Appendix A

NOT FOR PUBLICATION

FILED

MAY 12 2022

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

O. L., Plaintiff-Appellant, v. LILIANA JARA; et al., Defendants-Appellees.	No. 21-55740 D.C. No. 2:20-cv-00797-RGK-JDE MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted April 13, 2022
Pasadena, California

Before: BADE and LEE, Circuit Judges, and CARDONE,** District Judge.

Plaintiff-Appellant "O.L." sued, claiming that officers at the City of El Monte Police Department (EMPD) and Los Angeles Sheriff's Department (LASD) mishandled their investigations of her claim of rape. She alleged violations of the Equal Protection Clause and the Fourth Amendment, and brought claims against

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

** The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

individual officers under 42 U.S.C. § 1983 and against the municipalities under section 1983 and *Monell v. Department of Social Services of N.Y.C.*, 439 U.S. 658 (1978), among other things. The district court dismissed the equal protection claims against the individual officers and municipalities, and granted summary judgment for the defendants on the Fourth Amendment claim. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

BACKGROUND

O.L. met her alleged assailant online and went on a date with him. She claimed that he raped her later that night, and she reported it to the EMPD. O.L. showed Officer Martha Tate messages on her cell phone between herself and the alleged assailant. In those messages, O.L. casually discussed the sexual activity that occurred the night of the alleged rape and agreed to meet him again for a future sexual encounter. Based on these messages, Officer Tate questioned O.L. about alcohol use, consent, and her motive for reporting the alleged crime.

O.L.'s case was later transferred to LASD. Detective Liliana Jara interviewed her. O.L. showed Detective Jara the same messages on her cell phone. Detective Jara also saw a message in which O.L. told the alleged assailant that she "could make him lose his job" after she discovered that he had remained active on the online dating website where they met. The detective, too, questioned O.L. about her motive for reporting the alleged crime and ultimately told O.L. that her case suffered from

many problems.

At the end of the interview, O.L. agreed to provide her cell phone to LASD to download messages. O.L. provided Detective Jara with her cell phone password and signed a form giving LASD consent to search the phone for "any and all data" related to the case. Before returning the phone to her, LASD's task force downloaded the phone's data onto a USB drive to allow the investigating officer to review the data. O.L. then retrieved her cell phone from LASD custody.

After the Los Angeles District Attorney declined to file charges against the alleged assailant, O.L. filed a *pro se* complaint. The district court denied O.L.'s request to proceed under a pseudonym, and O.L. filed an amended complaint replacing "Jane Doe" with her supposed initials. The district court dismissed the equal protection and *Monell* claims, and then granted summary judgment for defendants on the Fourth Amendment claim.

DISCUSSION

1. Fourth Amendment Claim: O.L. argues that Detective Jara unlawfully searched her phone and that LASD's copying of data from her phone amounted to an illegal seizure.

First, O.L. has not shown that Detective Jara violated her Fourth Amendment right against unreasonable searches. O.L.'s only evidence that her phone was searched is a screenshot image of a single message on her phone from a friend that

was translated from Chinese into English in her WeChat App. She claims that the message was translated while the phone was in LASD's custody, but the screenshot she provided does not show when the translation happened. O.L. cannot create a factual dispute by speculating that Detective Jara searched the phone and translated the message. *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." (alternation in original) (citation omitted)).

In any event, O.L. consented to the search. She admits to signing a form when she voluntarily gave her cell phone and its password to Detective Jara. O.L.'s signature is on a form called "Entry and Search Waiver," which is dated that same day. The form gave LASD "full and unconditional authority," and "unrestricted access" to search O.L.'s cell phone. O.L. maintains that she did not sign this form, but she has abandoned the argument that her signature was forged by failing to challenge the district court's finding on appeal. The only plausible inference is that O.L. signed the search waiver form when she gave her cell phone to Detective Jara. *See 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 purposes of ruling on a motion for summary judgment.").

Second, qualified immunity bars her unlawful seizure claim because it is not

clearly established that copying electronic data for review after voluntarily agreeing to a search amounts to a Fourth Amendment violation. *See Sharp v. County of Orange*, 871 F.3d 901, 911 (9th Cir. 2017) (requiring "prior case law that articulates a constitutional rule specific enough to alert [the officer] in this case that [her] particular conduct was unlawful" (emphases omitted)). In *Arizona v. Hicks*, the Supreme Court held that the police copying down the serial numbers on stereo equipment "did not constitute a seizure" because "it did not meaningfully interfere with respondent's possessory interest in either the serial numbers or the equipment." 480 U.S. 321, 324 (1987) (internal quotation marks omitted). While the nature of cell phone data is different than serial numbers on a stereo, it is unsettled as to how far the "possessory interest" principle extends.

O.L.'s reliance on *United States v. Comprehensive Drug Testing, Inc.* (*CDT*) is misplaced. *See* 621 F.3d 1162 (9th Cir. 2010) (en banc) (per curiam), *overruled in part on other grounds as recognized by Demaree v. Pederson*, 887 F.3d 870, 876 (9th Cir. 2018) (per curiam). In that case, the court authorized the federal government to seize "considerably more data than that for which it had probable cause," subject to certain procedural safeguards. *Id.* at 1168–69. The government, however, ignored the required protocols, seized large amounts of data, and later justified its retention of the seized data under the "plain view" doctrine. *Id.* at 1169–72. On appeal, we cautioned against the government retaining unresponsive data

based on the plain view doctrine. *Id.* at 1169–71, 1174. We, however, recognized that "over-seizing is an inherent part of the electronic search process." *Id.* at 1177; *see also United States v. Flores*, 802 F.3d 1028, 1044–45 (9th Cir. 2015). *CDT* does not put it beyond debate that law enforcement making a temporary local copy of cell phone data while consensually possessing the phone constitutes an unlawful seizure.

2. Equal Protection Claim: To state an equal protection claim under § 1983, O.L. must plausibly allege facts showing that "the defendants acted with an intent or purpose to discriminate against [her] based upon membership in a protected class." *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001) (internal quotation marks omitted). She does not allege facts showing that the officers treated her investigation differently than other criminal investigations. For example, she alleges that Officer Tate asked O.L.: "What made her think she was a victim of rape." The Second Amended Complaint then simply concludes that "[v]ictims of other type[s] of crimes would not be asked the same question." "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," however, "do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3. *Monell* claims: O.L. failed to state cognizable *Monell* claims against the City of El Monte and the County of Los Angeles. To establish municipal liability, O.L. must allege: "(1) she was deprived of a constitutional right; (2) [EMPD and LASD] had a policy; (3) the policy amounted to a deliberate indifference to her

constitutional right; and (4) the policy was the moving force behind the constitutional violation." *Mabe v. San Bernardino County, Dept. of Pub. Soc. Servs.*, 237 F.3d 1101, 1110–11 (9th Cir. 2001) (internal quotation marks omitted).

O.L.'s *Monell* claim for violation of equal protection fails because she did not show any underlying constitutional violation. *See Lockett v. County of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020). Moreover, O.L.'s conclusory allegations focus only on the handling of her case, and she has not articulated any "persistent and widespread" customs that "constitute a permanent and well settled city policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (internal quotation marks omitted).

4. Leave to amend: The district court did not abuse its discretion in denying O.L. leave to amend her complaint for the third time. O.L. had already amended her complaint, and, before ruling on the motion to dismiss, the judge stopped the proceedings multiple times to allow O.L. time to think about additional allegations to cure her complaint. But O.L. responded with redundant allegations and conclusory statements.

5. Redaction: The district court did not abuse its discretion in denying O.L.'s motion to seal an exhibit filed with the court. *See Pintos v. Pac. Creditors Ass'n*,

605 F.3d 665, 679 (9th Cir. 2010).[1] O.L. contends that sealing or redacting a portion of the record is "necessary to preserve [her] anonymity," but the district court determined that the portion of the record at issue did not "itself identify [O.L.] by name." O.L. has not challenged this finding on appeal or shown that this finding was "illogical, implausible, or without support in inferences that may be drawn from the record." *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc). O.L. has not met her burden of showing a "compelling reason" for sealing the document. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). We thus affirm the district court's denial of the request to seal.[2]

AFFIRMED.

[1] O.L. has filed similar cases in other courts involving different individuals and municipalities. Decl. of Erin R. Dunkerly at 13–14, *O.L. v. City of El Monte, et al.*, No. 21-55246 (9th Cir. Aug. 9, 2021), ECF No. 5; *see, e.g., Doe v. City of Concord*, No. 22-15384 (9th Cir. docketed March 15, 2022); *Doe v. U.S Dist. Ct. for the Cent. Dist. of Cal.*, No. 22-70056 (9th Cir. denied April 19, 2022). In those other cases, as here, she proceeds either as Jane Doe or by initials (which may or may not be her own). While O.L. makes it difficult to track her cases because she uses initials or pseudonyms, we caution that "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

[2] O.L. requests that this same document be redacted or sealed in the record on appeal. Because O.L. has not met her burden of showing a "compelling reason" to seal the document, we decline to order this document sealed in the record before this court.

Appendix B

UNITED STATES COURT OF APPEALS

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U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

O. L., Plaintiff-Appellant, v. LILIANA JARA; et al., Defendants-Appellees.	No. 21-55740 D.C. No. 2:20-cv-00797-RGK-JDE Central District of California, Los Angeles ORDER

Before: BADE and LEE, Circuit Judges, and CARDONE,* District Judge.

