UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

KRYSTAL JASMIN, Plaintiff, v. SANTA MONICA POLICE DEPARTMENT, et al., Defendants.	Case No. CV 16-06999-FMO (JDE) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I.

INTRODUCTION

On September 16, 2016, Plaintiff Krystal Jasmin ("Plaintiff"), proceeding pro se and in forma pauperis, filed a civil rights Complaint (Dkt. 1, "Complaint"). On October 19, 2016, the previously-assigned Magistrate Judge dismissed the Complaint with leave to amend. On November 21, 2016, Plaintiff filed a First Amended Complaint ("FAC").

9/6

The case was reassigned to the undersigned Magistrate Judge on March 3, 2017. On September 22, 2017, the Court dismissed the FAC with leave to amend. On October 20, 2017, Plaintiff filed the operative Second Amended Complaint (Dkt. 29, "SAC") naming as defendants: (1) the City of Santa Monica ("the City"); (2) the Santa Monica Police Department ("SMPD"); (3) SMPD Officer Cochran ("Cochran"); (4) SMPD Officer Jauregui ("Jauregui"); (5) Los Angeles County ("the County"); (6) the Los Angeles County Department of Children and Family Services ("DCFS"); (7) Children's Social Worker ("CSW") Jeweutt Bright ("Bright"); (8) CSW Stephanie Rush ("Rush"); (9) CSW Jamie Hein ("Hein"); and (10) DOES 1-10.

On November 13, 2017, the Court found that the SAC failed to state a claim upon which relief can be granted for money damages alleged against the municipal defendants (the City, SMPD, the County, and DCFS) in those entities' respective "individual" capacities and the individual defendants (Cochran, Jauregui, Bright, Rush, and Hein) in their respective official capacities, and further amendment would be futile. Dkt. 30. With respect to the remaining allegations in the SAC, the Court ordered the Defendants who had been properly served and/or who had appeared in the action to file their respective responsive pleadings.

On December 12, 2017, the City, SMPD, Cochran, and Jauregui (collectively, "the Moving Defendants") filed a Motion to Dismiss the SAC. Dkt. 32 ("Motion to Dismiss"). On February 8, 2018, the Court issued an Order to Show Cause re Dismissal for Failure to Serve Defendants with respect to the other named defendants. Dkt. 34 ("OSC"). Plaintiff did not file an opposition to the Motion to Dismiss or respond to the OSC. On April 24, 2018, the Court issued a Report and Recommendation ("R&R") recommending that: (1) the Motion to Dismiss be granted as to all claims against the Moving Defendants and Doe defendants except for Claim Three

97

against Cochran and Jauregui ("Defendants"); and (2) dismissing the County, DCFS, Bright, Rush, and Hein without prejudice. Dkt. 37. On May 8, 2018, Plaintiff filed objections to the R&R, and the Moving Defendants filed a Reply on May 23, 2018. On May 25, 2018, the District Judge issued an Order accepting the R&R and dismissing all claims asserted in the SAC except for Claim Three as to Defendants. Dkt. 42 ("Dismissal Order"). On June 21, 2018, Defendants answered the SAC. On June 22, 2018, the Court issued a Case Management and Scheduling Order, which provided for a discovery cut-off of December 21, 2018. Dkt. 44 at 2.

On December 11, 2018, Plaintiff filed a one-page "Request for Consideration" that stated, in its entirety: "Request to reinstate prior defendants from original pleading based on discovery evidence. ---------- Request to add new defendants. ----------" Dkt. 46 ("Prior Request"). On December 13, 2018, Defendants filed objections to the Prior Request. Dkt. 52. By Order dated December 14, 2018, the Court denied the request. Dkt. 53.

On December 26, 2018, Plaintiff filed a document entitled, "Evidence to Reinstate Defendants and Claims Based on New Discovery Evidence," by which Plaintiff seeks to "re-allege[] all claims from the original pleading against all original defendants based on new discovery evidence" and "add additional defendants after the answers from the defendants and discovery evidence in the defendant's possession are provided for the record." Dkt. 55 ("Second Request") at 2. Plaintiff also attaches various documents to the Second Request and states a "Request to enter new, third amended, complaint," although no proposed amended complaint was attached. See id. at 4-34. On January 7, 2019, Plaintiff filed a "Request to file Third Amended Complaint (Civil Rights) Pursuant to 42 U.S.C. § 1983" (Dkt. 60, "Third Request"), together with a proposed Third Amended Complaint ("TAC"). On January 10, 2019, Defendants filed an Opposition to Plaintiff's Second

98

Request, and on January 11, 2019, Defendants filed Objections to Plaintiff's Third Request. Plaintiff filed a Response on January 17, 2019.

Also, on January 7, 2019, Plaintiff filed a Motion for Summary Judgment based on the proposed TAC. Dkt. 59 ("Pl. MSJ" or "Plaintiff's Motion"). Defendants filed Objections to Plaintiff's Motion on January 11, 2019. On January 28, 2019, Plaintiff filed a declaration in support of her MSJ. Dkt. 72 ("Pl. Decl."). Defendants filed Objections on January 31, 2019.

