said the deputies would kill Plaintiff; (7) despite efforts by  
26 Sprecher and the deputies to calm Plaintiff down, Plaintiff became  
27 increasingly agitated; (8) when Burton put his hand on Plaintiff's  
28 shoulder to direct her out of the residence, Plaintiff pulled away;

1 and (9) Plaintiff refused to heed the requests of the deputies and  
2 Sprecher to stop screaming and to calm down. Burton then handcuffed  
3 Plaintiff and removed her from Sprecher's residence to sit on a  
4 retaining wall outside the door. There is no evidence that the  
5 handcuffing was done in rough manner or that the handcuffs were overly  
6 tight or unduly uncomfortable.<sup>11</sup> Plaintiff has not presented any  
7 factual evidence to dispute the foregoing version of events, except to  
8 contend that she was not screaming. This contention must be rejected  
9 as "blatantly contradicted" by the audio recordings. Plaintiff  
10 screamed loudly and repeatedly.

11  
12 The handcuffing of Plaintiff was minimally intrusive under the  
13 circumstances. Plaintiff was screaming, flailing her arms, disobeying  
14 the deputies' orders and acting out of control, giving the deputies  
15 reason to fear for Plaintiff's safety and their own. The officers  
16 repeatedly told Plaintiff that they only wanted her to calm down so  
17 that they could perform their investigation and that they were not  
18 arresting her. In these circumstances, the handcuffing of Plaintiff

---

19  
20 <sup>11</sup> To the extent Plaintiff claims in conclusory fashion  
21 that the deputies subjected her to excessive force in compelling  
22 Plaintiff to leave the residence and in handcuffing Plaintiff,  
23 the undisputed material evidence shows Plaintiff was screaming,  
24 cursing, resisting the deputies' orders to exit the residence and  
25 flailing a lighted cigarette around. The deputies acted  
26 reasonably in placing a hand on Plaintiff's shoulder to direct  
27 her outside and in handcuffing Plaintiff while they proceeded  
28 with their investigation. The evidence, including the audio  
recordings, does not include any contemporaneous complaint by  
Plaintiff regarding any physical touching or handcuffing. See  
MacLellan v. County of Alameda, 2014 WL 793444, at \*5 (N.D. Cal.  
Feb. 26, 2014) (handcuffing did not amount to excessive force  
where injuries were minor and plaintiff did not complain about  
allegedly tight handcuffs at any time during the relevant  
period).

1 did not transform the investigatory detention into an arrest. See  
2 Haynie v. County of Los Angeles, 339 F.3d 1071, 1077 (9th Cir. 2003)  
3 (where suspect became belligerent, yelled and refused to obey orders  
4 to spread feet during pat-down search and to sit down thereafter,  
5 handcuffing and placement of suspect in patrol car for approximately  
6 16-20 minutes did not transform detention into an arrest); United  
7 States v. Taylor, 716 F.2d 701, 709 (9th Cir. 1983) ("the use of  
8 handcuffs, if reasonably necessary, while substantially aggravating  
9 the intrusiveness of an investigatory stop, do[es] not necessarily  
10 convert a Terry stop into an arrest necessitating probable cause.").

11  
12 In sum, as a matter of law, the detention of Plaintiff was  
13 supported by reasonable suspicion, and the handcuffing did not  
14 transform the detention into an arrest.<sup>12</sup> Defendants are entitled to  
15 summary judgment on any challenge to the lawfulness of the detention.

#### 16 17 **B. The Arrest**

18  
19 Under the Fourth Amendment, an arrest is constitutionally  
20 reasonable "when an officer has probable cause to believe a person  
21 committed even a minor crime in his presence. . . ." Virginia v.  
22 Moore, 553 U.S. 164, 171 (2008) (officers did not violate Fourth  
23 Amendment by arresting motorist whom they believed was driving with a  
24 suspended license, although under state law officers should have  
25 issued a summons rather than make an arrest); see also Atwater v. City

26  
27 <sup>12</sup> Moreover, even if the handcuffing did transform the  
28 detention into an arrest, the deputies then had probable cause  
for the arrest. See Discussion section IB, infra.