The panel voted to deny the petition for panel rehearing. Judges Bade and Lee voted to deny the petition for rehearing en banc. Judge Cardone recommended denying the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc is DENIED.

* The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

Appendix C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

O.L., Plaintiff, v. CITY OF EL MONTE, et al., Defendants.	Case No. 2:20-cv-00797-RGK (JDE) ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the records on file, including the operative Second Amended Complaint (Dkt. 40, "SAC") filed by Plaintiff O.L. ("Plaintiff"); this Court's Order granting Plaintiff's Motion for Preliminary Injunction (Dkt. 54); the Motion to Dismiss the SAC filed by Defendants the City of El Monte, Michael Buckhannon, David Reynoso, and Martha Tate (Dkt. 50); the Motion to Dismiss the SAC filed by Defendants the County of Los Angeles, Peter Cagney, June Chung, Liliana Jara, Jackie Lacey, Richard Ruiz, Karen Thorp, and Alex Villanueva (Dkt. 51); the prior Report and Recommendation of the assigned United States Magistrate Judge (Dkt. 66, "First Report"); this Court's Order accepting the First Report (Dkt. 72, "Prior Dismissal Order"); the First Amended Case Management and Scheduling

Order issued by the assigned Magistrate Judge (Dkt. 94, "Scheduling Order"); the Answer to the SAC filed by Defendants Liliana Jara and Richard Ruiz ("Moving Defendants") (Dkt. 80); Moving Defendants' Motion for Summary Judgment as to the SAC (Dkt. 216, "Moving Defendants' Motion") and all supporting and opposing papers relating thereto; Plaintiff's Motion for Partial Summary Judgment (Dkt. 217, "Plaintiff's Motion") and all supporting and opposing papers relating thereto; Defendants' Motion for Sanctions (Dkt. 223, "Sanctions Motion") and all supporting and opposing papers relating thereto; the Report and Recommendation issued by the Magistrate Judge regarding Moving Defendants' Motion, Plaintiff's Motion, and the Sanctions Motion (Dkt. 242, "Second Report"); the Objections to the Second Report filed by Defendants (Dkt. 259); Plaintiff's Reply to Defendants' Objections (Dkt. 260); Plaintiff's Objections to the Second Report (Dkt. 261); and Defendants' Reply to Plaintiff's Objections (Dkt. 262).

The Court has engaged in a de novo review of those portions of the Second Report to which objections have been made. The Court accepts the findings and recommendation of the Magistrate Judge.

In her Objections, in addition to objecting to portions of the Second Report, Plaintiff asks (1) to amend the operative complaint to add the County of Los Angeles, Alex Villanueva, and Peter Hish as defendants; (2) permit discovery as to a Monell claim and state law claims; and (3) to keep the preliminary injunction in place. The Court denies each of Plaintiff's requests.

First, as to Plaintiff's request for further leave to amend as to the County of Los Angeles and Alex Villanueva, the Court has already found that Plaintiff failed to state a federal claim against either defendant, dismissing those claims with prejudice and without leave to amend nearly a year ago in the Prior Dismissal Order. To the extent Plaintiff seeks reconsideration of that finding, Plaintiff has not asserted, much less shown, any proper basis for

reconsideration of the Court's Order under Federal Rules of Civil Procedure 59 or 60(b) or Central District Local Civil Rule 7-18, and the Court finds no basis to reconsider its prior ruling. To the extent Plaintiff seeks to amend the operative SAC to identify Peter Hish as one of the Doe defendants, she has failed to show good cause for her failure to identify and serve him within the time period under the operative Scheduling Order. As noted in the Second Report, the deadline for seeking to amend a pleading or to join other parties was October 28, 2020—a deadline extended once at Plaintiff's request. The assigned Magistrate Judge repeatedly advised Plaintiff that the Court would recommend dismissal of any party not timely served or identified by name by that time. Nevertheless, in her Objections, Plaintiff now seeks to name Peter Hish as a defendant, claiming that she did not discover his identity until November 9, 2020. Even assuming that Plaintiff did not learn about this individual until November 2020, she has not provided any good cause for her failure to seek leave to amend in the intervening seven months. As such, Plaintiff's request for leave to amend the SAC to name the County of Los Angeles, Alex Villanueva, and Peter Hish is denied.

Second, as to Plaintiff's request for permission to conduct discovery as to a Monell claim and state law claims, the Monell claims were dismissed with prejudice and without leave to amend and the Court declined to exercise supplemental jurisdiction over the state law claims, as set forth in the Prior Dismissal Order. As such, no reopening of discovery relating to claims dismissed nearly a year ago is warranted.

Finally, as to Plaintiff's request to keep the preliminary injunction in place pending appeal, Plaintiff has provided no basis for such an order. The purpose of a preliminary injunction is to preserve the status quo and the rights of the parties until a final judgment. U.S. Philips Corp. v. KBC Bank N.V., 590 F.3d 1091, 1094 (9th Cir. 2010). Thus, "[a] preliminary injunction imposed

according to the procedures outlined in Federal Rule of Civil Procedure 65 dissolves ipso facto when a final judgment is entered in the cause." Id. at 1093. The Court has ruled in Defendants' favor and against Plaintiff as to each federal claim asserted in the action and has declined to exercise supplemental jurisdiction over the remaining state claims, with judgment to be entered dismissing all federal claims in favor of Defendants. There is no basis to continue the preliminary injunction and it shall be ordered discharged.

As a result, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion (Dkt. 217) is DENIED;
2. Moving Defendants' Motion (Dkt. 216) is:
   a. GRANTED without leave to amend and with prejudice as to the Second Cause of Action alleged against Moving Defendants; and
   b. DENIED as to the remaining state law claims alleged against Moving Defendants, but the Court declines to exercise supplemental jurisdiction over those state law claims and dismisses them without prejudice to Plaintiff asserting such claims in state court;
3. All claims against all remaining DOE defendants are dismissed without prejudice;
4. Moving Defendants' Motion for Sanctions (Dkt. 223) is DENIED;
5. The Preliminary Injunction (Dkt. 54) is DISCHARGED; and
6. Judgment shall be entered in accordance with the foregoing and the Prior Dismissal Order.

IT IS SO ORDERED.

Dated: July 2, 2021

R. GARY KLAUSNER
United States District Judge

Appendix D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

O.L., Plaintiff, v. CITY OF EL MONTE, et al., Defendant.	No. 2:20-cv-00797-RGK-JDE REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable R. Gary Klausner, 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.
PROCEEDINGS

On January 27, 2020, Plaintiff O.L. ("Plaintiff"),[1] proceeding pro se, filed a Complaint arising out of the handling of her report of sexual assault. On

[1] On February 28, 2020, Plaintiff was granted approval to proceed using her initials. See Dkt. 27.

March 19, 2020, Plaintiff filed the operative Second Amended Complaint seeking declaratory and injunctive relief and monetary damages against the City of El Monte (the "City"), the County of Los Angeles (the "County"), David Reynoso ("Reynoso"), Martha Tate ("Tate"), Michael Buckhannon ("Buckhannon"), Alex Villanueva ("Villanueva"), Liliana Jara ("Jara"), Richard Ruiz ("Ruiz"), Jackie Lacey ("Lacey"), Peter Cagney ("Cagney"), Karen Thorp ("Thorp"), June Chung ("Chung"), and Does 1-10. Dkt. 40 ("SAC"). The SAC asserts the following claims:

- First Cause of Action: Equal Protection against all Defendants;
- Second Cause of Action: Unreasonable Search and Seizure Against the County, Los Angeles County Sheriff's Department ("LASD") officers, Los Angeles County District Attorney's Office ("LADA") officials, and Doe Defendants;
- Third Cause of Action: Gender-based Civil Conspiracy (42 U.S.C. § 1985) against all Defendants;
- Fourth Cause of Action: Municipal Liability for Unconstitutional Policies, Customs, and Practices against all Defendants;
- Fifth Cause of Action: Municipal Liability – Failure to Train, Supervise, and/or Discipline against all Defendants;
- Sixth Cause of Action: Violation of Safe Street Act against the County, LASD officers, LADA officials, and Doe Defendants;
- Seventh Cause of Action: Violation of Cal. Constitution Art. I § 7 – Equal Protection against all Defendants;
- Eighth Cause of Action: Violation of Cal. Constitution Art. I § 13 – Unreasonable Search and Seizure against the County, LASD officers, LADA officials, and Doe Defendants;
- Ninth Cause of Action: Violation of Cal. Constitution Art. I § 1 –

Right to Privacy against the County, LASD officers, LADA officials, and Doe Defendants;

- Tenth Cause of Action: Violation of Cal. Constitution Art. I § 28(b) – Victims' Bill of Rights against all Defendants;
- Eleventh Cause of Action: Intentional Infliction of Emotional Distress against all Defendants;
- Twelfth Cause of Action: Violation of Unruh Civil Rights Act against all Defendants;
- Thirteenth Cause of Action: Violation of Tom Bane Act against the County and Jara;
- Fourteenth Cause of Action: Negligent Supervising, Disciplining, and Retaining Employees against the City, the County, Reynoso, Villanueva, Lacey, and Doe Defendants; and
- Fifteenth Cause of Action: Conversion/Claim and Delivery against the County, LASD officers, LADA officials, and Doe Defendants.

On May 22, 2020, the Court granted Plaintiff's Motion for Preliminary Injunction (Dkt. 43) enjoining the County, Villanueva, Jara, Ruiz, Lacey, Cagney, Thorp, Chung, and persons acting on their behalf from reading, exploring, using, copying, transferring, distributing, disclosing, or releasing Plaintiff's electronic data from her smartphone, other than her message conversations with an alleged assailant ("Alleged Assailant"). Dkt. 54.