Meanwhile, on January 22, 2019, Defendants filed a Motion for Summary Judgment (Dkt. 67, "Def. MSJ" or "Defendants' Motion"), together with a Statement of Uncontroverted Facts and Conclusions of Law and supporting declarations. Plaintiff filed an Objection (Dkt. 76, "Pl. Obj.") to Defendants' Motion on January 31, 2019. On February 7, 2019, Defendants filed a Reply.

A hearing on the matter was scheduled for February 21, 2019. Despite notice of the hearing date, courtroom location, and address (see Dkt. 71), Plaintiff did not appear at the hearing. Counsel for Defendants was heard, after which the matter was taken under submission.

For the reasons discussed below, the Court recommends that Plaintiff's Second and Third Requests be denied, Plaintiff's Motion be denied, Defendants' Motion be granted, and the action dismissed with prejudice.

II.

REQUESTS FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Plaintiff requests leave to file the proposed TAC seeking to re-allege all claims from the previous complaint "based on new discovery evidence" and seeks to add a new defendant and claim.[1]

[1] Plaintiff filed a document entitled, "Pro Se Matter Defendants have not responded to requests for production of documents or admissions," on the same date

99

A. Request for Reconsideration

Motions to reconsider are appropriately brought under Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. See Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th Cir. 1991). Under Rule 59(e), reconsideration may be appropriate where the movant demonstrates that there is (1) an intervening change in the controlling law, (2) new evidence not previously available, or (3) a need to correct a clear error of law or to prevent manifest injustice. Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Rule 60(b) provides for reconsideration only upon a showing of: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by the adverse party; (4) a void judgment; (5) satisfaction or discharge of judgment; or (6) any other reason justifying relief. See Fed. R. Civ. P. 60(b); School Dist. No. 1J, 5 F.3d at 1263. Rule 60(b)(6) requires a showing that the grounds justifying relief are extraordinary; mere dissatisfaction with the court's order or belief that the court is wrong in its decision are not adequate grounds for relief. See Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981).

In addition, Central District of California Local Civil Rule ("Local Rule") 7-18 provides, in part:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in

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as the filing of the Second Request. See Dkt. 54. The Court interpreted that motion as a motion to compel discovery, which was denied on January 2, 2019. Dkt. 57. To the extent Plaintiff seeks to compel discovery responses in her Second Request, that request is denied for the same reasons set forth in the Court's January 2, 2019 Order.

100

> the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision.

Plaintiff contends that newly discovery evidence "which by due diligence could not have been discovered before the court's decision due to fraud (collusion, witness tampering and falsification of evidence)" warrants reconsideration of the District Judge's Dismissal Order. See Second Request at 2. Plaintiff identifies various documents that she contends demonstrates false arrest, falsification of evidence, perjury, witness and evidence tampering, and conspiracy. Id. at 3.

None of these documents resolve the deficiencies previously identified, nor does Plaintiff explain how they remedy those deficiencies or contradict the Court's conclusion that leave to amend would be futile. Although Plaintiff contends that these documents provide evidence of false arrest, falsification of evidence, perjury, witness and evidence tampering, and conspiracy, she fails to show how these documents support such contentions. As Defendants note, Plaintiff does not provide any factual or legal basis for her allegations, let alone explain how these exhibits are relevant or material to her request for reconsideration. The Court has reviewed the documents attached to the requests and finds nothing therein warrants reconsideration of the Dismissal Order. Indeed, several defendants were dismissed pursuant to Fed. R. Civ. P. 4(m) and 41(b). Plaintiff has not asserted any enumerated basis for reconsideration of the Dismissal Order as to these defendants. Plaintiff was given multiple warnings of the consequences of failing to properly serve these

101

defendants. She did not timely and properly serve these defendants, show good cause for that failure, or seek additional time in which to do so. Plaintiff does not identify any new material facts or evidence that could not have been previously presented with respect to this issue.

As such, Plaintiff's request for reconsideration should be denied.

B. Leave to Amend to Name New Defendant and Add New Claim

To the extent Plaintiff seeks to amend her operative SAC by adding "new" defendants, it appears the Santa Monica-Malibu Unified School District ("SMMUSD") is the only defendant not previously named in this action. Plaintiff seeks to assert a Fourth Amendment "Invasion of Privacy & Unlawful Search & Seizure of Property" claim based on allegations that SMMUSD employee Cathryn Taylor ("Taylor") initially contacted SMPD and SMMUSD employees "then colluded with SMPD to falsify evidence and cover up the existence of the false arrest and civil rights violations." TAC at 45-46. Plaintiff also seeks to add a First Amendment claim based on "[r]eligious [p]ersecution, [d]efamation of [c]haracter," alleging that she was arrested while wearing "religious garb"; SMPD then "attributed false quasi-religious statements in their report" to Plaintiff; and Hein described Plaintiff's religious practice as "staring at walls" and "talking about God and the devil." Plaintiff contends that this infringed on her right to practice her religion and caused detriment to her family and "the reputation of the plaintiff's character." Id. at 57-58.

Although leave to amend is otherwise generally freely given, in light of the Case Management and Scheduling Order (Dkt. 44, "Scheduling Order"), a request to add a new party or claim at this stage – more than two years after this action was initiated and after the close of discovery, would effectively constitute a request to amend the Scheduling Order, a request required to be supported by good cause. See Fed. R. Civ. P. 16(b)(4). Rule 16(b)'s "good

cause" standard primarily focuses on the diligence of the party seeking the amendment. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). "If the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify should not be granted." Zivkovic S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (citation omitted).

