

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEP 20 2021

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

ADA MARIA BENSON, M.D.,

Plaintiff-Appellant,

v.

HEMET POLICE DEPARTMENT,

Defendant-Appellee.

No. 21-55802

D.C. No.
5:20-cv-02230-DMG-SHK
Central District of California,
Riverside

ORDER

Before: HAWKINS, WATFORD, and LEE, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the district court has not issued any orders that are final or appealable. *See* 28 U.S.C. § 1291; *In re San Vicente Med. Partners Ltd.*, 865 F.2d 1128, 1131 (9th Cir. 1989) (order) (magistrate judge order not final or appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

To the extent that appellant requests relief by way of a petition for writ of mandamus, the request is denied because appellant has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977).

DISMISSED in part; DENIED in part.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10
11 ADA MARIA BENSON, Case No. 5:20-cv-02230-DMG-SHK
12 Plaintiff,
13 v.
14 ORDER DISMISSING COMPLAINT
15 HEMET POLICE DEPARTMENT, WITH LEAVE TO AMEND
Defendant.

17 Plaintiff Ada Maria Benson (“Plaintiff”), proceeding pro se and in forma
18 pauperis (“IFP”), filed a Complaint (“Complaint” or “Compl.”), under 42 U.S.C.
19 § 1983 (“§ 1983”), naming the Hemet Police Department (“Defendant”) as the
20 sole defendant. Electronic Case Filing Number (“ECF No.”) 1, Compl. As
21 discussed below, the Court finds that the Complaint is subject to dismissal, but
22 grants Plaintiff leave to amend in accordance with the instructions in Section IV of
23 this Order.

I. BACKGROUND

25 On October 23, 2020, Plaintiff filed her Complaint seeking damages for
26 alleged violations of their constitutional rights by Defendant when Plaintiff was
27 arrested by what appears to be one of Defendant's officers. ECF No. 1, Compl at 6,

1 9. That same day, Plaintiff also filed an application to proceed IFP. ECF No. 2, IFP
2 Appl. The Court granted Plaintiff's IFP request. ECF No. 4, Order.

3 **A. Factual Background**

4 Plaintiff's Complaint appears to stem from an arrest and impound of her
5 vehicle (the "Incident"). In her Complaint, Plaintiff alleges that, on the morning of
6 September 9, 2020, she was "locked inside [her] vehicle . . . undergoing seizures."
7 ECF No. 1, Compl. at 6. Plaintiff states that "[she] had safely parked" her vehicle
8 when "Cheyne Nicot [("Nicot")] appeared at the driver's window of [her] van,
9 forcing the door open [and] dragging [Plaintiff] violently out of [her] vehicle[.]"¹ Id.
10 at 6, 8. Plaintiff notes that there were two officers at the scene—Nicot and an
11 Officer Orlando—but Officer Orlando "remained with [Plaintiff's] vehicle while
12 [Plaintiff] was being abducted." Id. at 8. Plaintiff also appears to allege that Nicot
13 did the following:

14 • "forc[ed] [Plaintiff's] face, neck towards the glass window of the
15 driver's door";
16 • "press[ed] with his body forcefully [on] [Plaintiff's] body";
17 • "handcuff[ed] [Plaintiff] tight to the point of pain while [Nicot] pulled
18 and twisted [Plaintiff's] right arm";
19 • "pulled [Plaintiff] and pushed [Plaintiff] towards the police patrol
20 [vehicle] parked behind [Plaintiff's] vehicle";
21 • "forced [Plaintiff] inside the back of the Hemet Police Patrol
22 [vehicle]"; and
23 • "abduct[ed] [Plaintiff] for more than 9 hours inside a locked room at
24 the Hemet Police Department[.]"

25 Id.

26
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¹ The Court notes that Plaintiff did not name "Cheyne Nicot" as a defendant or clarify whether
28 Nicot is an officer of Defendant. However, for the purpose of addressing Plaintiff's Complaint,
the Court will assume Nicot is an officer of the Defendant.

1 Additionally, Plaintiff alleges, generally without indicating which person did
2 what act, the following:

3 • “[i]llegal searching and impounding of [Plaintiff’s] vehicle[,]” which
4 resulted in a seizure of Plaintiff’s personal belongings, including her
5 medication;

6 • “forcing [Plaintiff] to walk without shoes and without medication in a
7 locked room”; and

8 • Placing “libel . . . in the detention report”; and

9 • “alienat[ing] [Plaintiff] for long hours and no access to medication.”