1 of Lago Vista, 532 U.S. 318, 354 (2001) (Fourth Amendment does not  
2 forbid warrantless arrest for "even a very minor criminal offense"  
3 committed in arresting officer's presence, such seatbelt violation).  
4

5 An officer has probable cause to make a warrantless arrest when  
6 the facts and circumstances within his or her knowledge are sufficient  
7 for a reasonably prudent person to believe that the suspect has  
8 committed a crime. See Rosenbaum v. Washoe County, 663 F.3d 1071,  
9 1076 (9th Cir. 2011). In determining whether there was probable cause  
10 to arrest, an arresting officer's subjective conclusions are  
11 irrelevant. See Devenpeck v. Alford, 543 U.S. 146, 153 (2004); Whren  
12 v. United States, 517 U.S. 806, 812-13 (1996). "Because the probable  
13 cause standard is objective, probable cause supports an arrest so long  
14 as the arresting officers had probable cause to arrest the suspect for  
15 any criminal offense, regardless of their stated reason for the  
16 arrest." Edgerly v. City and County of San Francisco, 599 F.3d 946,  
17 954 (9th Cir. 2010) (citation omitted); see Devenpeck v. Alford, 543  
18 U.S. at 153-56.  
19

20 As discussed in more detail below, as a matter of law, probable  
21 cause existed to arrest Plaintiff for: (1) trespass in violation of  
22 California Penal Code section 602(o); and (2) resisting, delaying or  
23 obstructing an officer in violation of California Penal Code section  
24 148(a). Probable cause also existed to detain Plaintiff pursuant to  
25 California Welfare and Institutions Code section 5150.

26 ///

27 ///

28 ///

1                   **1. Trespass**

2

3           Probable cause existed to arrest Plaintiff for trespass.

4   California Penal Code section 602(o) makes it unlawful to refuse or

5   fail to leave property lawfully occupied by another and not open to

6   the general public, upon the request of: (1) a peace officer acting at

7   the request of the owner, the owner's agent or the person in lawful

8   possession, and upon being informed by the peace officer that he or

9   she is acting at the request of the owner, the owner's agent or the

10   person in lawful possession; or (2) the owner, the owner's agent or

11   the person in lawful possession. The officers had probable cause to

12   believe that Sprecher was in lawful possession of his residence, that

13   he had asked Plaintiff to leave and that Plaintiff had not left. The

14   dispatch log bears an entry indicating that the reporting party ("RP")

15   stated that his girlfriend and her ex-boyfriend were involved in a

16   disturbance and that the reporting party was "TRYING TO GET SUBJS TO

17   LEAVE LOC." Burton stated in his declaration that Sprecher said he

18   had asked Plaintiff to leave and wished she had left sooner.

19   Sprecher's voice on an early portion of Burton's audio recording

20   confirms that Sprecher had asked Plaintiff to leave and Plaintiff

21   instead had remained. Accordingly, the officers had probable cause to

22   arrest Plaintiff for trespass.

23

24                   **2. Resisting, Delaying or Obstructing an Officer**

25

26           Under California Penal Code section 148(a)(1), "[e]very person

27   who willfully resists, delays, or obstructs any . . . peace officer

28   . . . in the discharge or attempt to discharge any duty of his or her

1 office or employment" is subject to a fine, imprisonment or both.  
2 While section 148(a)(1) is "often referred to as a statute prohibiting  
3 'resisting arrest' . . . the statutory prohibition is much broader  
4 than merely resisting arrest." Hooper v. Cty. of San Diego, 629 F.3d  
5 1127, 1130 (9th Cir. 2011). "The legal elements of [the] crime are as  
6 follows: (1) the defendant willfully resisted, delayed, or obstructed  
7 a peace officer, (2) when the officer was engaged in the performance  
8 of his or her duties, and (3) the defendant knew or reasonably should  
9 have known that the other person was a peace officer engaged in the  
10 performance of his or her duties." Yount v. City of Sacramento, 43  
11 Cal. 4th 885, 894-95, 76 Cal. Rptr. 3d 787, 183 P.3d 471 (2008), cert.  
12 denied, 555 U.S. 1099 (2009) (citation and internal quotations  
13 omitted).