Here, Plaintiff has failed to demonstrate good cause for her untimely motion to amend. Plaintiff's proposed First Amendment claim is based on facts that took place before she filed the original Complaint. Yet, despite multiple opportunities to amend her complaint, she failed to raise this claim until December 2018. Similarly, Plaintiff has not exercised reasonable diligence in naming SMMUSD in this action. Plaintiff has known since at least the filing of her FAC that SMPD was responding to a citizen call reporting that her children were left alone in front of their school and she may have been under the influence of alcohol when she picked them up. FAC ¶ 17. Plaintiff could have discovered this defendant had she diligently pursued discovery in this matter. Indeed, SMMUSD employee Taylor was identified as the caller in the incident report (Second Request, Exh. E), a copy of which Plaintiff apparently had in her possession by January 25, 2015 (id. at 3, Exh. B4-B5). Nevertheless, Plaintiff waited until January 2019, after the close of discovery, to file her request for leave to amend. Plaintiff has not shown good cause.

Based on the foregoing, the Court recommends that Plaintiff's Second and Third Requests be denied.

III.

STANDARD FOR MOTIONS FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56 requires summary judgment to be granted when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.

R. Civ. P. 56(a); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248. A dispute about a material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

The moving party bears the initial burden of establishing the absence of a genuine dispute of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party presents sufficient evidence or argument to support the motion, the burden shifts to the nonmoving party to set forth specific facts showing a genuine triable issue. Id. at 324; see also Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 987 (9th Cir. 2006) (per curiam). The nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex, 477 U.S. at 324 (citation omitted); see also Fed. R. Civ. Proc. 56(c); Anderson, 477 U.S. at 257. Summary judgment cannot be avoided by relying solely on conclusory allegations or mere speculation unsupported by factual data. See Loomis v. Cornish, 836 F.3d 991, 997 (9th Cir. 2016) ("[M]ere allegation and speculation do not create a factual dispute for purposes of summary judgment." (citation omitted)); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). To show a genuine issue exists, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The Court may rely on the nonmoving party to identify specifically the evidence that precludes summary judgment. See Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). Summary judgment is appropriate if

the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322.

If the party moving for summary judgment bears the burden of proof at trial, that party "must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial." C.A.R. Transp. Brokerage Co. v. Darden Restaurants, Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citation omitted). "In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." Id. A moving party bearing the burden of persuasion at trial must show "the evidence is so powerful that no reasonable jury would be free to disbelieve it." Shakur v. Schriro, 514 F.3d 878, 890 (9th Cir. 2008) (citation omitted).

The Court may not weigh evidence or make credibility determinations. Bator v. Hawaii, 39 F.3d 1021, 1026 (9th Cir. 1994). Inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co., 475 U.S. at 587; see also Tolan v. Cotton, 572 U.S. 650, 657 (2014) (per curiam).

Where, as here, "parties submit cross-motions for summary judgment, '[e]ach motion must be considered on its own merits.'" Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two, 249 F.3d 1132, 1136 (9th Cir. 2001) (citation omitted). However, the Court must consider all evidence properly submitted in support of both cross-motions to determine whether the evidence demonstrates the existence of a genuine issue of material fact. Id. at 1136-37.

IV.

PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT

As indicated, Plaintiff's Motion is based on her proposed TAC, including reasserting claims and defendants previously dismissed from this

105

action. As explained, the Court recommends that Plaintiff's request for leave to amend her SAC be denied. As such, it would be inappropriate to rule on her Motion based on the proposed TAC.

Further, Plaintiff failed to comply with Federal Rule of Civil Procedure 56 and Local Rule 56. Fed. R. Civ. P. 56(c)(1) requires that:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Local Rule 56-1 requires a Statement of Uncontroverted Facts, as follows: "A party filing a notice of motion for summary judgment or partial summary judgment shall lodge a proposed 'Statement of Uncontroverted Facts and Conclusions of Law.' Such proposed statement shall set forth the material facts as to which the moving party contends there is no genuine dispute." (Emphasis added).

Plaintiff did not comply or substantially comply with Rule 56 and Local Rule 56-1. Despite being advised of the requirements for filing a motion for summary judgment (see Dkt. 44 at 7-9), Plaintiff did not lodge a proposed Statement of Uncontroverted Facts and Conclusions of Law, setting forth the material facts as to which Plaintiff contends there is no genuine dispute. Rather, Plaintiff's Motion, largely framed as a complaint, includes a section entitled,

"Undisputed Facts." However, the section asserts virtually all of the allegations in her proposed TAC, without distinguishing between the Third Claim – the only remaining claim in this action – and all of the other claims and defendants raised in the proposed TAC. Plaintiff does not identify material facts relevant to the Third Claim and the only evidence submitted with the Motion are photos from a December 2018 incident and a handwritten "index" referencing exhibits purportedly in support of the proposed TAC, none of which were attached. See Pl. MSJ, Exhs. A, B. The only other evidence submitted in support of the Motion was Plaintiff's declaration, which was filed after Defendants filed their Objections to Plaintiff's Motion. She otherwise refers to documents previously filed in this action but does not identify which documents show an absence of a genuine issue of material fact as to Claim Three. Indeed, in addressing this claim in her Motion, Plaintiff merely alleges in conclusory fashion that Defendants (including defendants who are no longer parties in this action) violated her Fourth and Fifth Amendment rights. She cites no evidentiary support, let alone establish that there is no genuine issue of material fact. See Celotex, 477 U.S. at 323 ("a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." (citation omitted)).