Meanwhile, on May 19, 2020, the City, Reynoso, Tate, and Buckhannon filed a Motion to Dismiss the SAC. Dkt. 50 ("City Motion"). On the same date, the County, Villanueva, Jara, Ruiz, Lacey, Cagney, Thorp, and Chung also filed a Motion to Dismiss. Dkt. 51 ("County Motion"). On June 26, 2020, the undersigned Magistrate Judge issued a Report and

Recommendation ("R&R"), recommending that the City Motion be granted and the County Motion be granted in part. Dkt. 66. Specifically, the Magistrate Judge recommended: (1) granting the City's and County's Motions and dismissing the First, Third, Fourth, Fifth, and Sixth Causes of Action without leave to amend and with prejudice as to the City, the County, Reynoso, Tate, Buckhannon, Villanueva, Jara, Ruiz, Lacey, Cagney, Thorp, and Chung; and dismissing the Second Cause of Action without leave to amend and with prejudice as to the County, Villanueva, Cagney, Thorp, Chung, and Lacey; (2) denying the County's Motion as to the Second Cause of Action against Jara and Ruiz in their individual and official capacities; (3) dismissing all federal claims against Does 1-10 without leave to amend; (4) declining to exercise supplemental jurisdiction over the state law claims against the City, the County, Reynoso, Tate, Buckhannon, Villanueva, Lacey, Cagney, Thorp, Chung, and Does 1-10 without prejudice to Plaintiff raising them in state court; (5) staying further proceedings with respect to the state law claims against Jara and Ruiz until further order of the Court; and (6) modifying the May 22, 2020 Preliminary Injunction and releasing Villanueva, Lacey, Cagney, Thorp, and Chung therefrom. Id. On July 31, 2020, the District Court accepted the R&R, with the exception that the Court did not, at that time, dismiss claims against Doe defendants to the extent such claims against such Doe defendants related to claims not dismissed by the Order. Dkt. 72. Pursuant to the Court's July 31, 2020 Order, the only remaining federal claim is the Second Cause of Action for unreasonable search and seizure.

On August 14, 2020, Jara and Ruiz ("Defendants") filed an Answer to the SAC. Dkt. 80.

On April 21, 2021, Plaintiff filed a Motion for Partial Summary Judgment, contending she is entitled to judgment against Jara and Ruiz in their official capacity. Dkt. 217 ("Pl. MSJ" or "Plaintiff's Motion"). The

Motion was accompanied by a Statement of Uncontroverted Facts and Conclusions of Law, Plaintiff's Declaration ("Pl. MSJ Decl."), and exhibits. Defendants filed an Opposition ("Def. Opp.") on May 6, 2021, together with a Statement of Genuine Disputes of Material Fact, evidentiary objections, a supporting declaration, and exhibits. Dkt. 230. On May 13, 2021, Plaintiff filed a Reply ("Pl. Reply"), a Reply to Defendants' Response to Plaintiff's Statement of Uncontroverted Facts, evidentiary objections, a supporting declaration, and exhibits. Dkt. 233.

Defendants filed their own Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment on April 21, 2021, together with a Statement of Uncontroverted Facts and Conclusions of Law, supporting declarations, and exhibits, contending that there is no genuine dispute as to any material fact and they are entitled to judgment as a matter of law. Dkt. 216 ("Def. MSJ" or "Defendants' Motion"). On May 6, 2021, Plaintiff filed an Opposition ("Pl. Opp."), a Response to Defendants' Statement of Uncontroverted Facts, a supporting declaration ("Pl. Opp. Decl."), exhibits, and evidentiary objections. Dkt. 231. On May 13, 2021, Defendants filed a Reply, a Reply to Plaintiff's Response to Defendants' Statement of Uncontroverted Facts, and evidentiary objections. Dkt. 232.

The Motions came on for hearing on May 27, 2021 starting at 10:00 a.m. Counsel for Defendants appeared. No appearance was made by Plaintiff. Although Local Civil Rule 7-14 provides, in part, "[f]ailure of any counsel to appear, unless excused by the Court in advance pursuant to L.R. 7-15 or otherwise, may be deemed consent to a ruling upon the motion adverse to that counsel's position,"[2] the Court nonetheless considers the merits of both

[2] Pursuant to Local Civil Rule 1-3, "[p]ersons appearing pro se are bound by these rules, and any reference in these rules to 'attorney' or 'counsel' applies to parties pro se unless the context requires otherwise."

Motions despite Plaintiff's nonappearance at the hearing.

For the reasons discussed below, the Court recommends that partial summary judgment be granted in Defendants' favor.

II.

STANDARD OF REVIEW

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 meets its burden, 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. P. 56(c); Anderson, 477 U.S. at 257. Summary judgment cannot be avoided by relying solely on conclusory allegations or speculation unsupported by facts. 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." (alteration in original) (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 [her] 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 who bears the burden of persuasion at trial must show that "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. However, "[w]hen 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 purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007).

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 cross-motions to determine whether the evidence demonstrates the existence of a genuine issue of material fact. Id. at 1136-37.

III.

EVIDENTIARY OBJECTIONS

The parties assert numerous objections to the evidence submitted in connection with the Motions.

"In motions for summary judgment with numerous objections, it is often unnecessary and impractical for a court to methodically scrutinize each objection and give a full analysis of each argument raised." Capitol Records, LLC v. BlueBeat, Inc., 765 F. Supp. 2d 1198, 1200 n.1 (C.D. Cal. 2010) (citation omitted). Many of the objections here are garden variety evidentiary objections based on lack of foundation, lack of personal knowledge, misstatement of the evidence, confusion of issues, relevance, improper opinions, and violation of the "best evidence" rule. While these objections may be cognizable at trial, on a motion for summary judgment, evidence does not need to be in a form that is admissible at trial, Nev. Dep't of Corr. v. Greene, 648 F.3d 1014, 1019 (9th Cir. 2011); Garlick v. Cty. of Kern, 167 F. Supp. 3d 1117, 1125 (E.D. Cal. 2016), and many of the objections are unnecessary as they are "duplicative of the summary judgment standard itself." Burch v. Regents of the Univ. of Cal., 433 F. Supp. 2d 1110, 1119 (E.D. Cal. 2006) (objections that evidence is "irrelevant, speculative, and/or argumentative, or that it constitutes an improper legal conclusion are all duplicative of the summary judgment standard itself"). When assessing evidence in connection with a motion for summary judgment, the Court must consider the

admissibility of the evidence's contents, not its form. See Fraser v. Goodale, 342 F.3d 1032, 1036 (9th Cir. 2003); see also JL Beverage Co. v. Jim Beam Brands Co., 828 F.3d 1098, 1110 (9th Cir. 2016). Accordingly, the parties' objections based on relevance, lack of foundation, lack of personal knowledge, improper authentication, improper lay opinion, improper expert opinion, improper legal conclusion, violation of the "best evidence" rule, inadmissible evidence, misstates evidence, and confuses the issues are overruled with two exceptions, as provided below.

Defendants object to the statement in Plaintiff's Declaration submitted in support of her Opposition to Defendants' Motion that "After Sergeant Peter Hish informed JARA that he did not see any written consent or search waiver JARA forged a search waiver and emailed it to Sergeant Peter Hish" on the grounds of lack of foundation, lack of personal knowledge, and misstating the evidence. See Pl. Opp. Decl. ¶ 9, page 6, lines 9-10; Defendants' Objections to Evidence Submitted by Plaintiff in Support of Opposition to Def. MSJ ("Def. Obj."), Objection 5. To the extent Plaintiff is attempting to create a genuine issue of material fact by claiming that Jara forged the search waiver form, it is Plaintiff's burden to prove this allegation, see Johnson v. Roche, 2009 WL 720891, at *10 (E.D. Cal. Mar. 13, 2009), findings and recommendations adopted by 2009 WL 902261 (E.D. Cal. Mar. 31, 2009), and she has not presented any evidence demonstrating that Jara "forged" a document. The Court is not required to accept Plaintiff's assertion that Jara "forged" a document where Plaintiff does not profess to have witnessed any such alleged forgery and thus lacks foundation to claim Jara forged the document, and where such an assertion is contracted by the record as a whole, including Jara's testimony to the contrary, Plaintiff's acknowledgment that she voluntarily gave her cell phone to Jara with the password and consented to downloading information on her cell phone (Declaration of Amanda G. Papac in support of

Def. MSJ ["Papac MSJ Decl."], Exh. F (Excerpts from Plaintiff's Deposition) at 172:3-16; Pl. Opp. Decl. ¶ 6), and Plaintiff's representation that she signed a form at the time of the interview (Papac Decl., Exh. F at 173:21-174:25), which she has not provided. See Scott, 550 U.S. at 380; Bond v. Knoll, 2014 WL 7076901, at *10 (C.D. Cal. Dec. 10, 2014) (plaintiff's speculation that defendants' declarations and exhibits were fabricated was insufficient to defeat summary judgment). The Court sustains Defendants' objection to Plaintiff's unsupported allegation that Jara "forged" a search waiver form, but as discussed in Section IV, below, for the purposes of the consideration of the Motions, the Court accepts Plaintiff's assertion, made under penalty of perjury, that she did not sign the particular search waiver form at issue. For similar reasons, the Court sustains Defendants' objections to the statement, "Without my consent my message in Wechat was searched and translated by JARA instead of Detective Gerald Groenow," in the same declaration on the grounds of lack of foundation and personal knowledge. See Pl. Opp. Decl. ¶ 13, page 7, lines 4-5; Def. Obj., Objection 7.