10 Id.

11 As a result of the Incident, Plaintiff claims that there was damage to both
12 herself and her vehicle. Id.

13 Finally, Plaintiff appears to allege that Defendant “carjack[ed]” her vehicle
14 on October 20, 2020 and in August 2018. Id. Plaintiff also appears to allege that
15 “Gatekeepers’ Security Guards had abused and threatened [her] with arrest.”² Id.

16 **B. Plaintiff’s Claims**

17 In her Complaint, Plaintiff alleges that Defendant violated her civil rights
18 under the Fourth, Thirteenth, and Fourteenth Amendment of the United States
19 Constitution. Id. at 3. Plaintiff also lists several of the following statutes at issue in
20 this case as well additional statutes in a Criminal Complaint (Form AO 91), which
21 are also included in the list below:

22 • 18 U.S.C. § 242;

23 • 28 U.S.C. § 4101;³

24 • 34 U.S.C. § 10284;⁴

27 ² The Court notes that “Gatekeepers’ Security Guards” was not named as a Defendant.

28 ³ Plaintiff appears to be citing to only a definitions section, which is not a cause of action.

⁴ Plaintiff appears to be citing to only a definitions section, which is not a cause of action.

- Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, et seq.;
- Cal. Civ. Code § 3294;⁵
- Cal. Penal Code § 1538.5;
- BAC.AB Trespass, B.8 Coke, 147 2 BL. Rep. 1218 Clayt. 44;⁶
- Cal. Penal Code § 242;
- Tex. Penal Code § 20.01, (2)A;⁷
- Cal. Penal Code § 207(a);
- Cal. Penal Code § 236;
- Tex. Penal Code § 20.04(6);
- Cal. Penal Code § 215;
- Cal. Veh. Code § 22657;
- Cal. Veh. Code § 22658; and
- Cal. Penal Code §148.5.

- 15 | Id. at 7.

16 Plaintiff appears to seek actual, compensatory, and punitive damages arising
17 from the Incident as well as the alleged carjacking on October 20, 2020. *Id.* at 4-5.
18 Plaintiff appears to also seek damages for a potential lost employment opportunity
19 due to a failed background check, which Plaintiff appears to suggest was a result of
20 the Incident. *Id.*

II. STANDARD OF REVIEW

22 As Plaintiff is proceeding IFP, the Court must screen the Complaint and is
23 required to dismiss the case at any time if it concludes the action is frivolous or

25 ⁵ The Court notes that Plaintiff cites to “U.S. Code 3294 (Civil Code Section)” but appears to be
26 referencing California’s Civil Code Section 3294, as there does not appear to be a U.S. Code
Section 3294.

²⁷ ⁶ Plaintiff appears to intend to cite to a code for trespass ab initio, but the citation does not lead to a statute.

28 |⁷ The Court notes that Plaintiff does not indicate the state for the penal code she cites, but upon a search it appears that Plaintiff is referencing Texas's Penal Code.

1 malicious, fails to state a claim on which relief may be granted, or seeks monetary
2 relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b);
3 see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (dismissing complaint
4 for failing to state any elements of claims for relief).

5 In determining whether a complaint fails to state a claim for screening
6 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
7 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to dismiss
8 under Federal Rule of Civil Procedure 12(b)(6). Watison v. Carter, 668 F.3d 1108,
9 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a “short and plain
10 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
11 8(a)(2).

12 A complaint may be dismissed for failure to state a claim “where there is no
13 cognizable legal theory or an absence of sufficient facts alleged to support a
14 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
15 (citation and internal quotation marks omitted). In considering whether a complaint
16 states a claim, a court must accept as true all of the material factual allegations in it.
17 Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). However, the court need
18 not accept as true “allegations that are merely conclusory, unwarranted deductions
19 of fact, or unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049,
20 1055 (9th Cir. 2008) (citation and internal quotation marks omitted). Although a
21 complaint need not include detailed factual allegations, it “must contain sufficient
22 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
23 Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (citation and internal quotation
24 marks omitted). A claim is facially plausible when it “allows the court to draw the
25 reasonable inference that the defendant is liable for the misconduct alleged.” Id.
26 (citation and internal quotation marks omitted). The complaint “must contain
27 sufficient allegations of underlying facts to give fair notice and to enable the
28

1 opposing party to defend itself effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th
2 Cir. 2011).