14  
15 The deputies' orders to Plaintiff to exit the residence, to  
16 provide her name, to put out her cigarette, and to calm down so they  
17 could investigate were lawful orders issued in aid of investigating an  
18 alleged domestic disturbance and possible trespass. See Smith v. City  
19 of Hemet, 394 F.3d 689, 697 (9th Cir. 2005) (en banc) (where officers  
20 were investigating 911 call alleging domestic abuse, plaintiff's  
21 refusals to obey officers' orders to take his hands out of his  
22 pockets, to put his hands on his head and come off the porch and turn  
23 around each "constituted a violation of § 148(a)(1)) sufficient to  
24 warrant the filing of a criminal charge" and "[e]ach could support a  
25 conviction under that section for obstructing the criminal  
26 investigation") (citations omitted).

27 ///

28 ///

1 As previously indicated, Plaintiff disputes some of the deputies'  
2 descriptions of Plaintiff's behavior, asserting that Plaintiff  
3 purportedly was not screaming during the incident and that she  
4 purportedly was a "welcomed guest" at Sprecher's residence. The  
5 dispatch log submitted by Plaintiff and the audiotapes blatantly  
6 contradict Plaintiff's assertions. The undisputed material evidence  
7 shows that Sprecher had stated that he wanted Plaintiff out of his  
8 residence<sup>13</sup> and that Plaintiff was screaming and cursing at Sprecher  
9 and at the deputies. Because Plaintiff's (unsworn) version of events  
10 is "blatantly contradicted by the record, so that no reasonable jury  
11 could believe it," the Court will not assume the truth of Plaintiff's  
12 contradictory version for the purposes of ruling on the Motion for  
13 Summary Judgment. See Scott v. Harris, 550 U.S. 372, 380 (2007).

14  
15 The record also blatantly contradicts any assertion by Plaintiff  
16 that she simply was verbally challenging the deputies rather than  
17 resisting, delaying or evading them in the performance of their  
18 duties. "[T]he First Amendment protects a significant amount of  
19 verbal criticism and challenge directed at police officers." City of  
20 Houston, Tex. v. Hill, 482 U.S. 451, 461 (1987). In the context of  
21 section 148(a), "the fact that someone verbally challenges a police  
22 officer's authority or is slow to comply with orders does not mean  
23 that he or she has delayed an investigation." In re Chase C., 243  
24 Cal. App. 4th 107, 117, 196 Cal. Rptr. 3d 381 (2016) (citation

25  
26 <sup>13</sup> At some time prior to the 911 call, Plaintiff may well  
27 have been a "welcomed guest" at Sprecher's residence. However,  
28 at the time of Plaintiff's arrest, the deputies plainly had  
probable cause to believe that Plaintiff had remained there after  
she was no longer welcome.



1 omitted); see In re Quiroga, 16 Cal. App. 4th 961, 966, 20 Cal. Rptr.  
2 2d 446 (1993) (minor who initially was uncooperative but eventually  
3 obeyed officer's orders did not violate section 148(a)). "An  
4 individual's temporary refusal to comply with an officer's commands is  
5 not in itself a valid basis for an arrest." Sialoi v. City of San  
6 Diego, 823 F.3d 1223, 1234 (9th Cir. 2016) (citation omitted). "Nor  
7 is an individual's peaceful, verbal challenge to police action a valid  
8 basis." Id. (citation omitted).