As to the remaining objections, the Court overrules the parties' objections that the evidence is unfairly or unduly prejudicial, the evidence is misleading, and the evidence constitutes improper character evidence. Further, to the extent Plaintiff objects to the Court's consideration of the transcript from the June 25, 2020 hearing on the Motions to Dismiss, that objection is overruled. As to Plaintiff's objection to the consideration of excerpted portions of her deposition transcript on the ground that the copy submitted by Defendants does not reflect the corrections made after the deposition, Plaintiff has not cited any specific portion of the deposition transcript that is inaccurate, does not identify any portions of the transcript that were later corrected, and does not attach her errata sheet. Plaintiff's objection to the use of her deposition transcript is overruled.

Finally, the Court addresses Plaintiff's references to Defendants' evidence as a "sham declaration" and "sham verified response." "The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." Van Asdale v. Int'l Game Tech., 577 F.3d 989, 998 (9th Cir. 2009) (quoting Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 266 (9th Cir. 1991)). This sham affidavit rule prevents "a party who has been examined at length on deposition" from "rais[ing] an issue of fact simply by submitting an affidavit contradicting his own prior testimony," which "would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact." Kennedy, 952 F.2d at 266 (citation omitted); see also Van Asdale, 577 F.3d at 998 (stating that some form of the sham affidavit rule is necessary to maintain the principle that summary judgment is an integral part of the federal rules). Here, Plaintiff has presented no evidence that any of Defendants' witnesses testified inconsistently or that their declarations or verified responses are contradicted by earlier statements or testimony. As such, any objections based on Plaintiff's characterization of Defendants' evidence as "shams" are overruled.

IV.

UNDISPUTED FACTS

To the extent certain facts are not mentioned in this Order, the Court has not relied on them in reaching its decision. The Court has independently considered the admissibility of the evidence underlying the parties' statements of fact and has not considered facts that are irrelevant or based upon inadmissible evidence. Additionally, the Court deems certain material facts undisputed where the parties have merely objected to an admissible material fact without citing any specific facts or evidentiary support showing a genuine triable issue. Unless otherwise indicated, the following material facts are undisputed.

On July 2, 2019, Plaintiff went to the LASD station in the City of Industry for an interview with Jara to provide information regarding her allegations that the Alleged Assailant raped her. Papac MSJ Decl., Exh. F at 142:9-143:14; Declaration of Liliana Jara filed in support of Def. MSJ ["Jara Decl."] ¶ 3; Pl. MSJ Decl. ¶ 5. During this interview, Plaintiff showed messages on her cell phone to Jara regarding her conversations with the Alleged Assailant, and agreed to provide her cell phone to LASD to download certain messages. Papac Decl., Exh. F at 55:13-22, 144:24-145:18, 147:7-14, 171:3-172:2, 193:22-194:1; Papac Decl., Exh. I at 19:20-21:14; Jara Decl. ¶¶ 3-5, Exh. E; Pl. MSJ Decl. ¶ 5; Pl. Opp. Decl. ¶¶ 4-6. Plaintiff wrote down her cell phone password for Jara. Papac Decl., Exh. F at 172:3-22; Jara Decl. ¶ 4. The parties agree that Plaintiff signed a form during this interview confirming that Jara was taking possession of her cell phone, although the parties disagree regarding the nature and substance of this form. Plaintiff claims she merely signed a "receipt for property" while Defendants maintain that she signed an "Entry and Search Waiver," granting the LASD consent to search her cell phone for information related to the case, including "text messages, photographs, videos, messages, [and] emails." Pl. Mot. Decl. ¶ 8; Pl. Opp. Decl. ¶ 7; Jara Decl. ¶¶ 5-6, Exhs. A, E; Papac Decl., Exh. F at 173:21-176:19, 214:2-22. As the Court is not permitted to make credibility determinations on summary judgment, the Court accepts Plaintiff's assertion, made under penalty of perjury, that she did not sign the waiver form for purposes of the Motions, and therefore, has not considered the waiver form.

After the interview was concluded, Jara submitted the cell phone into evidence storage so that the High Tech Task Force could conduct a forensic examination and download Plaintiff's cell phone data. Jara Decl. ¶¶ 8-9, Exh. C; Pl. MSJ Decl., Exh. 2. Jara submitted a request for the task force to search for "all data related to this case; specifically any communication between the

victim . . . via 'WeChat' or cell phone number . . . any and all photographs, text messages, videos, or emails." Pl. MSJ Decl., Exh. 2; Jara Decl. ¶ 8. At the time of Jara's request, she was notified that the task force would make a digital copy of the cell phone and conduct the examination from the digital copy. Pl. MSJ Decl., Exh. 2. On July 3, 2019, Jara advised Plaintiff that a forensic examination would be completed, which Plaintiff acknowledged without objection. Pl. Opp. Decl., Exh. 3. The High Tech Task Force obtained the cell phone from evidence storage on July 18, 2019 and downloaded Plaintiff's cell phone data onto a disk in a reader format (USB drive) "to allow the [investigating officer] to review the data extracted, and find any evidence pertaining to [her] case." Jara Decl. ¶ 10, Exh. C; Pl. Mot. Decl., Exh. 3.

Meanwhile, on August 5, 2019, the Santa Ana Police Department contacted Jara about an investigation they were conducting of Plaintiff in a criminal matter. Jara Decl. ¶ 14. They also informed Jara that Plaintiff published a GoFundMe webpage complaining about Jara. Id. On August 5, 2019, one of the investigators with the Santa Ana Police Department emailed Jara a link to the GoFundMe webpage, which Jara forwarded to Ruiz the same day. Declaration of Richard Ruiz filed in support of Def. MSJ ("Ruiz Decl.") ¶ 2; Papac MSJ Decl., Exh. J (Interrogatory Response No. 5); Jara Decl. ¶ 14, Exh. D. Ruiz learned about the GoFundMe webpage through this email; he never touched, reviewed, or accessed the contents of Plaintiff's cell phone or the downloaded data. Papac Decl., Exh. F at 75:10-76:8; Papac Decl., Exh. J (Interrogatory Response No. 5); Ruiz Decl. ¶¶ 3, 5.

On October 17, 2019, Jara retrieved Plaintiff's cell phone and the USB drive and transported them to the Walnut Sheriff's Station, where she placed the evidence in evidence storage. Jara Decl. ¶ 10, Exhs. B-C. The only time Jara viewed any contents on Plaintiff's cell phone was during the July 2, 2019 interview in Plaintiff's presence. Id. ¶ 12. After that interview, Jara did not

access or search the contents of Plaintiff's cell phone or the data downloaded. She also did not translate any messages on Plaintiff's cell phone. Id.; Papac Decl., Exh. F at 177:12-179:25. Plaintiff retrieved her cell phone on October 21, 2019. Jara Decl., Exh. C; Papac Decl., Exh. F at 45:13-20, 191:19-24.

V.

DISCUSSION

A. Plaintiff's Motion for Summary Judgment

Plaintiff contends she is entitled to judgment as a matter of law against Jara and Ruiz in their official capacity because Jara unreasonably searched her messages with a friend and translated them into English and directed the High Tech Task Force to seize all electronic data from Plaintiff's cell phone without her consent in direct contravention of the LASD's policy against such seizure of evidence. Plaintiff maintains that the LASD's failure to train its officers regarding how to conduct a search and seizure of an electronic device and lack of supervision caused the constitutional deprivation at issue. Pl. MSJ at 6-8. Defendants maintain that Plaintiff is moving for partial summary judgment on a cause of action that no longer exists. Defendants note that Plaintiff's Fifth Cause of Action for failure to train and supervise against the County, Jara, Ruiz, and other defendants was previously dismissed, and contend there is no legal basis for her to seek summary adjudication of this claim and in any event, her uncontroverted "facts" are not supported by competent evidence. Def. Opp. at 1, 3. The Court agrees.

Plaintiff may not move for summary judgment on a claim that has been previously dismissed from this action. Plaintiff's Fifth Cause of Action for municipal liability based on the failure to train, supervise, and/or discipline was previously dismissed with prejudice in response to an earlier motion to dismiss. Dkt. 72. The R&R definitively found that "[t]he SAC [f]ail[ed] to [s]tate a [f]ederal [c]ivil [r]ights [c]laim [b]ased on [m]unicipal [l]iability" and

recommended that these claims be dismissed with prejudice. Dkt. 66 at 15, 38. The District Court accepted this portion of the R&R and dismissed the Monell claims without leave to amend and with prejudice. Dkt. 72. As the Court dismissed Plaintiff's claim alleging the failure to train and supervise, Plaintiff may not seek summary judgment on this claim. See Gibson v. Beer, 2008 WL 5063878, at *1 (E.D. Cal. Nov. 24, 2008) ("Plaintiff may not seek summary judgment against non-parties or for claims/defendants that have previously been dismissed from this action."), findings and recommendations adopted by 2009 WL 159282 (E.D. Cal. Jan. 22, 2009).