3 “A document filed pro se is to be liberally construed, and a pro se complaint,
4 however inartfully pleaded, must be held to less stringent standards than formal
5 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
6 2008) (citations and internal quotation marks omitted). “[W]e have an obligation
7 where the p[laintiff] is pro se, particularly in civil rights cases, to construe the
8 pleadings liberally and to afford the p[laintiff] the benefit of any doubt.” Akhtar v.
9 Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks
10 omitted).

11 If the Court finds the complaint should be dismissed for failure to state a
12 claim, the Court has discretion to dismiss with or without leave to amend. Lopez v.
13 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if
14 it appears possible the defects in the complaint could be corrected, especially if the
15 plaintiff is pro se. Id. at 1130-31; Cato v. United States, 70 F.3d 1103, 1106 (9th Cir.
16 1995). However, if, after careful consideration, it is clear a complaint cannot be
17 cured by amendment, the Court may dismiss without leave to amend. Cato, 70 F.3d
18 at 1107-11; see also Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002)
19 (upholding dismissal without leave to amend where additional facts did not establish
20 elements of claim).

21 III. DISCUSSION

22 A. Most Of Plaintiff's Allegations Are Against A Non-Named Party In 23 Violation Of Rule 10.

24 Rule 10(a) of the Federal Rules of Civil Procedure requires that plaintiffs
25 include the names of all parties in the caption of the complaint. Fed. R. Civ. P. 10(a)
26 (“The title of the complaint must name all the parties[.]”). The Court cannot order
27 service of the Complaint without this information. Soto v. Bd. of Prison Term, 2007
28 WL 2947573, at *2 (E.D. Cal. Oct. 9, 2007).

1 In Plaintiff's Complaint, she alleges numerous factual allegations against
2 Nicot, but fails to name Nicot as a party in the caption of the Complaint. If Plaintiff
3 intends to state a claim against Nicot, then Plaintiff must name Nicot as a defendant
4 in the instant action pursuant to Rule 10(a); otherwise, Plaintiff's Complaint will be
5 subject to dismissal. See Martinez v. Davey, No. 16-cv-1658-AWI-MJS (PC), 2018
6 WL 898153, at *5 (E.D. Cal. 2018) (dismissing, among other reasons, because
7 "Plaintiff makes allegations against numerous non-party individuals not named in
8 the caption of the complaint" in violation of Rule 10(a)). Therefore, the Court
9 dismisses Plaintiff's claims against Nicot with leave to amend so that, if Plaintiff
10 wishes to do so, Plaintiff may add Nicot as a named defendant.

11 B. The Complaint Attempts To Join An Unrelated Claim.

12 Federal Rule of Civil Procedure 18 ("Rule 18") provides that "[a] party
13 asserting a claim, counterclaim, crossclaim, or third-party claim may join, as
14 independent or alternative claims, as many claims as it has against an opposing
15 party." Fed. R. Civ. P. 18(a). This means that a "[p]laintiff may pursue multiple
16 claims against a single defendant, but he may not pursue unrelated claims against
17 different defendants." Morris v. Virga, No. CIV S-10-2069 GEB, 2012 WL 1155674,
18 at *2 (E.D. Cal. Apr. 5, 2012) (citing George v. Smith, 507 F.3d 605 (7th Cir. 2007)).

19 Here, in a single sentence in the Complaint, Plaintiff appears to try to state a
20 claim against "Gatekeepers' Security Guards" for "abus[ing] and threaten[ing] with
21 arrest" Plaintiff on a separate date from the Incident.⁸ ECF No. 1, Compl. at 8. Not
22 only has Plaintiff not named Gatekeepers' Security Guards as a defendant, but this
23 alleged misconduct by Gatekeepers' Security Guards appears to be wholly unrelated
24 to the Incident. Because Plaintiff has not indicated Gatekeepers' Security Guards is
25 related to Defendant and Plaintiff's claim against Gatekeepers' Security Guards is
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27

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⁸ The Court notes that Plaintiff states that the incident with Gatekeepers' Security Guards
occurred "[t]wo days prior" but does not indicate prior to what.