9  
10 "However, when a person's words go beyond verbal criticism, into  
11 the realm of interference with an officer's performance of his or her  
12 duty, the First Amendment does not preclude criminal punishment." In  
13 re Chase C., 243 Cal. App. 4th at 117 (citation, internal quotations  
14 and brackets omitted); see In re Muhammed C., 95 Cal. App. 4th 1325,  
15 1329-30, 116 Cal. Rptr. 2d 21 (2002) (minor who approached patrol car  
16 containing minor's arrested associate and spoke to associate,  
17 disobeyed officers' orders to stop and to move away from car, and  
18 raised his hand to officers, violated section 148(a), where minor did  
19 more than simply fail to respond, but rather "affirmatively responded  
20 to the police orders with defiance"); In re Joe R., 12 Cal. App. 3d  
21 80, 83-84, 90 Cal. Rptr. 530 (1970), disapproved on other grounds, In  
22 re Robert G., 31 Cal. 3d 437, 182 Cal. Rptr. 644, 644 P.2d 837 (1982)  
23 (minor who interrupted officer talking with other minors, making it  
24 impossible for officer to conduct investigation, and also pushed  
25 officer, broke away when officer took hold of minor's arm, hit another  
26 officer and used profane language violated section 148(a)); see also  
27 Young v. County of Los Angeles, 655 F.3d 1156, 1170 (9th Cir. 2011)  
28 (motorist's disobedience of officer's order to reenter car following

1 traffic stop was not an act of speech protected by the First Amendment  
2 but rather an act of disobedience justifying arrest for violation of  
3 section 148(a)). Plaintiff's conduct was not limited to verbal  
4 complaints or a temporary refusal to obey orders or to give  
5 identifying information. Rather, the facts indisputably show that  
6 Plaintiff: (1) refused multiple orders to leave the residence so that  
7 the deputies could conduct an investigation by talking with Sprecher  
8 and Plaintiff separately; (2) waved a lighted cigarette; (3) cursed  
9 and screamed at the deputies and accused them of wanting to kill her;  
10 (4) disregarded the deputies' commands to calm down and to provide her  
11 name and identification; (5) pulled away when Defendant Burton put his  
12 hand on Plaintiff's shoulder to guide her out of the residence; and  
13 (6) threatened to kill Defendant Hollenbaugh. The evidence shows as a  
14 matter of law that the deputies had probable cause to arrest Plaintiff  
15 for a violation of section 148(a). See In re J.C., 228 Cal. App. 4th  
16 1394, 1396-1400, 176 Cal. Rptr. 3d 503 (2014) (upholding finding that  
17 minor violated section 148(a), where minor: (a) threatened to punch  
18 school principal and another student; (b) became more irate and began  
19 yelling, screaming, using profanity and pacing; (c) disobeyed police  
20 officer's orders to sit down and calm down; and (d) pulled away and  
21 began to walk away after officer advised that minor was being detained  
22 and attempted to put control hold on minor); People v. Lopez, 119 Cal.  
23 App. 4th 132, 135-36, 13 Cal. Rptr. 3d 921 (2004), cert. denied, 543  
24 U.S. 1158 (2005) (defendant's refusal to identify himself, coupled  
25 with his "belligerent" conduct including attempts to avoid a pat-down  
26 by rolling away to kick officer, violated section 148).

27 ///

28 ///

1                   3.   Section 5150 Detention

2

3           As indicated above, California Welfare and Institutions Code

4 section 5150(a) authorizes a peace officer, among others, to take a

5 person into custody for up to 72 hours for assessment and evaluation

6 if, as a result of a mental health disorder, the person is "a danger

7 to others, or to himself or herself, or gravely disabled." A

8 detention pursuant to section 5150 must be supported by probable

9 cause. Bias v. Moynihan, 508 F.3d 1212, 1220 (9th Cir. 2007); Maag v.

10 Wessler, 960 F.2d 773, 775-76 (9th Cir. 1991); Cal. Welf. & Inst. Code

11 §§ 5150(a), 5050.05. "Probable cause exists under section 5150 if

12 facts are known to the officer that would lead a person of ordinary

13 care and prudence to believe, or to entertain a strong suspicion, that

14 the person detained is mentally disordered and is a danger to himself

15 or herself." Bias v. Moynihan, 508 F.3d at 1220; People v. Triplett,

16 144 Cal. App. 3d 283, 287-88, 192 Cal. Rptr. 537 (1983).

17

18           [Under section 5150, a] peace officer (or other authorized

19 person) . . . is not required to make a medical diagnosis of

20 mental disorder. It is sufficient if the officer, as a lay

21 person, can articulate behavioral symptoms of mental

22 disorder, either temporary or prolonged. An

23 all-encompassing lay definition of mental disorder is

24 difficult if not impossible to formulate. But, generally,

25 mental disorder might be exhibited if a person's thought

26 processes, as evidenced by words or actions or emotional

27 affect, are bizarre or inappropriate for the circumstances.