Plaintiff maintains that she can proceed on her Monell claim because the Court did not dismiss the Second Cause of Action against Jara and Ruiz in their official capacity. Pl. Reply at 1. The SAC names all defendants "in their official capacities for declaratory and injunctive relief." SAC ¶ 18. As Plaintiff concedes, however, "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166 (1985). "It is not a suit against the official personally, for the real party in interest is the entity." Id. As the Supreme Court has explained, "[t]here is no longer a need to bring official-capacity actions against local government officials, for under Monell . . . local government units can be sued directly for damages and injunctive or declaratory relief." Id. at 167 n.14. Thus, an "official capacity" suit is, in fact, a suit against the local government entity, which requires a showing that the entity itself was a "moving force" behind the alleged constitutional deprivation. See id. at 166.

Here, the Court already found that the SAC failed to state a Monell claim against the County and dismissed the Second Cause of Action without leave to amend and with prejudice as to the County. The Court has repeatedly made clear the only operative claim is a single civil rights claim against Jara and Ruiz based on an assertion that they seized and searched Plaintiff's cell

phone either without her consent or beyond her consent. See, e.g., Dkt. 145 at 33; Dkt. 162 at 5. A claim against Jara and Ruiz in their "official capacity" is functionally the same as a claim against the County, and must be treated as such. To the extent this claim was not explicitly dismissed before, the Second Cause of Action against Jara and Ruiz in their "official capacity" must be dismissed as the Court already found that Plaintiff failed to state a cognizable Monell claim against the County. See Grisham v. Cty. of L.A., 2018 WL 7501118, at *4 (C.D. Cal. Jan. 22, 2018) ("Because the claims against each Individual Defendant in his or her official capacity are, in all respects other than name, the same as the claims against the County, the dismissal of plaintiff's first four claims in the FAC as to the County for failure to state a claim pursuant to Monell is dispositive of plaintiff's first four claims in the FAC as to the Individual Defendants in their official capacities."); Howard v. Contra Costa Cty., 2014 WL 824218, at *12 (N.D. Cal. Feb. 28, 2014) (because the complaint failed to state a Monell claim, individual defendant may not be held liable under Section 1983 in his official capacity).

Accordingly, Plaintiff is not entitled to partial summary judgment.[3]

/ / /

[3] The Court also notes that as the party moving for summary judgment, Plaintiff "bears the initial responsibility of informing the district court of the basis for [her] motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which [she] believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323 (citation omitted). The district court is not required to search the record for evidence to support a motion for summary judgment. Robles v. Agreserves, Inc., 158 F. Supp. 3d 952, 966 (E.D. Cal. 2016) ("[t]he parties have the obligation to particularly identify material facts"); Fed. R. Civ. P. 56(c)(1); cf. Keenan, 91 F.3d at 1279 (explaining that the district court is not required to "scour the record in search of a genuine issue of triable fact" (citation omitted)). Even if the Court could consider the Motion, Plaintiff did not cite to the relevant portions of the record to support her assertions that she is entitled to judgment as a matter of law.

B. Defendants' Motion for Summary Judgment

Defendants contend they are entitled to judgment as a matter of law on Plaintiff's Fourth Amendment claim because there is no evidence Jara searched Plaintiff's cell phone after her interview and Ruiz never touched, accessed, or searched Plaintiff's cell phone or the USB drive containing Plaintiff's cell phone data. Def. MSJ at 12-14. Additionally, Defendants contend they are entitled to qualified immunity as there is no "competent evidence to substantiate Plaintiff's unlawful search claims" and both Defendants acted "reasonably as to what they believed the law required of them relative to a consensual search of a victim's phone." Id. at 14-18.

In her Opposition, Plaintiff argues that Jara exceeded the scope of her consent to search only the Alleged Assailant's "incriminating messages" and Defendants are not entitled to qualified immunity as the law was clearly established and "legitimate disputes exist as to whether Defendants were 'plainly incompetent' or 'knowingly violat[ed] the law,' or both." Pl. Opp. at 7-9.

1. Fourth Amendment Claim

In her Second Cause of Action, Plaintiff alleges that Jara and Ruiz violated her "Fourth Amendment right to be secure in her person against unreasonable searches and seizures." SAC ¶ 173. She claims her "private information was subjected to analysis by LASD personnel without a warrant, valid consent, or exigent circumstances, in violation of her Fourth Amendment rights" and remains "in the possession of government agencies . . . ." Id. ¶¶ 174-175. She contends she did not consent to search the entire contents of her cell phone, but rather only to download the conversations between herself and the Alleged Assailant. Id. ¶¶ 71, 169, 171. She further alleges "Jara was well aware" that she "handed over her cell phone solely for Jara to download

her conversations with" the Alleged Assailant and Ruiz "had personal knowledge of the illegal search and seizure" and "was part of it." Id. ¶¶ 97, 169. Based on a conversation with Ruiz in which he referenced Plaintiff's GoFundMe webpage and a translation on her cell phone, Plaintiff claims Jara and Ruiz conducted an illegal search and seizure. See id. ¶¶ 96, 131.

i. Applicable Legal Authority

Under the Fourth Amendment to the U.S. Constitution, individuals have the right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Generally, law enforcement officials must obtain a warrant before searching the contents of a phone. Carpenter v. United States, 585 U.S. --, 138 S. Ct. 2206, 2214 (2018); Riley v. California, 573 U.S. 373, 401 (2014).

Consent is a recognized exception to the Fourth Amendment protection against unreasonable searches and seizures. United States v. Russell, 664 F.3d 1279, 1281 (9th Cir. 2012). However, "[t]he existence of consent to a search is not lightly to be inferred" and the government always has the burden of proving effective consent. United States v. Reid, 226 F.3d 1020, 1025 (9th Cir. 2000) (citation omitted). The scope of the search by consent is limited by the terms of its authorization. Walter v. United States, 447 U.S. 649, 656 (1980). Under the Fourth Amendment, the standard for measuring the scope of an individual's consent is "that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the [person giving consent]?" Florida v. Jimeno, 500 U.S. 248, 251 (1991).

ii. Analysis

a. Jara

As to a Fourth Amendment search, it is undisputed that the only search conducted by Jara was during the July 2, 2019 interview, which was done in Plaintiff's presence and with her consent. Although Plaintiff speculates that

Jara later translated a WeChat message with her friend, Plaintiff presents no evidence to support this contention. Such speculation without any factual support is insufficient to create a genuine dispute of material fact. See Loomis, 836 F.3d at 997. As such, Jara did not conduct a "search" in violation of the Fourth Amendment.

At most, Jara caused the High Tech Task Force to download the information on Plaintiff's cell phone, creating a mirror image of the data and copying this information to a USB drive. The evidence submitted in support of Plaintiff's Motion reflects that regardless of the scope of Plaintiff's initial consent - whether it was limited to the WeChat messages with the Alleged Assailant or any evidence relating to the alleged assault - the LASD would need to make a digital copy of the entire cell phone to conduct any examination. See Pl. MSJ Decl., Exh. 2. While a digital copy of Plaintiff's cell phone data was created, there is no evidence that either the cell phone or this digital copy was searched after the July 2, 2019 interview. Given that Plaintiff voluntarily gave her cell phone to LASD, including providing Jara with the password to her cell phone, LASD's possession of the cell phone alone did not constitute a "seizure" in violation of the Fourth Amendment. Plaintiff has not claimed otherwise. See Papac Decl., Exh. F at 55:13-16. Thus, Plaintiff's Fourth Amendment claim turns on whether downloading a copy of the data on Plaintiff's cell phone, which was never searched, constitutes a "seizure" in violation of the Fourth Amendment.

The Court need not decide whether Jara violated the Fourth Amendment when she directed the task force to download information on Plaintiff's cell phone, however, because even assuming a Fourth Amendment violation occurred, the law on the relevant issue was not clearly established and therefore, Jara is entitled to qualified immunity.

> 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 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) (citation 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). It is available to government officials sued in their individual capacity. Wright v. Beck, 981 F.3d 719, (9th Cir. 2020). Such officials are entitled to qualified immunity unless: (1) the defendant violated a constitutional or federal statutory, and (2) the unlawfulness of his or her conduct was "clearly established at the time." District of Columbia v. Wesby, 583 U.S. --, 138 S. Ct. 577, 589 (2018) (citation omitted). Demonstrating the unlawfulness of the defendant's conduct was "clearly established" requires a showing that "at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." Id. (citation and quotation marks omitted); Kisela v. Hughes, 584 U.S. --, 138 S. Ct. 1148, 1153 (2018) (per curiam) ("An officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it.'" (citation omitted)). "While there does not have to be 'a case directly on point,' existing precedent must place the lawfulness of the [conduct] 'beyond debate.'" Villanueva v. California, 986 F.3d 1158, 1165 (9th Cir. 2021) (alteration in original) (quoting Wesby, 138 S. Ct. at 590). "[S]pecificity is especially

important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." Kisela, 138 S. Ct. at 1152 (citation omitted). Plaintiff bears the burden of showing that the right allegedly violated was clearly established. Shafer v. Cty. of Santa Barbara, 868 F.3d 1110, 1118 (9th Cir. 2017).