1 an unrelated claim to the Incident, Plaintiff has failed to properly join her claim
2 against Gatekeepers' Security Guards under Rule 18.

3 Accordingly, the Court will sever and dismiss Plaintiff's claim against
4 Gatekeepers' Security Guards but will give Plaintiff leave to amend. See Williams v.
5 Sabo, No. CV 20-1373-PA (KK), 2020 WL 4586857, at *4 (C.D. Cal. Aug. 10, 2020)
6 ("When numerous claims are misjoined, the court can generally dismiss all but the
7 first named defendant without prejudice to the institution of new, separate lawsuits
8 against some or all of the present defendants based on the claim or claims attempted
9 to be set forth in the present complaint.") (citations omitted).

10 **C. Several Allegations In The Complaint Fail To Comply With Rule 8.**

11 Rule 8 requires that a complaint provide sufficient facts to give a defendant
12 fair notice of the claims against them. Conley v. Gibson, 355 U.S. 41, 47 (1957). In
13 other words, Rule 8 requires that a complaint clearly establish the claims and parties
14 such that a defendant would have "no difficulty in responding to the claims with an
15 answer and/or with a Rule 12(b)(6) motion to dismiss." Hearns v. San Bernardino
16 Police Dep't, 530 F.3d 1124, 1131-32 (9th Cir. 2008). "Something labeled a
17 complaint but written more as a press release, prolix in evidentiary detail, yet
18 without simplicity, conciseness and clarity as to whom plaintiffs are suing for what
19 wrongs, fails to perform the essential functions of a complaint." McHenry v. Renne,
20 84 F.3d 1172, 1179 (9th Cir. 1996).

21 To properly state a claim against Defendants in their individual capacities, a
22 plaintiff must explain:

23 (1) the constitutional right that [plaintiff] believes was violated;
24 (2) the name of the defendant who violated the right;
25 (3) exactly what the defendant did or failed to do;
26 (4) how the action or inaction of the defendant is connected to the violation
27 of [plaintiff's] constitutional right; and

1 (5) what specific injury [plaintiff] suffered because of the defendant's
2 conduct.

3 Tucker v. Stewart, 72 F. App'x 597, 598 (9th Cir. 2003) (denying Plaintiff's claims
4 for failing to satisfy Rule 8 where he failed to allege these elements as instruct[ed] by
5 the district court). Where a plaintiff sues multiple defendants, “[s]pecific
6 identification of the parties to the activities alleged by [a plaintiff] is required . . . to
7 enable the defendant to plead intelligently.” Sherrell v. Bank of Am., N.A., No. CV
8 F 11-1785-LJO (JLT), 2011 WL 6749765, at *4 (E.D. Cal. Dec. 22, 2011) (internal
9 quotations omitted).

10 Here, Plaintiff's Complaint fails to meet the Rule 8 pleading requirement.
11 First, Plaintiff provides a standalone laundry list of constitutional and statutory
12 violations, without linking any of the alleged violations to any defendant or factual
13 allegation of misconduct. Merely listing alleged violations of constitutional and
14 statutory rights is insufficient to state a claim under Rule 8.

15 Second, Plaintiff failed to specifically identify what specific instances of
16 misconduct were committed by Defendant. Instead, Plaintiff provides a list of
17 conduct undertaken by the non-named party, Nicot, but barely mentions any specific
18 conduct undertaken by Defendant. See ECF No. 1, Compl. at 8. As is, the
19 Complaint does not make any sort of factually specific allegations against Defendant.
20 The only two mentions of Defendant’s conduct are that (1) Defendant had engaged
21 in “[r]epetitive offenses and damages throughout two decades[,]” id. at 5, and (2)
22 Defendant “carjack[ed]” Plaintiff in August 2018 and on August 20, 2020, id. at 8.
23 However, such a vague and conclusory allegation is insufficient to bring a claim
24 against Defendant. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (a
25 plaintiff “must allege facts, not simply conclusions, that show that an individual was
26 personally involved in the deprivation of his civil rights.”).