Although Plaintiff is proceeding pro se, she is still required to comply with the Federal Rules of Civil Procedure. See Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) ("an ordinary pro se litigant, like other litigants, must comply strictly with the summary judgment rules"). Based on the foregoing, Plaintiff's Motion should be denied.

V.

DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT

A. Undisputed Material Facts in Support of Defendants' Motion

i. Plaintiff Failed to Properly Respond to Defendants' Separate Statement of Uncontroverted Facts

As explained, Defendants filed a Separate Statement of Uncontroverted Facts and Conclusions of Law ("Separate Statement") in support of their Motion. Under Local Rule 56-3,"[i]n determining any motion for summary judgment . . ., the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion."

A party asserting a fact is genuinely disputed must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). The Court may consider other materials in the record not cited by the parties, but is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001). The Court is not required to comb the record to find supporting evidence. Carmen, 237 F.3d at 1031 ("The district court need not examine the entire file for evidence establishing a genuine issue of fact, where the evidence is not set forth in the opposing papers with adequate references so that it could

108

conveniently be found."); see also Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir. 2003) ("[j]udges are not like pigs, hunting for truffles buried in briefs." (alteration in original) (citation omitted)).

Here, rather than submitting a Statement of Genuine Disputes, Plaintiff includes her own "Undisputed Facts" in her Objection. Although Plaintiff appears to dispute various material facts in Defendants' Separate Statement, she has failed to adequately support most of her statements with evidence. She either fails to identify evidence or cites to her proposed TAC generally without identifying any specific paragraph or page. The Court declines to search the entire record for evidence in support of her contentions.

As to Plaintiff's "Undisputed Facts" supported by evidence, the evidence cited either does not support the facts asserted or is insufficient to create a genuine dispute of material fact. For instance, like her Motion, Plaintiff's "Undisputed Facts" includes allegations regarding claims and parties that have been dismissed from this action. Plaintiff also includes allegations regarding an incident that occurred in December 2018, several years after the incident at issue. As to the remaining allegations, the Court will consider those contentions in Plaintiff's Opposition that are supported by specific citations to evidence in the record, as well as the evidence submitted by Plaintiff in support of her Motion. See Fair Hous. Council, 249 F.3d at 1137.

Accordingly, pursuant to Fed. R. Civ. P. 56(e) and Local Rule 56-3, the Court will assume that those material facts that Plaintiff failed to oppose with specific evidence, and which are otherwise admissible and supported by the evidence, are undisputed for purposes of Defendants' Motion.

As a result, the following material facts are undisputed and supported adequately by admissible evidence.

ii. Factual Background

On September 19, 2014 at 7:24 p.m., Cochran and Jauregui were dispatched a radio call of "Check the Status" at Grant Elementary ("Grant"). Cochran Decl. ¶ 3; Jauregui Decl. ¶ 3; Def. Exh. A. The reporting party, Taylor, a program coordinator for CREST afterschool programs, told SMPD dispatch that the mother of three girls did not appear stable when she arrived more than two hours late to pick up her children. Cochran Decl. ¶ 3; Jauregui Decl. ¶ 3; Def. Exh. A.

When Cochran and Jauregui arrived, Cochran spoke with Taylor, who told the officers she observed three young female children sitting alone in front of the school at 6:15 p.m. Cochran Decl. ¶ 4(a); Jauregui ¶ 4(a); Def. Exh. A; Def. Exh C, Taylor Deposition ("Taylor Depo.") at 20:12-20. Taylor stated that she asked the girls who was picking them up and one of them told her that she was trying to call her mother, but she was unable to get a hold of her. Taylor also said that the children told her that they thought there was a movie night, but when they found out there was no movie, they stayed in front of the school to wait for their mother. Cochran Decl. ¶ 4(a); Jauregui Decl. ¶ 4(a); Def. Exh. A; Taylor Depo. at 20:21-21:5. Taylor said that the school was not hosting a movie night that day and the girls were not enrolled in any after school programs offered by the City. Cochran Decl. ¶ 4(b); Jauregui Decl. ¶ 4(b); Def. Exh. A. After escorting the children to a classroom, Taylor tried to reach their mother and the listed emergency contact, Plaintiff's mother, but was unable to reach either. Cochran Decl. ¶ 4(b); Jauregui Decl. ¶ 4(b); Def. Exh. A; Taylor Depo. at 21:6-10, 22:2-23:9. Taylor notified principal Wendy Wax Gellis ("Wax Gellis") that she was unable to reach Plaintiff. Cochran Decl. ¶ 4(b); Jauregui Decl. ¶ 4(b); Wax Gellis Decl. ¶ 4; Def. Exh. A; Taylor Depo. at 23:10-17.