Whether copying data is a "seizure" within the meaning of the Fourth Amendment is "uncertain[]." 1 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 2.6(f) (6th ed. 2020); see also Note, Digital Duplications and the Fourth Amendment, 129 Harv. L. Rev. 1046, 1047 (2016) (explaining that "it is not entirely settled that the government conducts either a search or a seizure when it makes a copy of locally stored data, and then retains that data without further reviewing it" (footnote omitted)); Michael W. Price, Rethinking Privacy: Fourth Amendment "Papers" and the Third-Party Doctrine, 8 J. Nat'l Sec. L. & Pol'y 247, 278 (2016) (whether copying data counts as a seizure is an "outstanding question"). Plaintiff does not provide any case with facts similar to those at issue here, where the court found that merely copying digital information without searching it constitutes a Fourth Amendment violation. The leading case on the question of whether copying is a seizure, Arizona v. Hicks, 480 U.S. 321, 324 (1987), concluded that police conduct in copying down the serial numbers on stereo equipment "did not constitute a seizure," reasoning that "it did not 'meaningfully interfere' with the respondent's possessory interest in either the serial numbers or the equipment." Since Hicks, it has been suggested by at least one commentator that electronic copying by the government should ordinarily be considered a Fourth Amendment seizure:

> the Fourth Amendment power to seize is the power to freeze. That is, the seizure power is the power to hold the crime scene and

> control evidence. Generating an electronic copy of data freezes that data for future use just like taking physical property freezes it: it adds to the amount of evidence under the government's control. From the standpoint of regulating the government's power to collect and use evidence, generating an electronic copy is not substantially different from controlling access to a house or making an arrest. Each of these seizures ensures that the government has control over the person, place, or thing that it suspects has evidentiary value. As a result, copying Fourth Amendment protected data should ordinarily be considered a Fourth Amendment seizure.

Orin Kerr, Fourth Amendment Seizures of Computer Data, 119 Yale L. J. 700, 709 (2010). However, the Supreme Court has not squarely addressed the issue in the digital context and lower courts have disagreed regarding whether copying data constitutes a seizure. See Brittany Adams, Striking a Balance: Privacy and National Security in Section 702 U.S. Person Queries, 94 Wash. L. Rev. 401, 426-27 (2019); Digital Duplications and the Fourth Amendment, 129 Harv. L. Rev. at 1048 (explaining that case law provides no "conclusive answers" regarding whether mirror-imaging is subject to the Fourth Amendment); Price, 8 J. Nat'l Sec. L. & Pol'y at 279 (noting that the Supreme Court has "yet to weigh in on this question"). At least one district court in the Ninth Circuit has found that the act of copying computer data is not a seizure under the Fourth Amendment "because it did not interfere with Defendant's or anyone else's possessory interest in the data. The data remained intact and unaltered. It remained accessible to Defendant and any co-conspirators or partners with whom he had shared access. The copying of the data had absolutely no impact on his possessory rights." United States v. Gorshkov, 2001 WL 1024026, at *3 (W.D. Wash. May 23, 2001).

Given the lack of existing precedent placing the constitutional issue beyond debate, it was not clearly established that merely copying Plaintiff's cell phone data without searching such information constituted a Fourth Amendment violation. Jara is entitled to qualified immunity in her individual capacity, and as explained in Section V(A), Plaintiff's Second Cause of Action against Jara in her official capacity is the same as a claim against the County, which was previously dismissed with prejudice for failure to state a claim. That finding is dispositive of Plaintiff's official capacity claim.

b. Ruiz

Defendants contend that Plaintiff's Second Cause of Action fails against Ruiz because Ruiz never touched, accessed, or searched Plaintiff's cell phone or the USB drive containing Plaintiff's cell phone data. Ruiz learned about Plaintiff's GoFundMe webpage through the Santa Ana Police Department, not through a search of Plaintiff's cell phone. Def. MSJ at 13-14.

Plaintiff does not dispute these contentions. Rather, Plaintiff appears to contend that as Jara's supervisor, Ruiz is liable for failing to supervise her alleged misconduct. Pl. Opp. at 4, 6, 9. Plaintiff maintains that pursuant to LASD Policy and Procedures 5-04/000.10, only evidence essential to proving an offense shall be seized and the seizure of such evidence shall be scrutinized by supervisory personnel. Id. at 6. Plaintiff contends that personal information unrelated to the underlying offense was seized without any supervision. Id. She claims that because Jara sent Ruiz the GoFundMe webpage, this "suggests that JARA and RUIZ had close communication and kept RUIZ updated regarding the investigation of Plaintiff's complaint." Id. at 9. According to Plaintiff, Ruiz "had ample opportunities but failed his supervisory duty as required by LASD Policy and Procedures 5-04.000.10[.]" Id.

Defendants counter that Plaintiff's Fifth Cause of Action for failure to train and supervise was dismissed against Ruiz without leave to amend and

that this claim lacks merit. Def. MSJ at 14. The Court agrees that Plaintiff's Fifth Cause of Action for "Municipal Liability – Failure to Train, Supervise, and/or discipline" was dismissed without leave to amend and with prejudice as to the County, Ruiz, Jara, among others. Dkt. 72. Further, even if the Court considered Plaintiff's theory of liability, she has not demonstrated a genuine issue of material fact as to the Second Cause of Action against Ruiz. As framed by the SAC, Plaintiff seeks to hold Ruiz liable because he allegedly had "personal knowledge of the illegal search and seizure and he was part of it." SAC ¶ 97. However, Plaintiff has presented no evidence that Ruiz "was part of" the alleged constitutional deprivation or had "personal knowledge" of it.

As previously explained, "[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior." Iqbal, 556 U.S. at 676. Rather, "each Government official, his or her title notwithstanding, is only liable for his or her own misconduct." Id. at 677. "A defendant may be held liable as a supervisor under § 1983 'if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.'" Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (citation omitted). A causal connection can be established "by setting in motion a series of acts by others" or "knowingly refusing to terminate a series of acts by others, which the supervisor knew or reasonably should have known would cause others to inflict a constitutional injury." Id. at 1207-08 (citations and alterations omitted). "A supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others." Id. at 1208 (citation omitted).

Here, Plaintiff has not presented any evidence that Ruiz was personally involved in a violation of her Fourth Amendment rights or that Ruiz's alleged deficient supervision had any direct causal connection to the alleged constitutional violation. It is undisputed that Ruiz did not personally access or search Plaintiff's cell phone and there is no evidence substantiating Plaintiff's allegation that Ruiz had "personal knowledge" of the alleged constitutional violation. Plaintiff cannot avoid summary judgment simply by citing evidence that Jara sent Ruiz a copy of the GoFundMe webpage and alleging in conclusory fashion that Jara updated Ruiz regarding the investigation of Plaintiff's complaint and failed in his "supervisory duty." See Pl. Opp. at 9. Plaintiff has presented no evidence showing that Ruiz was personally aware of the alleged constitutional violation. Rivera v. Nat'l R.R. Passenger Corp., 331 F.3d 1074, 1078 (9th Cir. 2003) ("Conclusory allegations unsupported by factual data cannot defeat summary judgment."), amended by 340 F.3d 767 (9th Cir. 2003). Based on the foregoing, drawing all reasonable inferences in Plaintiff's favor, the Court concludes that Plaintiff has failed to demonstrate a genuine issue of material fact exists as to her Fourth Amendment claim against Ruiz. Ruiz is entitled to judgment as a matter of law.

2. State Law Claims

Defendants also request that the Court dismiss Plaintiff's remaining state law claims. Def. MSJ at 18-19.

On July 31, 2020, the District Court accepted the R&R, wherein the Court declined to exercise supplemental jurisdiction over the remaining state law claims against the City, Buckhannon, Reynoso, Tate, the County, Cagney, Chung, Lacey, Thorp, and Villanueva and stayed the state law claims against Jara and Ruiz until further order of the Court. Dkt. 72. That stay has not been lifted. As such, it is inappropriate to dismiss these claims at this time, particularly given that the parties have had no opportunity to conduct

discovery regarding such claims. Nonetheless, the Court should decline supplemental jurisdiction over these remaining claims.

When a federal court has dismissed all claims over which it has original jurisdiction, it may, at its discretion, decline to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3); Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 640 (2009). "[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." Carnegie–Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988); see also United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966) ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal law claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." (internal footnote omitted)); Jones v. Cmty. Redevelopment Agency of the City of L.A., 733 F.2d 646, 651 (9th Cir. 1984) ("When federal law claims are dismissed before trial, . . . pendant state claims also should be dismissed.").

As a matter of comity, in light of the recommended dismissal of the only remaining federal claim, the Court should decline to hear the remaining exclusively state law claims in the SAC and dismiss those claims without prejudice.

C. The Doe Defendants Should Be Dismissed Without Prejudice

Fed. R. Civ. P. 4(c)(1) provides that the "plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service."

Rule 4(m) of the Federal Rules of Civil Procedure provides: "If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." Plaintiffs bear the burden to establish good cause. Tucker v. City of Santa Monica, 2013 WL 653996 at *2 (C.D. Cal. Feb. 20, 2013). The "good cause" exception to Rule 4(m) applies "only in limited circumstances" and is not satisfied by "inadvertent error or ignorance of the governing rules." Id. (citation omitted); see also Townsel v. Cty. of Contra Costa, 820 F.2d 319, 320 (9th Cir. 1987) (ignorance of Rule 4 is not good cause for untimely service).

Plaintiff was advised on August 17, 2020 that the deadline for seeking to amend a pleading or to join other parties, including to name a Doe defendant was September 28, 2020 absent a showing of good cause. The Court cautioned that it would "recommend dismissal of any party not timely served or identified by name by that time." Dkt. 81 ("Scheduling Order") at 3.

Plaintiff has twice requested to extend the deadlines in the Scheduling Order. Plaintiff's September 8, 2020 Motion to Amend the deadlines in the Scheduling Order was granted in part on September 8, 2020, and the Court extended the deadline to October 28, 2020. Dkt. 94. Plaintiff was again advised that the Court would "recommend dismissal of any party not timely served or identified by name by that time." Id. at 4. Plaintiff's second motion to amend the Scheduling Order was denied on October 30, 2020 because Plaintiff did not show good cause to modify the Scheduling Order. Dkt. 112.