27 Moreover, a number of Plaintiff's factual allegations do not indicate who was
28 the party committing the conduct. For example, Plaintiff alleges that her vehicle was

1 illegally searched and impounded, but Plaintiff does not identify who the party
2 responsible for the allegedly illegal search or impound. See id. While Plaintiff had
3 only named one party as the defendant, Plaintiff's Complaint discusses conduct
4 done by a multiple parties who were not named in this suit; thus, it is unclear
5 whether the factual allegations listed without an actor was committed by one of the
6 non-parties or Defendant. And even if these allegations were construed to be
7 Defendant's conduct, they still fail to state a claim against Defendant for being
8 conclusory.⁹ See Barren v. Harrington, 152 F.3d at 1194.

9 To the extent that Plaintiff intended to have Nicot's conduct constitute as
10 Defendant's conduct, Plaintiff's allegations are still insufficient under Rule 8.
11 Despite providing a list of alleged misconduct of Nicot, Plaintiff has failed to connect
12 Nicot's alleged misconduct to each of Plaintiff's alleged constitutional violations.
13 See Tucker, 72 F. App'x at 598. Moreover, Plaintiff failed to specifically allege that
14 Defendant, as Nicot's employer, knowingly participated or condoned the alleged
15 violation of Plaintiff's rights. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
16 (holding that, when the named defendant holds a supervisory position, the causal
17 link between the defendant and the claimed constitutional violation must be
18 specifically alleged.).

19 Accordingly, without identifying the specific conduct committed by
20 Defendant, the Complaint does not provide fair notice to Defendant of the claims
21 made against it, and as such, fails to state a claim under Rule 8. The Court dismisses
22 the Complaint with leave to amend.

23 **D. Plaintiff Fails To State A Monell Claim Against Defendant.**

24 In addition to failing to properly plead a claim under Rule 8, Plaintiff also
25 failed to state a Monell claim against Defendant. Local government entities such as

27 ⁹ Specifically, Plaintiff alleges an "illegal search[] and impound[] of [Plaintiff's] vehicle" and a
28 seizure of Plaintiff's medication. ECF No. 1, Compl. at 8. Plaintiff also alleges that she was
"forc[ed] [] to walk without shoes and without medication in a locked room," and was "alienated
for long hours and no access to medication." Id.

1 counties can be sued directly under § 1983 for monetary or equitable relief where it
2 is alleged that the entity's official or unofficial policy, custom, usage, or practice that
3 is the "moving force [behind] the constitutional violation." Monell v. Dep't of Soc.
4 Servs. of City of New York, 436 U.S. 658, 690, 694 (1978). A plaintiff can establish
5 this "municipal liability" by:

6 (1) alleging that an officer "committed the alleged constitutional violation
7 pursuant to a formal governmental policy or a longstanding practice or
8 custom which constitutes the standard operating procedure of the local
9 governmental entity";
10 (2) establishing that the officer who committed the constitutional tort "was
11 an official with final policy-making authority and that the challenged
12 action itself thus constituted an act of official governmental policy";
13 (3) proving that an official "with final policy-making authority ratified a
14 subordinate's unconstitutional decision or action and the basis for it."

15 Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992). A Complaint that
16 simply recites the elements of a Monell claim is insufficient to put a municipality on
17 fair notice of the claims against it. White v. City of Vacaville, No. 2:12-CV-00515-
18 GEB, 2012 WL 1455221, at *4-*6 (E.D. Cal. Apr. 26, 2012).

19 To state viable claims for municipal liability, Plaintiff must plead "(1) that the
20 plaintiff possessed a constitutional right of which [he] was deprived; (2) that the
21 municipality had a policy; (3) that this policy amounts to deliberate indifference to
22 the plaintiff's constitutional right; and, (4) that the policy is the moving force behind
23 the constitutional violation." Dougherty v. City of Covina, 654 F.3d 892, 900 (2011)
24 (internal quotation marks and citations omitted). "At the very least there must be
25 an affirmative link between the policy and the particular constitutional violation
26 alleged." City of Okla. City v. Tuttle, 471 U.S. 808, 823 (1985).

27 Here, Defendant Hemet Police Department is clearly a governmental entity.
28 As noted above, Plaintiff makes only two allegations against Defendant—

1 specifically, that Defendant engaged in “repetitive offenses and damages” and a
2 “carjacking”—that could be construed as a Monell claim of having a policy or
3 practice resulting in a violation of Plaintiff’s constitutional rights. However,
4 Plaintiff’s allegations are far from sufficient to establish a Monell claim. Plaintiff
5 makes no mention regarding any policy, practice, or custom used by Defendant, let
6 alone establishing that Defendant’s policy resulted in Plaintiff’s constitutional
7 violations. Accordingly, any potential Monell claim made by Plaintiff is
8 insufficiently plead and therefore is dismissed with leave to amend.