110

Taylor also reported that when Plaintiff finally arrived at the school to pick up her children, she noticed Plaintiff's clothing and hair were disheveled, she was slurring her speech, and her breath and person had a strong odor of alcohol. Cochran Decl. ¶ 4(e); Jauregui Decl. ¶ 4(e); Def. Exh. A; Taylor Depo. at 27:20-22, 28:16-29:18. Taylor was less than three to three and a half feet away from Plaintiff when she smelled alcohol on her breath. Taylor Depo. at 29:9-18. Taylor stated that she was afraid to release the children to Plaintiff because she was intoxicated, so she called SMPD for assistance. Cochran Decl. ¶ 4(e); Jauregui Decl. ¶ 4(e); Def. Exh. A; Taylor Depo. at 30:25-31:17. Although Taylor asked Plaintiff to stay and speak with Wax Gellis, Plaintiff ignored her request and walked with the children westbound on Pearl Street out of sight. Cochran Decl. ¶ 4(e); Jauregui Decl. ¶ 4(e); Def. Exh. A.

Cochran, with Jauregui present, also spoke with Wax Gellis. Wax Gellis told Cochran that after speaking with Taylor, she went through the school district's emergency contact list for the children, but was unable to reach their mother or any family members. Cochran Decl. ¶ 4(c); Jauregui Decl. ¶ 4(c); Wax Gellis Decl. ¶ 4; Taylor Depo. at 22:21-23:9. Wax Gellis also reported that she attempted to locate Plaintiff by driving the children to two separate locations: their listed home address, an apartment complex in Santa Monica; and the Pico Branch Library at Virginia Park, where the children indicated she often waited for them. Plaintiff was not at either location. Cochran Decl. ¶ 4(c); Jauregui Decl. ¶ 4(c); Wax Gellis Decl. ¶ 6. At the apartment complex, a resident told Wax Gellis that she should contact Paula White ("White") as she used to work for the school district and lived in the same apartment complex. Cochran Decl. ¶ 4(c); Jauregui Decl. ¶ 4(c); Wax Gellis Decl. ¶ 6; Def. Exh. A. After she returned to the school, Wax Gellis looked up contact information for White and called her. Wax Decl. ¶ 7; Def. Exh. A.

Cochran also interviewed White, with Jauregui present. White told Cochran that around 7:00 p.m. she received a call from Wax Gellis requesting assistance in locating Plaintiff. She agreed to help and knocked on Plaintiff's front door for approximately ten minutes until Plaintiff opened it. Cochran Decl. ¶ 4(d); Jauregui Decl. ¶ 4(d). When White spoke to Plaintiff, she told Plaintiff that the principal was trying to reach her to pick up her children and Plaintiff responded that the children were supposed to be at school watching a movie. Cochran Decl. ¶ 4(d); Jauregui Decl. ¶ 4(d); Def. Exh. A. White told Cochran that Plaintiff appeared to be unstable, was possibly under the influence of an unknown substance, and believed that Plaintiff had a problem with alcohol and an untreated mental disorder. Cochran Decl. ¶ 4(d); Jauregui Decl. ¶ 4(d). White offered to drive Plaintiff to the school to pick up her children and Plaintiff agreed to go. When they arrived at approximately 7:20 p.m., White told Plaintiff she needed to speak with Wax Gellis, but she refused. Cochran Decl. ¶ 4(d); Jauregui Decl. ¶ 4(d); Def. Exh. A.

After taking the witnesses' statements, Cochran and Jauregui believed that they were investigating a possible child endangerment case involving the three children and asked for a supervisor and assisting unit to meet them at Plaintiff's apartment complex. Cochran Decl. ¶ 5; Jauregui Decl. ¶ 5. Sergeant Jeffrey Glaser ("Glaser") and Officers Garcia and Diaz responded to the location to assist. Glaser Decl. ¶ 3; Cochran Decl. ¶ 5; Jauregui Decl. ¶ 5. Cochran and Jauregui briefed Glaser regarding the dispatched radio call and their investigation and he concurred that they were investigating a possible child endangerment case involving the three children. Glaser Decl. ¶¶ 4-5.

At approximately 8:10 p.m., Cochran, with Jauregui and Glaser present, knocked on Plaintiff's apartment unit, but no one was home. A short time later, they observed a woman with three young girls walk through the back

gate of the apartment complex and asked if her name was Krystal Jasmin. She responded, "Yes." Cochran Decl. ¶ 6; Jauregui Decl. ¶ 6; Glaser Decl. ¶ 6; Def. Exh. A. Cochran, with Jauregui and Glaser present, asked Plaintiff if she could speak with her and Plaintiff said, "Why? Am I being detained?" Plaintiff was told that SMPD received a call from her children's school because they were concerned about her and the welfare of her children. Plaintiff became agitated and told the officers that the children were at the school watching a movie. Cochran Decl. ¶ 6; Jauregui Decl. ¶ 6; Glaser Decl. ¶ 6; Def. Exh. A.

Cochran, Jauregui, and Glaser noticed that Plaintiff's hair and clothing were disheveled, she kept raising and lowering the volume of her voice, slurred her words, and talked over Cochran. Cochran Decl. ¶ 6; Jauregui Decl. ¶ 6; Glaser Decl. ¶ 6; Def. Exh. A. They also detected a strong odor of alcohol from her breath and person and her eyes were bloodshot and watery. Cochran Decl. ¶ 6; Jauregui Decl. ¶ 8; Glaser Decl. ¶ 9. Cochran told Plaintiff that she was being detained for public intoxication and asked her three times to step away from the children so they could speak to each of them individually and she said, "No." Plaintiff was told she would be able to watch them from the courtyard, but they needed to speak with her alone, but Plaintiff refused to follow the instructions and at one point, turned and told her children not to talk to the officers. Cochran Decl. ¶ 7; Jauregui Decl. ¶ 7; Glaser Decl. ¶ 7; Def. Exh. A.