28   ///

1 People v. Triplett, 144 Cal. App. 3d at 288.

2  
3 Here, the undisputed material facts show that Plaintiff was  
4 screaming and wailing inappropriately, refusing to heed the  
5 exhortations of Sprecher and the deputies to calm down, resisting the  
6 deputies' orders, and demonstrating paranoia by yelling that the  
7 deputies intended to kill her. Plaintiff also threatened to kill  
8 Hollenbaugh. The audio recordings alone manifestly demonstrate that  
9 the deputies had probable cause to believe that Plaintiff was mentally  
10 disordered and a danger to herself and others.

11  
12 In sum, as a matter of law, the deputies had probable cause to  
13 arrest Plaintiff for trespass, probable cause to arrest Plaintiff for  
14 resisting, delaying or obstructing an officer, and probable cause to  
15 detain Plaintiff pursuant to California Welfare and Institutions Code  
16 section 5150. Accordingly, Defendants are entitled to summary  
17 judgment on any challenge to the lawfulness of the arrest.<sup>14</sup>

18 ///

19 ///

20  
21 <sup>14</sup> In light of this determination, the Court need not, and  
22 does not, reach the issues of qualified immunity. The defense of  
23 qualified immunity protects government officials from liability  
24 for civil damages as long as their conduct does not violate  
25 clearly established constitutional or statutory rights of which a  
26 reasonable person would have known. Pearson v. Callahan, 555  
27 U.S. 223, 231 (2009); Harlow v. Fitzgerald, 457 U.S. 800, 818  
28 (1982). "If no constitutional right would have been violated  
were the allegations established, there is no necessity for  
further inquiries concerning qualified immunity." Saucier v.  
Katz, 533 U.S. 194, 201 (2001); see also John v. City of El  
Monte, 515 F.3d 936, 940 (9th Cir. 2007) (on summary judgment,  
because officer had probable cause to arrest plaintiff, "that  
ends the [qualified immunity] inquiry").

1 **II. Plaintiff Has Failed to Produce Evidence From Which a Reasonable**  
2 **Jury Could Conclude that Any of the Defendants Were Materially**  
3 **Involved in the Alleged Incidents at the West Valley Detention**  
4 **Center or the Hospital.**

5  
6 As indicated above, Defendant Burton states in his declaration  
7 that he took Plaintiff to the West Valley Detention Center and, after  
8 completing a probable cause declaration, left Plaintiff in the custody  
9 of jail deputies and nurses and had no further contact with Plaintiff.  
10 Defendant Hollenbaugh states that he did not escort Plaintiff to West  
11 Valley Detention Center or ARMC and was not present at WVDC when  
12 Plaintiff was taken there. Defendant Wijnhamer states that he was not  
13 involved in transporting Plaintiff to the jail, did not transport  
14 Plaintiff to ARMC, and had no further contact with Plaintiff.

15  
16 "An officer's liability under section 1983 is predicated on his  
17 'integral participation' in the alleged violation." Blankenhorn v.  
18 City of Orange, 485 F.3d 463, 481 n.12 (9th Cir. 2007) (citation  
19 omitted). "Integral participation" requires "some fundamental  
20 involvement in the conduct that allegedly caused the violation." Id.  
21 (citation omitted). Here, for the reasons discussed below, Defendants  
22 are entitled to summary judgment on Plaintiff's claims concerning her  
23 alleged treatment at the WVDC and her hospital detention, because  
24 Plaintiff has failed to produce evidence from which a reasonable jury  
25 could conclude that any of the Defendants was an integral participant  
26 in the alleged events at the WVDC or the hospital. See id. (officer  
27 who arrived on scene after arrest was completed and officer who  
28 provided crowd control not liable for constitutional violations in

1 connection with arrest); Hill v. City of Torrance, 2016 WL 3679298, at  
2 \*6 (C.D. Cal. June 9, 2016), adopted, 2016 WL 3658675 (C.D. Cal.  
3 July 7, 2016) (granting summary judgment for police officers who were  
4 not present during arrest or use of excessive force)