9 **E. The Complaint Does Not State A Claim For Unlawful Search and**
10 **Seizure Of Plaintiff’s Vehicle And Personal Items.**

11 The Fourth Amendment provides that “[t]he right of the people to be secure
12 in their persons, houses, papers, and effects, against unreasonable searches and
13 seizures, shall not be violated.” U.S. CONST. Amend. IV. To state a § 1983 claim
14 for an unreasonable seizure in violation of the Fourth Amendment, a plaintiff must
15 allege the defendants’ conduct constituted a seizure, and the seizure was
16 unreasonable. Brower v. Cty. of Inyo, 489 U.S. 593, 599 (1989); Torres v. City of
17 Madera, 524 F.3d 1053, 1055 (9th Cir. 2008).

18 Presently, the Complaint fails to make a sufficient claim for unlawful search
19 and seizure of Plaintiff’s vehicle and personal items. In what appears to be one run-
20 on sentence, Plaintiff alleges an “illegal search[] and impound[] of [Plaintiff’s]
21 vehicle . . . seizing all [of Plaintiff’s] personal belongings, [and] seizing [Plaintiff’s]
22 medication[.]” ECF No. 1, Compl. at 8. Plaintiff makes no statements or
23 allegations that the taking of Plaintiff’s vehicle and personal belongings constituted
24 as a seizure, let alone that the seizure was unreasonable. Without further allegations
25 regarding the seizure of Plaintiff’s vehicle and personal belongings, the Complaint’s
26 vague and conclusory allegations are insufficient to state a Fourth Amendment
27 claim. See Zion v. Cty of Orange, No. SACV 14-1134 JVS (RNBx), 2014 WL
28 12798107, *3-4 (C.D. Cal. Nov. 17, 2014) (dismissing the plaintiff’s Fourth

1 Amendment claim because the plaintiff's "allegation is conclusory and thus
2 insufficient to support a finding that the County may be liable for [the other
3 defendants'] actions. Without contextual facts, the Court cannot infer more than
4 the mere possibility of misconduct by the County."). Therefore, Plaintiff's Fourth
5 Amendment claim against Defendant is dismissed with leave to amend.

6 **F. The Complaint Does Not State A Claim For Violations Of The**
7 **Thirteenth Amendment.**

8 The Thirteenth Amendment provides that "[n]either slavery nor involuntary
9 servitude, except as a punishment for crime whereof the party shall have been duly
10 convicted, shall exist within the United States[.]" U.S. Const. Amend. XIII, § 1.

11 Here, Plaintiff has made no allegations that even remotely suggests that she is
12 incarcerated, enslaved, or otherwise subjected to involuntary servitude. Therefore,
13 the Thirteenth Amendment does not appear to apply and Plaintiff's claims under
14 the Thirteenth Amendment is dismissed with leave to amend.

15 **G. The Complaint Does Not State A Claim For Violations Of Equal**
16 **Protection.**

17 "The Equal Protection Clause of the Fourteenth Amendment commands that
18 no State shall 'deny to any person within its jurisdiction the equal protection of the
19 laws,' which is essentially a direction that all persons similarly situated should be
20 treated alike." City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439
21 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)). In order to state a § 1983
22 equal protection claim, a plaintiff must allege he was treated differently from others
23 who were similarly situated without a rational basis or discriminated against based on
24 his membership in a protected class. See Serrano v. Francis, 345 F.3d 1071, 1082
25 (9th Cir. 2003) (stating the elements of a § 1983 equal protection claim based on
26 membership in protected class); Gallo v. Burson, 568 F. App'x 516, 517 (9th Cir.
27 2014) (affirming district court dismissal of inmate's equal protection claim).

28

1 In her Complaint, Plaintiff appears to allege an Equal Protection claim against
2 Defendant in one sentence, stating that Defendant “subjected a disable[d] senior
3 citizen to deprivation of rights, immunities protected by the Constitution.” ECF
4 No. 1, Compl. at 7. However, Plaintiff’s allegation falls short of what is required to
5 plead an Equal Protection claim. First and foremost, Plaintiff had not made any
6 claim that she is in a protected class, let alone provided any allegations that she was
7 treated differently than others similarly situated. Without any further allegations,
8 Plaintiff’s conclusory Equal Protection claim against Defendant is insufficient and
9 dismissed with leave to amend.