At this time, Jauregui, with Cochran and Glaser present, attempted to speak with Plaintiff and explained to her they needed to talk to her and the children to check on their welfare. Cochran Decl. ¶ 8; Jauregui Decl. ¶ 8; Glaser Decl. ¶8; Def. Exh. A. Plaintiff told the officers that she did not believe they had a right to detain her and asked to speak with a supervisor. Cochran Decl. ¶ 8; Jauregui Decl. ¶ 8; Glaser Decl. ¶ 8; Def. Exh. A. Glaser then spoke

with Plaintiff and explained to her that he was a supervisor, and they needed to interview her and the children in order to complete their investigation. Plaintiff spoke over Glaser and kept repeating that she had not committed a crime, so she should not be detained. Cochran Decl. ¶ 9; Jauregui Decl. ¶ 9; Glaser Decl. ¶ 9; Def. Exh. A. Cochran asked Plaintiff two more times to walk over to the other end of the courtyard so they could speak with her privately about the incident at the school, but she refused. Cochran Decl. ¶ 10; Jauregui Decl. ¶ 10; Glaser Decl. ¶ 10; Def. Exh. A.

Because Plaintiff was impeding the child endangerment investigation and was intoxicated in public, Cochran placed Plaintiff under arrest for Cal. Penal Code § 148(a)(1) (willfully resisting a peace officer) and Cal. Penal Code § 647(f) (public intoxication). Cochran Decl. ¶ 10; Jauregui Decl. ¶ 10; Glaser Decl. ¶ 10; Def. Exh. A. The officers also believed that based on the witness statements and their own observations of Plaintiff's state of intoxication, she was endangering the health of her children and Cochran also charged her with a violation of Cal. Penal Code § 273a(b) (willful child endangerment). Cochran Decl. ¶ 11; Jauregui Decl. ¶ 11; Glaser Decl. ¶ 11; Def. Exh. A.

B. Defendants Had Probable Cause to Arrest Plaintiff

Claim Three alleges Fourth and Fifth Amendment violations based upon "Unlawful/False Arrest and Imprisonment without Probable Cause/Assault and Battery." SAC ¶ 178. Plaintiff alleges she was arrested under "false pretenses" for the crime of public intoxication, but "[t]he criteria of the crime did not conform to the encounter, and the actions witnessed by police officers as stated in their report do not suggest there was a lawful cause to place the plaintiff under arrest for said crime." Id. ¶ 182. She alleges she was arrested even though she committed no crime and asserts she was arrested without a warrant or probable cause. Id. ¶ 152, 180.

114

Section 1983 creates a cause of action against any person who, acting under color of state law, abridges rights established by the Constitution or laws of the United States. See Henderson v. City of Simi Valley, 305 F.3d 1052, 1056 (9th Cir. 2002). The statute "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred . . . ." Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979). "[A] claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth Amendment, provided the arrest was without probable cause or other justification." Dubner v. City & Cty. of S.F., 266 F.3d 959, 964 (9th Cir. 2001). A claim for false imprisonment does not ordinarily state a claim under § 1983 absent a cognizable claim for wrongful arrest. See Baker, 443 U.S. at 142-45.

"Probable cause to arrest or detain is an absolute defense to any claim under § 1983 against police officers for wrongful arrest or false imprisonment, as the lack of probable cause is a necessary element of each." Lacy v. Cty. of Maricopa, 631 F. Supp. 2d 1183, 1193 (D. Ariz. 2008). "'[P]robable cause' to justify an arrest means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." United States v. Johnson, 913 F.3d 793, 801 (9th Cir. 2019) (citation omitted); Barry v. Fowler, 902 F.2d 770, 772 (9th Cir. 1990) ("Probable cause for a warrantless arrest arises when the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person to believe 'that the suspect has committed, is committing, or is about to commit an offense.'" (citation omitted)). "This standard is met when there is a 'fair probability' that a crime has been committed." Johnson, 913 F.3d at 801 (citation omitted). Probable cause "is not a high bar." District of Columbia v. Wesby, 583 U.S. –, 138 S. Ct. 577, 586 (2018) (citation omitted).

115

"To determine whether an officer had probable cause for an arrest, 'we examine the events leading up to the arrest, and then decide "whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to" probable cause.'" Wesby, 138 S. Ct. at 586 (citation omitted). "As long as the officers had some reasonable basis to believe [the suspect] had committed a crime, the arrest is justified as being [ ] based on probable cause. Probable cause need only exist as to any offense that could be charged under the circumstances." Blankenhorn v. City of Orange, 485 F.3d 463, 473 (9th Cir. 2007) (second alteration in original) (citation omitted).