5  
6 **A. Defendant Burton**

7  
8 Plaintiff has produced no evidence to show that Defendant Burton  
9 was an integral participant in the alleged events at the WVDC or the  
10 hospital. In her "Corrected/Amended Declaration," Plaintiff alleges  
11 generally that "Defendants" had no search warrant or probable cause to  
12 arrest and detain Plaintiff, to commit her to a mental ward, to rape,  
13 drug and almost kill Plaintiff, to tie her to a restraint chair naked  
14 and drugged all night long and to leave her there so that a man in a  
15 green sheriff's jacket could rape Plaintiff (Corrected/Amended  
16 Declaration, p. 6). Plaintiff's conclusory reference to "Defendants"  
17 is insufficient to show Burton's involvement in these alleged events.  
18 See Columbia Pictures Industries, Inc. v. Fung, 710 F.3d 1020, 1043  
19 (9th Cir.), cert. denied, 134 S. Ct. 624 (2013) (conclusory statements  
20 insufficient to defeat summary judgment).

21  
22 Plaintiff asserts that she "now questions what really happened at  
23 the hands of unnamed perpetrator(s) while incarcerated at West Valley  
24 Detention Center on the night of February 16, 2013, which lead [sic]  
25 to Plaintiff filing this lawsuit. . . ." (Corrected Opposition, p. 2).  
26 Plaintiff contends that, as a result of alleged "recent counseling,"  
27 Plaintiff now recalls that she supposedly was left naked in a cell  
28 with a man in a green jacket (id.). Plaintiff's speculation that

1 unnamed perpetrators, or some unidentified man in a green jacket,  
2 supposedly violated Plaintiff's rights does not satisfy Plaintiff's  
3 burden on summary judgment. See Aerotec Internat'l, Inc. v. Honeywell  
4 Internat'l, Inc., 836 F.3d 1171, 1175 (9th Cir. 2016); Loomis v.  
5 Cornish, 836 F.3d 991, 997 (9th Cir. 2016).

6  
7 Plaintiff also asserts that, when Defendant Burton arrived with  
8 Plaintiff at the WVDC, a "Sergeant Youst" and "multiple deputies," one  
9 of which allegedly was Plaintiff's supposed rapist, purportedly were  
10 standing by "and the whole incident was recorded" (id., p. 8). No  
11 such recording has been submitted to the Court. Plaintiff's vague and  
12 confused allegations and references to nonexistent evidence do not  
13 suffice to withstand summary judgment. See Aerotec Internat'l, Inc.  
14 v. Honeywell Internat'l, Inc., 836 F.3d at 1175; Loomis v. Cornish,  
15 836 F.3d at 997.

16  
17 Plaintiff's responses to Defendants' Separate Statement of  
18 Undisputed Material Facts and Contentions of Law do not reference any  
19 material evidence showing any Defendant was involved in the alleged  
20 events at the WVDC or the decision to take Plaintiff to the ARMC.  
21 Defendants' Undisputed Material Fact No. 32 states: "Deputy Burton  
22 left Brown at West Valley in the custody of the jail deputies and  
23 nurses." Plaintiff purports to dispute this statement, and describes  
24 her purported supporting evidence as follows: "Plaintiff's Corrected  
25 declaration[, ] Gennifer Livingston phone, email, texts, Duty Roster to  
26 name deputies and/or nurses on duty 2/16/13 - 2/17/13, so plaintiff  
27 can identify her rapist while in custody[.] A police line-up to  
28 identify (Plaintiff's) rapist." Defendants' Undisputed Material Fact

1 No. 33 states: "After leaving her at West Valley, Burton had no  
2 further contact with Brown." Plaintiff contends this statement is  
3 "disputed," and describes her purported supporting evidence as  
4 follows: "Plaintiff's Corrected Declaration[, ] Burton's audio Belt  
5 and audio/video dash cam, recordings and phone email texts for 2/16/13  
6 - 2/17/13 Livingston audio, video, phone, email, texts for 2/16/13 -  
7 2/17/13." (Corrected Opposition, p. 18).