The deadline for service of the Doe defendants has long since expired and Plaintiff has yet to identify and serve these defendants, despite the opportunity to conduct discovery. Plaintiff did not move for leave to amend

the SAC to name these defendants and she has not shown good cause to extend the time for serving the Doe defendants. Accordingly, dismissal pursuant to Rule 4(m) is appropriate.

By this Report, Plaintiff is placed on notice of the recommended dismissal of the Doe defendants; if Plaintiff believes she can show "good cause" for her failure to properly name and serve these defendants, she should make that showing in Objections to the Report and Recommendation.

D. Defendants' Motion for Sanctions

On April 26, 2021, Defendants filed a Motion for Terminating Sanctions, seeking an order terminating this action due to Plaintiff's spoliation of evidence and failure to comply with court ordered discovery. Dkt. 223 ("Motion for Sanctions"). In light of the Court's recommendation on Defendants' Motion, the Motion for Sanctions should be denied as moot.

VI.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1) approving and accepting this Report and Recommendation; (2) granting Defendants' Motion in part, granting partial summary judgment and dismissing Plaintiff's Second Cause of Action with prejudice; (3) denying Defendants' Motion as to the state law claims; (4) declining to exercise supplemental jurisdiction over the state law claims and dismissing these claims without prejudice; (5) denying Plaintiff's Motion; (6) dismissing the remaining Doe defendants without prejudice; (7) denying Defendants' Motion for Sanctions (Dkt. 223) as moot; (7) discharging the Preliminary Injunction; and (8) directing that Judgment be entered accordingly.

DATED: May 28, 2021.

JOHN D. EARLY
United States Magistrate Judge

Appendix E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

O.L, Plaintiff, v. CITY OF EL MONTE, et al., Defendants.	Case No. 2:20-cv-00797-RGK (JDE) ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the records on file, including the operative Second Amended Complaint (Dkt. 40, "SAC") filed by Plaintiff O.L. ("Plaintiff"), the Motion to Dismiss the SAC filed by Defendants the City of El Monte, Michael Buckhannon, David Reynoso, and Martha Tate (collectively, "the City Defendants") (Dkt. 50, "the City Motion"), the Motion to Dismiss the SAC filed by Defendants the County of Los Angeles, Peter Cagney, June Chung, Liliana Jara, Jackie Lacey, Richard Ruiz, Karen Thorp, and Alex Villanueva (collectively, "the County Defendants") (Dkt. 51, "the County Motion"), the Joinder in the County Motion filed by the City Defendants (Dkt. 55), the Oppositions filed by Plaintiff to the City Motion and the County Motion (Dkt. 56, 57), the Replies filed by the City Defendants and

the County Defendants in support of their respective motions (Dkt. 60, 61), the Report and Recommendation of the assigned United States Magistrate Judge (Dkt. 66, "Report"), the Objections to the Report filed by Plaintiff (Dkt. 67), the Objections to the Report filed by the County Defendants (Dkt. 68), the Reply to the County Defendants' Objections filed by Plaintiff (Dkt. 69), and the Replies to Plaintiff's Objections filed by the City Defendants (Dkt. 70) and the County Defendants (Dkt. 71).

The Court has engaged in a de novo review of those portions of the Report to which objections have been made. The Court accepts the findings and recommendation of the magistrate judge except the Court does not, at this time, dismiss claims against DOE defendants to the extent such the claims against such DOE defendants relate to claims not dismissed by this Order.

IT IS HEREBY ORDERED that:

1. The City Motion (Dkt. 50) is GRANTED without leave to amend and with prejudice as to the First, Third, Fourth, Fifth, and Sixth Causes of Action;
2. The County Motion (Dkt. 51) is:
   a. GRANTED without leave to amend and with prejudice as to the First, Third, Fourth, Fifth, and Sixth Causes of Action as to the County of Los Angeles, Peter Cagney, June Chung, Jackie Lacey, Karen Thorp, Alex Villanueva, Liliana Jara, and Richard Ruiz;
   b. GRANTED without further leave to amend and with prejudice as to the second Cause of Action against the County of Los Angeles, Peter Cagney, June Chung, Jackie Lacey, Karen Thorp, and Alex Villanueva; and
   c. DENIED as to the Second Cause of Action against Liliana Jara and Richard Ruiz;

3. The Court declines to exercise supplemental jurisdiction over the remaining state law claims against Defendants the City of El Monte, Michael Buckhannon, David Reynoso, Martha Tate, the County of Los Angeles, Peter Cagney, June Chung, Jackie Lacey, Karen Thorp, and Alex Villanueva without prejudice to Plaintiff asserting such claims in state court;

4. The Court orders further proceedings with respect to the remaining state law claims only against Defendants Liliana Jara and Richard Ruiz stayed until further order of the Court; and

5. The Court hereby modifies its May 22, 2020 Preliminary Injunction (Dkt. 54) to release Defendants Peter Cagney, June Chung, Jackie Lacey, Karen Thorp, and Alex Villanueva from the Preliminary Injunction.

IT IS SO ORDERED.

Dated: July 31, 2020

Gary Klausner

R. GARY KLAUSNER
United States District Judge

Appendix F

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

O.L., Plaintiff, v. CITY OF EL MONTE, et al., Defendant.	No. 2:20-cv-00797-RGK-JDE REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable R. Gary Klausner, 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.

PROCEEDINGS

On January 27, 2020, Plaintiff O.L. ("Plaintiff"),[1] proceeding pro se, filed a Complaint arising out of the handling of her report of sexual assault. On

[1] On February 28, 2020, Plaintiff was granted approval to proceed using her initials. See Dkt. 27.

March 19, 2020, Plaintiff filed the operative Second Amended Complaint against the City of El Monte (the "City"), the County of Los Angeles (the "County"), David Reynoso ("Reynoso"), Martha Tate ("Tate"), Michael Buckhannon ("Buckhannon"), Alex Villanueva ("Villanueva"), Liliana Jara ("Jara"), Richard Ruiz ("Ruiz"), Jackie Lacey ("Lacey"), Peter Cagney ("Cagney"), Karen Thorp ("Thorp"), June Chung ("Chung"), and Does 1-10 (collectively, "Defendants"). Dkt. 40 ("SAC"). Plaintiff names the individual defendants in both their official and individual capacities. See SAC ¶¶ 18-19.

On May 19, 2020, the City, Reynoso, Tate, and Buckhannon (collectively, the "City Defendants") filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). Dkt. 50 ("City Motion"). On the same date, the County, Villanueva, Jara, Ruiz, Lacey, Cagney, Thorp, and Chung (collectively, the "County Defendants") also filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). Dkt. 51 ("County Motion"). On May 28, 2020, the City Defendants filed a Joinder, seeking to join the County Motion "for all the reasons stated therein." Dkt. 55. On June 3, 2020, Plaintiff filed her Opposition to the City Motion (Dkt. 56, "Opp. City Mtn.") and the County Motion (Dkt. 57, "Opp. Cty. Mtn."). The City and County Defendants filed their respective Reply briefs on June 11, 2020. Dkt. 60 ("City Reply"), 61 ("County Reply"). A tentative ruling was issued on June 24, 2020. A hearing on the Motions was held on June 25, 2020, at which all parties were provided an opportunity to address the Motions, the tentative ruling, and the propriety of leave to amend.

For the reasons discussed hereafter, the Court recommends that the City Motion be granted and the County Motion be granted in part.

II.

SUMMARY OF PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that Carlos Suarez (also known as Charlie Suarez) ("Suarez") "friended" her on or about April 1, 2019 through the mobile app,

"Wechat." SAC ¶ 43. On or about April 5, 2019, Plaintiff and Suarez went to dinner. Later that evening, Plaintiff and Suarez had drinks in his car. Id. Plaintiff maintains that she eventually lost consciousness "after consuming a lot of alcohol" and woke up the following morning "in an unfamiliar place, naked with a sore vagina," next to Suarez. Id. ¶¶ 43-44. She contends she suffered a "sexual attack while she was unconscious." Id. ¶ 83. She avers that she was "still drunk and confused about what had happened." That morning, Suarez initiated sexual intercourse and Plaintiff "didn't know what to say or what to do." Id. ¶ 44. Plaintiff indicates that she did not resist because she was "afraid of any confrontation and escalat[ing] the situation"; she remained silent, "reasonably believ[ing] that Suarez would commit violence against her if the situation was escalated." She asserts she "never gave her consent to sexual contact with Suarez while she was awake not to mention when she was unconscious." Id. Thereafter, Plaintiff allegedly declined his sexual advances, and the last time she saw Suarez was on or about May 3, 2019. Id. ¶ 45.

Plaintiff states she reported the incident on June 7, 2019 and was interviewed by Tate at the El Monte Police Department ("EMPD"). SAC ¶ 47. Although the initial interview was not recorded, Tate asked Plaintiff to retell her story again for recording purposes. Plaintiff claims that during the interview, no victim services personnel were present and she was not advised of a right to request a victim advocate. Plaintiff avers that throughout the interview, she noticed "Tate's fake smile and the way Tate looked at her with skepticism." Id. ¶¶ 47-48. Plaintiff takes issue with how Tate conducted the interview, including her refusal to take Plaintiff at her word and the form of her questions, which purportedly focused on physical force instead of the absence of consent and reflected doubt about Plaintiff's allegation. Id. ¶¶ 49, 56-57. At the end of the interview, Tate allegedly "willfully smirked" and told Plaintiff that it was not rape, which upset her. Id. ¶ 50. According to Plaintiff,

Tate falsified her incident report by stating that she gave consent and willingly engaged in sexual intercourse with Suarez and omitting pertinent information. Id. ¶¶ 51, 55. Plaintiff alleges that she "struggle[ed] immensely" with Tate's finding and went to urgent care for a "severe" sleep disorder. Id. ¶ 63.