10 H. The Complaint Does Not State A Claim For Violations Of The
11 ADA.

12 Title II of the ADA prohibits a public entity from discriminating against a
13 qualified individual with a disability in the provision of a program, activity, or
14 service. 42 U.S.C. § 12132 (“[N]o qualified individual with a disability shall, by
15 reason of such disability, be excluded from participation in or be denied the benefits
16 of the services, programs, or activities of a public entity, or be subjected to
17 discrimination by any such entity.”).

18 Unlike the Eleventh Amendment bar on the constitutional claims under
19 § 1983 asserted against Defendants in their official capacities, “Congress has
20 unequivocally expressed its intent to abrogate the State’s [Eleventh Amendment]
21 immunity under . . . the ADA.” Clark v. State of Cal., 123 F.3d 1267, 1269 (9th Cir.
22 1997). In fact, a plaintiff may assert a claim under Title II of the ADA only against a
23 public entity and not against an individual defendant. See 42 U.S.C. § 12132
24 (redress available for discrimination by a “public entity”); § 12131(1) (“public
25 entity” as defined within the statute does not include individuals); Vinson v.
26 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002) (holding that “a plaintiff cannot bring
27 an action under 42 U.S.C. § 1983 against a State official in her individual capacity to
28 vindicate rights created by Title II of the ADA”), cert. denied, 537 U.S. 1104 (2003).

1 Also, an official acting in his or her official capacity is essentially a suit against the
2 entity, and is also a proper defendant under Title II of the ADA. Pombrio v.
3 Villaraigosa, No. CV 10-5604-GHK (MAN), 2010 WL 4181340, at *5 (C.D. Cal.
4 Oct. 15, 2010) (citation omitted). Accordingly, plaintiff may assert a claim under
5 Title II of the ADA against an entity, or an individual in his or her official capacity.

6 In order to successfully allege a claim under Title II of the ADA, Plaintiff must
7 sufficiently allege that:

8 (1) he is an individual with a disability; (2) he is otherwise qualified to
9 participate in or receive the benefit of some public entity's services,
10 programs, or activities; (3) he was either excluded from participation in
11 or denied the benefits of the public entity's services, programs, or
12 activities, or was otherwise discriminated against by the public entity;
13 and (4) such exclusion, denial of benefits, or discrimination was by
14 reason of [his] disability.

15 Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1021 (9th Cir. 2010).

16 Here, Plaintiff has failed to allege a claim under the ADA. Plaintiff's
17 Complaint fails to allege all four requirements needed to make a claim under Title II
18 of the ADA. Plaintiff appears to have only alleged that she is an individual with a
19 disability, but otherwise fails to allege that she was discriminated against by
20 Defendant on the basis of her disability. Thus, Plaintiff's allegations for a claim
21 under Title II of the ADA is insufficient and is dismissed with leave to amend.

22 **I. The Court Declines To Exercise Supplemental Jurisdiction.**

23 "A court may decline to exercise supplemental jurisdiction over related state-
24 law claims once it has 'dismissed all claims over which it has original jurisdiction.'" "
25 Ove v. Gwinn, 264 F.3d 817, 826 (9th Cir. 2001) (citing 28 U.S.C. § 1367(c)(3) and
26 San Pedro Hotel Co., Inc. v. City of Los Angeles, 159 F.3d 470, 478 (9th Cir. 1998)
27 (a district court is not required to provide explanation when declining jurisdiction
28 under § 1367(c)(3)).

1 In addition to claims under the Fourth, Thirteenth, and Fourteenth
2 Amendment, and the ADA, Plaintiff also states claims for violations of her rights
3 under various state statutes listed above. Because the Court dismisses with leave to
4 amend Plaintiff's federal claims, the Court declines to exercise supplemental
5 jurisdiction over Plaintiff's various state-law claims. See Carnegie-Mellon Univ. v.
6 Cohill, 484 U.S. 343, 351 (1988) ("When the single federal-law claim in the action
7 was eliminated at an early stage of the litigation, the District Court had a powerful
8 reason to choose not to continue to exercise jurisdiction.").