The Ninth Circuit "has held that '[i]n establishing probable cause, officers may not solely rely on the claim of a citizen witness that [s]he was a victim of a crime, but must independently investigate the basis of the witness' knowledge or interview other witnesses.'" Hopkins v. Bonvicino, 573 F.3d 752, 767 (9th Cir. 2009) (alteration in original) (citations omitted). However, a citizen report combined with an appropriate further investigation can provide probable cause. See Fuller v. M.G. Jewelry, 950 F.2d 1437, 1444 (9th Cir. 1991).

Defendants argue that they had probable cause to arrest Plaintiff for violation of Cal. Penal Code §§ 647(f), 148(a)(1), and 273a(b). Def. MSJ at 6-7. Defendants further maintain that summary judgment should be granted if the Court finds that Defendants arrested Plaintiff with probable cause to believe she committed any crime, as it is not necessary for purposes of defeating an unlawful arrest claim to demonstrate probable cause with respect to all three crimes. Id. at 7-8. Alternatively, Defendants maintain that there are no triable issues of material fact regarding whether their actions are entitled to qualified immunity. Id. at 17.

Viewing the evidence in the light most favorable to Plaintiff, the undisputed evidence shows Cochran and Jauregui had probable cause to arrest

116

Plaintiff for public intoxication under Cal. Penal Code § 647(f). Public intoxication constituting misdemeanor disorderly conduct occurs where "the arrestee is (1) intoxicated (2) in a public place and either (3) is unable to exercise care for his own safety or the safety of others or (4) interferes with or obstructs or prevents the free use of any street, sidewalk or public way." Washburn v. Fagan, 331 F. App'x 490, 492 (9th Cir. 2009) (quoting People v. Lively, 10 Cal. App. 4th 1364, 1368-69 (1992)). Cochran and Jauregui responded to a radio dispatch call in which the reporting party stated that Plaintiff did not appear stable when she arrived more than two hours late to pick up her children from school. The officers interviewed witnesses, two of which reported that Plaintiff appeared to be under the influence of an unknown substance. Taylor reported that when Plaintiff arrived to pick up her children from school, her clothing and hair were disheveled, she was slurring her speech, and there was a strong odor of alcohol on Plaintiff's breath and person. White reported that Plaintiff appeared unstable and believed that Plaintiff had a problem with alcohol. After refusing to speak with Wax Gellis, Plaintiff left the school with the children, walking on Pearl Street. Law enforcement witnessed Plaintiff arriving home and asked to speak with her. They noted a strong odor of alcohol from Plaintiff's breath and person, her eyes were bloodshot and watery, her hair and clothing were disheveled, and she was slurring her words.

Plaintiff does not dispute that: the officers responded to a report that she was unstable; witnesses reported that she appeared to be under the influence of an unknown substance; or she spoke with officers on the evening of September 19, 2014. Plaintiff claims, however, that Defendants falsely accused her of public intoxication and obstructing/resisting arrest, and Cochran and Jauregui falsified the arrest reports. Pl. Obj. at 7. Plaintiff has not set forth any evidence, beyond conclusory allegations, to contradict the incident report in any material

117

respect or the testimony of witnesses and the officers that Plaintiff appeared intoxicated. Although she otherwise claims in the SAC and Objection that she was not intoxicated (SAC ¶ 43; Pl. Obj. at 17), she does not submit a declaration attesting to this and neither her SAC nor Objections was verified. Cochran, Jauregui, and Glaser all attest that Plaintiff admitted that she had been drinking alcohol when they spoke with her on September 19, which also was noted in the Probable Cause Determination attached to Plaintiff's proposed TAC. Cochran Decl. ¶ 8; Jauregui Decl. ¶ 8; Glaser Decl. ¶ 8; Proposed TAC, Exh. A2. Plaintiff's conclusory allegations, without more, are insufficient to raise a genuine dispute of material fact. See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 922 (9th Cir. 2001).

Additionally, whether Plaintiff was, in fact, intoxicated, and whether she was later "absolved of any wrongdoing" (Pl. Obj. at 4, 7) do not change the fact that Defendants had probable cause at the time of arrest to believe a crime had been committed. Khachatourian v. Hacienda La Puente United Sch. Dist., 2012 WL 12877986, at *13 (C.D. Cal. Jan. 24, 2012). "The validity of the arrest does not depend on whether the suspect actually committed a crime; the mere fact that the suspect is later acquitted of the offense for which he is arrested is irrelevant to the validity of the arrest." Michigan v. DeFillippo, 443 U.S. 31, 36 (1979).

Plaintiff also argues Defendants refused to give her a breathalyzer test. Pl. Obj. at 9, 17. The Court finds this argument unpersuasive. First, "[u]nlike statutes that make it an offense to have a certain amount of alcohol in the blood while driving, the statute prohibiting public intoxication references the ability of a person to care for themselves or others, not to any particular amount of alcohol in the blood." Amezcua v. City of Fresno, 2008 WL 5329934, at *7 (E.D. Cal. Dec. 19, 2008). Second, once probable cause to arrest someone is established, a law enforcement officer is not "required by the

118

Constitution to investigate independently every claim of innocence." Broam v. Bogan, 320 F.3d 1023, 1032 (9th Cir. 2003); see also Ricciuti v. New York City Transit Auth., 124 F.3d 123, 128 (2d Cir. 1997) ("Once a police officer has a reasonable basis for believing there is probable cause, he is not required to explore and eliminate every theoretically plausible claim of innocence before making an arrest."). Based upon their own observations and the reported observations of multiple witnesses, Defendants had probable cause to conclude that Plaintiff was intoxicated.