8  
9 Plaintiff's Corrected/Amended Declaration does not contain any  
10 statement controverting Burton's evidence that he left Plaintiff at  
11 WVDC in the custody of jail deputies and nurses and had no further  
12 contact with Plaintiff. Burton's belt recording contains no such  
13 controverting evidence. The record does not contain the supposed  
14 "dash cam" recording, other audio or video recordings, phone records,  
15 emails, texts or duty roster to which Plaintiff refers. Accordingly,  
16 Plaintiff has failed to produce evidence from which a reasonable jury  
17 could conclude that Defendant Burton had any "integral participation"  
18 in the alleged events at the WVDC or Plaintiff's hospital detention.

19  
20 **B. Defendant Hollenbaugh**

21  
22 Plaintiff has failed to produce any material evidence to  
23 controvert Defendant Hollenbaugh's statement that he did not escort  
24 Plaintiff to West Valley Detention Center or ARMC and was not present  
25 at WVDC when Plaintiff was taken there. Defendants' Undisputed  
26 Material Fact No. 30, based on Hollenbaugh's declaration, states:  
27 "Deputy Hollenbaugh had no further involvement with Brown after she  
28 left the Big Bear jail with Deputy Burton to be taken to West Valley.



1 Hollenbaugh did not escort Brown to West Valley or to Arrowhead  
2 Regional Medical Center for the 5150 evaluation." Plaintiff purports  
3 to dispute this statement and describes her purported supporting  
4 evidence as follows: "Plaintiff's Corrected Declaration, Burton's  
5 Audio & video recordings, Hollenbaugh's audio & video recordings,  
6 Burton, Hollenbaugh, Wijnhamer, Sgt. Mariedth, Jonathan Sprecher's  
7 [sic] Gennifer Livingston & Marty Zemming phone contact list, emails,  
8 texts, notes, declarations spoken and written for 2/16/13 - 2/25/13 &  
9 10/1/16 - 10/31/16" (Corrected Opposition, p. 7). Neither Plaintiff's  
10 Corrected Declaration nor the belt recordings of Defendants Burton and  
11 Hollenbaugh contain any evidence controverting Hollenbaugh's sworn  
12 statement that he had no involvement with Plaintiff after she left the  
13 Big Bear jail. The record does not contain the other alleged audio or  
14 video recordings, phone contacts lists, emails, texts, notes or  
15 declarations to which Plaintiff refers. Accordingly, Plaintiff has  
16 failed to produce evidence from which a reasonable jury could conclude  
17 that Defendant Hollenbaugh had any "integral participation" in the  
18 alleged events at the WVDC or Plaintiff's hospital detention.

19  
20 **C. Defendant Wijnhamer**

21  
22 Plaintiff has failed to produce any material evidence to  
23 controvert Defendant Wijnhamer's statement that he was not involved in  
24 transporting Plaintiff to the jail or to ARMC, and had no further  
25 contact with Plaintiff regarding the incident after Wijnhamer left on  
26 another call. In her Corrected/Amended Declaration Plaintiff alleges  
27 in conclusory fashion that Wijnhamer violated Plaintiff's rights and  
28 adds that "Plaintiff suffered sexual abuse by a deputy sheriff, his

co/workers or it was possibly him," apparently meaning Wijnhamer (Corrected/Amended Declaration, p. 5). Plaintiff's allegations of alleged sexual abuse are outside the scope of this action, and she has produced no evidence from which a reasonable jury could conclude that Wijnhamer had any "integral participation" in the events at the jail or the ARMC.

For the foregoing reasons, Defendants are entitled to summary judgment on Plaintiff's claims arising out of her confinement at the WVDC and the ARMC.

## RECOMMENDATION

For the reasons set forth above, IT IS RECOMMENDED that the Court issue an Order; (1) approving and accepting this Report and Recommendation; and (2) granting summary judgment in favor of Defendants.

DATED: March 10, 2017.

/s/  
CHARLES F. EICK  
UNITED STATES MAGISTRATE JUDGE

**Additional material  
from this filing is  
available in the  
Clerk's Office.**