IV. CONCLUSION

10 Accordingly, **IT IS ORDERED** that Plaintiff's Complaint is dismissed in its
11 entirety, without prejudice, and with leave to amend. It is further ordered that, if
12 Plaintiff would like to continue to prosecute this action, Plaintiff file a **First**
13 **Amended Complaint (“FAC”)** within **twenty-one (21) days** of the service date of
14 this Order.

15 On the first page, Plaintiff should clearly designate on the face of the
16 document that it is the “First Amended Complaint,” include the docket number
17 assigned to this case, and write the amended pleading on this Court’s **CV-066 form**,
18 which the Clerk of Court is directed to mail to Plaintiff along with this Order.

19 **In the body of the FAC, Plaintiff must include all claims that Plaintiff**
20 **would like to pursue, even if Plaintiff previously stated them in the original**
21 **Complaint.** If Plaintiff does not raise a claim in the FAC, the Court will consider it
22 waived. Plaintiff cannot refer to the original Complaint or any other pleading,
23 attachment, or document to state a claim in the FAC. Plaintiff cannot include in the
24 body of the FAC any new defendants or new allegations that are not reasonably
25 related to the claims asserted in the original Complaint.

26 For the claims that the Court found deficient in the above Order, Plaintiff
27 must fix the deficiencies consistent with the Court's Order in the FAC if Plaintiff
28 wishes to continue litigating those claims. Plaintiff should note that if Plaintiff files a

1 FAC restating deficient claims without fixing them, the Court may not allow
2 Plaintiff another opportunity to file an amended complaint and instead may dismiss
3 the action. If there are claims which the Court did not find deficient, Plaintiff must
4 still re-plead that claim in the FAC in its entirety if Plaintiff seeks to continue
5 litigating the claim.

6 Plaintiff is cautioned that if Plaintiff does not timely file a FAC, the Court
7 will recommend that this action be dismissed with or without prejudice for
8 failure to state a claim, failure to prosecute, and/or failure to obey Court orders
9 under Federal Rule of Civil Procedure 41(b). Dismissal “with prejudice” means
10 that Plaintiff will not be able to bring this action in federal court again, while
11 “without prejudice” means Plaintiff can re-file this action in this Court. If Plaintiff
12 believes more time is necessary to file a FAC, Plaintiff may request an extension of
13 time from the Court before the 21-day period mentioned above expires. However,
14 the Court will only grant an extension if Plaintiff demonstrates good cause for
15 needing more time (for example, if Plaintiff has requested police reports to
16 determine Defendants’ names but will not receive them in time to file an amended
17 complaint).

18 Plaintiff is advised that the Court’s determination in this Order that the
19 allegations in the Complaint are insufficient to state a particular claim should not be
20 seen as dispositive of that claim. Accordingly, while the Court believes Plaintiff has
21 failed to plead sufficient factual matter in the pleading, accepted as true, to state a
22 claim to relief that is viable on its face, Plaintiff is not required to omit any claim in
23 order to pursue this action. However, if Plaintiff asserts a claim in the FAC that has
24 been found to be deficient without addressing the claim’s deficiencies, then the
25 Court, pursuant to the provisions of 28 U.S.C. § 636, ultimately will submit to the
26 assigned district judge a recommendation that such claim be dismissed with
27 prejudice for failure to state a claim, subject to Plaintiff’s right at that time to file
28

1 Objections with the district judge as provided in the Local Rules Governing Duties
2 of Magistrate Judges.

3 Finally, Plaintiff may voluntarily dismiss the action without prejudice,
4 pursuant to Federal Rule of Civil Procedure 41(a). The Clerk of Court is directed to
5 mail Plaintiff a blank Notice of Dismissal Form.

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Dated: November 30, 2020



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9 HON. SHASHI H. KEWALRAMANI
United States Magistrate Judge

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FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEC 2 2021

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

ADA MARIA BENSON, M.D.,

Plaintiff-Appellant,

v.

HEMET POLICE DEPARTMENT,

Defendant-Appellee.

No. 21-55802

D.C. No.
5:20-cv-02230-DMG-SHK
Central District of California,
Riverside

ORDER

Before: HAWKINS, WATFORD, and LEE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 14) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

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