Plaintiff further argues that she was not intoxicated in public and Defendants did not "find" her in a public place. Pl. Obj. at 17, 25. Defendants need not show that the crime was committed in their presence. As explained, probable cause "to justify an arrest means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Johnson, 913 F.3d at 801 (emphasis added) (citation omitted). Here, the undisputed evidence shows that the officers had probable cause to believe that Plaintiff was intoxicated in public areas: both a public school and public streets. As noted, the officers were responding to a citizen report that Plaintiff did not appear stable when she picked up her children from school. The officers interviewed the reporting party, Taylor, who reported that when Plaintiff arrived to pick up her children, her clothing and hair were disheveled, she was slurring her speech, and Taylor noticed a strong odor of alcohol on Plaintiff's breath and person. She then ignored Taylor's request to speak to the principal, picked up the children, and walked westbound on Pearl Street. There is no dispute that public schools and streets are "public places" within the meaning of Cal. Penal Code § 647(f). See People v. Belanger, 243 Cal. App. 2d 654, 657 (1966) (public streets, highways, and sidewalks are public places); In re Miguel H.,

119

180 Cal. App. 4th 1429, 1436 (2010) (public schools were public places for purposes of a statute pertaining to defacement of property). As such, Defendants had probable cause to believe that Plaintiff had committed the offense of public intoxication.

To the extent Plaintiff contends that a warrant was required because she was on private property at the time of arrest (see Pl. Obj. at 5, 11-12), the Ninth Circuit has previously explained that the common areas of an apartment building, as with the threshold of one's dwelling, is a public place for purposes of the Fourth Amendment and as such, a warrantless arrest is proper. See United States v. Calhoun, 542 F.2d 1094, 1100 (9th Cir. 1976) (apartment hallway); see also United States v. Nohara, 3 F.3d 1239, 1241-42 (9th Cir. 1993) (no reasonable expectation of privacy in an apartment building hallway or other common area). The undisputed evidence establishes that Plaintiff was arrested in the common area of her apartment complex. No warrant was required.

Accordingly, the undisputed evidence establishes that, based on the totality of circumstances, including their own observations of Plaintiff and the reports of witnesses, Defendants had probable cause to arrest Plaintiff for violation of Cal. Penal Code § 247(f) and, therefore, Defendants are entitled to summary judgment.

C. Defendants Are Entitled to Qualified Immunity

Defendants alternatively argue that they are entitled to qualified immunity. Def. MSJ at 12-17.

> The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity balances two important interests–the need to hold public officials

120

> accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.

Pearson v. Callahan, 555 U.S. 223, 231 (2009) (citations and quotations marks omitted). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). In determining whether a defendant is entitled to qualified immunity, the court conducts a two-step test: "(1) whether a public official has violated a plaintiff's constitutionally protected right; and (2) whether the particular right that the official has violated was clearly established at the time of the violation." Shafer v. Cty. of Santa Barbara, 868 F.3d 1110, 1115 (9th Cir. 2017). A right is clearly established only if "it would have been clear to a reasonable officer that the alleged conduct 'was unlawful in the situation he confronted.'" Ziglar v. Abbasi, 582 U.S. –, 137 S. Ct. 1843, 1867 (2017) (citation omitted). The Court has clarified that judges of the lower courts "should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Pearson, 555 U.S. at 236.

Here, as noted above, the Court finds that probable cause existed to arrest Plaintiff, so no violation occurred. However, even assuming *arguendo* that the facts known to the arresting officers did not rise to the level of probable cause, the totality of the undisputed facts here, as discussed above, support a finding of qualified immunity because "a reasonable officer could have believed that probable cause existed to arrest [Plaintiff]." Hunter v. Bryant, 502 U.S. 224, 228 (1991) (per curiam); see also Rosenbaum v. Washoe Cty., 663 F.3d 1071, 1076 (9th Cir. 2011) (per curiam) ("whether it is reasonably arguable that there was probable cause for arrest–that is, whether reasonable officers could disagree as to the legality of the arrest such that the arresting

121

officer is entitled to qualified immunity"); Peng v. Mei Chin Penghu, 335 F.3d 970, 980 (9th Cir. 2003). The Court has reviewed the materials filed in connection with both Motions and finds that Defendants acted reasonably and with due care.

Although the Court finds Plaintiff's arrest was supported by probable cause and thus, was not a constitutional violation that could support a Section 1983 claim, even assuming that the arrest was not supported by probable cause, the Court finds that Defendants are entitled to qualified immunity.[2]

VI.

RECOMMENDATION

IT THEREFORE IS RECOMMENDED that the District Judge issue an Order: (1) approving and accepting this Report and Recommendation; (2) denying Plaintiff's Second and Third Requests; (3) denying Plaintiff's Motion for Summary Judgment; (4) granting Defendants' Motion for Summary Judgment; and (5) directing that Judgment be entered dismissing this action.

Dated: February 21, 2019

JOHN D. EARLY
United States Magistrate Judge

[2] In light of the undisputed facts that Cochran and Jauregui had probable cause to arrest Plaintiff for public intoxication and they are entitled to qualified immunity, the Court need not address the remaining charges against Plaintiff.

122