Plaintiff alleges that her case was transferred to the Los Angeles County Sheriff's Department ("LASD") based on jurisdiction. SAC ¶ 65. On or about July 2, 2019, Plaintiff claims she had an appointment with Jara at the City of Industry station. Id. ¶ 66. Jara asked Plaintiff to recount her story, but according to Plaintiff, "not long after [she] started Jara assumed that Plaintiff didn't remember giving consent." Id. ¶ 67. Plaintiff avers that Jara did not inform her of a victim's rights under the California Constitution. Id. ¶ 85. After Plaintiff purportedly refused to recant her allegation, Jara asked her, "What do you want here?" Id. ¶¶ 67-68. Plaintiff believes this was a "humiliating and degrading question," aimed at devaluing her credibility. Plaintiff responded that she "want[ed] JUSTICE." Id. ¶ 68. They also apparently argued about whether a comment made by Suarez amounted to a confession. Id. ¶¶ 73-74. According to Plaintiff, Jara questioned Plaintiff's intent to come forward, claiming that she came forward because she learned Suarez was cheating on her and she was mad. Id. ¶ 75. Plaintiff denies this. Id. Plaintiff claims she came forward after reading some articles, which she tried unsuccessfully to show Jara. Id. ¶ 78. Plaintiff avers that the entire interview was "frustrat[ing]" and conducted in "a very accusatory manner, very threatening." Id. ¶¶ 79, 84. Jara allegedly told Plaintiff repeatedly that the "case was going nowhere," it had a lot of problems, and she was not going to arrest Suarez. Id. ¶ 80.

As part of the interview, Jara allegedly read Plaintiff's conversations with Suarez on her cellular phone, concluding that it did not "look like" she was raped. SAC ¶ 69. Plaintiff avers that Jara indicated that LASD would need to download these conversations. Id. ¶ 70. Plaintiff had previously tried to

download these messages, but was unable to do so. Id. ¶ 64. She claims she told Jara as much, but Jara assured her that technical personnel would be able to download the messages. Id. ¶ 70. Plaintiff allegedly agreed to turn over her phone for this purpose only and did not grant consent to search her cellular phone. Id. ¶¶ 71, 169. Plaintiff maintains that she asked Jara how long it would take to download the messages to which Jara responded that it would take "about two weeks." Id. ¶ 72. Nevertheless, she maintains the Los Angeles County District Attorney ("LADA") did not return her phone until October 2019, despite repeated requests. Id. ¶¶ 72, 131. She claims that when she inquired about the investigation in August 2019, Ruiz confronted her about her gofundmepage, which Plaintiff appears to claim evidences that LASD conducted an illegal search of her cellular phone exceeding the scope of her consent. Id. ¶¶ 96-97. When she retrieved her cellular phone in late October 2019, she also noticed that a message conversation with a female friend had been translated into English. Id. ¶ 131.

At the conclusion of the interview with Jara, Plaintiff claims Jara told her that she would get Suarez's phone to see if there were additional messages, which Plaintiff maintains reflected a presumption that Plaintiff was lying or hiding something. SAC ¶ 82. Plaintiff avers that her depression and anxiety were "exacerbated to a whole new level" as a result of the interview. Id. ¶ 86.

On or about July 3, 2019, Plaintiff allegedly "reached out" to Ruiz, requesting that another detective be assigned to her case, but her attempt was unsuccessful. SAC ¶ 88. During a subsequent call with Ruiz regarding the case, Ruiz allegedly asked Plaintiff, "How did you not know you were violated?" Plaintiff claims this question made her feel like she was being punished for coming forward and should not have reported the incident. Id. ¶ 91. That same month, Plaintiff asserts she filed separate complaints against Jara and the Special Victims Bureau with both LASD and Inspector General. Id. ¶ 89. She

did not receive any information regarding the results of the internal investigation. Id. In August 2019, Plaintiff alleges her complaint against Jara was turned into a service comment report and investigated by Ruiz. Id. ¶ 98.

On August 6, 2019, Plaintiff alleges Jara arranged a follow-up interview for August 8, 2019, but claims this was merely a "trap set up by Jara" to have her arrested. Plaintiff claims that when she arrived for the appointment, she was arrested by Santa Ana police and charged with a misdemeanor. SAC ¶¶ 92-94, 102.

Jara allegedly notified Plaintiff on or about August 14, 2019 that she had done everything she could, and the LADA declined to file charges shortly thereafter. SAC ¶¶ 95, 102. Plaintiff maintains that more could have been done, explaining that a pretext phone call could have been made to obtain a confession, but this was never done. Id. ¶ 95. She believes Jara and Ruiz "made minimal or maybe no effort to interrogate or investigate the suspect in Plaintiff's case," and notes that she was never notified after law enforcement contacted Suarez. Id. ¶¶ 95, 100.

On or about August 16, 2019, Plaintiff claims she went to emergency for "dysfunctional menstrual bleeding," which was the first time she went to emergency. SAC ¶ 101.

Plaintiff asserts that she called LADA on August 23, 2019, requesting to speak with the prosecutor on her case. SAC ¶ 103. Plaintiff apparently spoke with Chung, who told her that the open case against her affected her credibility and made filing charges against Suarez impossible. Id. Plaintiff asserts that, at that time, she had not been convicted of a crime. Id. ¶¶ 94, 103. Chung purportedly told her that the case was not being prosecuted because she voluntarily consumed alcohol and it was a "he said she said" case, a characterization Plaintiff disputes. Id. ¶¶ 105, 107. She allegedly requested to speak with Chung's supervisor and spoke with Thorp later that day. SAC

¶¶ 108, 110. Thorp purportedly told Plaintiff, "We can't prove it in court to a jury that a jury is not likely to convict. . . . If someone thinks they were raped and then they have consensual sex with someone, then they have a relationship and they only go to the police after the breakup." Id. ¶ 110. Thorp also allegedly told Plaintiff that they needed a forensic medical exam and evidence of force, and it did not sound like she was raped. Id. ¶¶ 111, 114.

On or about August 30, 2019, she was transported to the hospital on suicide watch for five days, allegedly because she felt hopeless and worthless as a result of the "injustice and unlawful discrimination after sexual assault." SAC ¶ 118. On or about September 15, 2019, she allegedly moved for fear of her safety. Id. ¶ 119. Shortly thereafter, she avers she emailed County CEO Sachi A. Hamai and Cagney regarding "the Fourteenth Amendment violation." Id. ¶ 120.

After she obtained a copy of the incident report prepared by Tate in September 2019, Plaintiff claims she spoke to EMPD watch commander, Buckhannon. Plaintiff claims that Buckhannon agreed to play the interview tape in front of her and two victim advocates from Peace over Violence. Before listening to the entire interview, however, Buckhannon allegedly started defending Tate. SAC ¶¶ 121-122. Buckhannon allegedly told Plaintiff that it was "not fair to Tate to make an allegation against her," claiming that Tate just needed "a little bit [of] training." Id. Buckhannon also allegedly commented that he had been married for twenty years and did not ask for consent each time he had sex with his wife. Id. ¶ 124.

On September 27, 2019, Plaintiff alleges that EMPD Officer Carlos Tello conducted a supplemental interview in the presence of Plaintiff's victim advocate. Plaintiff claims the interview was done in a "hostile manner," causing the victim advocate to pause the interview a couple times. SAC ¶ 127. On or about October 4, 2019, Plaintiff alleges she filed a police misconduct

complaint against Tate, but never received a response. SAC ¶ 129. In November 2019, she allegedly filed a complaint against Tate with the LADA justice system integrity division, but her complaint was referred to EMPD. Id. ¶ 133.

In October and November 2019, Plaintiff maintains she tried unsuccessfully to obtain a copy of Jara's report. SAC ¶ 132. Lieutenant Michael Burse with the Special Victims Bureau allegedly told her that she would need a subpoena and attorney to obtain the report. Id.

Plaintiff alleges that she tried to commit suicide in November 2019 as a result of the sexual assault, which was exacerbated by Defendants' conduct. SAC ¶ 134.

On January 7, 2020, Plaintiff apparently had a joint phone call from Cagney, Thorp, and Chung, in which Cagney purportedly told Plaintiff the reason they did not prosecute was because she "had sex with [Suarez]. [She] had contact with him" and they would not be able to prove the case beyond a reasonable doubt because she delayed reporting the incident. SAC ¶ 147. Around the same day, Plaintiff alleges she sent an email to Lacey regarding "the Fourth Amendment violation," but "Lacey took no action." Id. ¶ 149.

As a result of the foregoing, Plaintiff asserts the following claims:

- First Cause of Action: Equal Protection against all Defendants;
- Second Cause of Action: Unreasonable Search and Seizure Against the County, LASD officers, LADA officials, and Doe Defendants;
- Third Cause of Action: Gender-based Civil Conspiracy (42 U.S.C. § 1985) against all Defendants;
- Fourth Cause of Action: Municipal Liability for Unconstitutional Policies, Customs, and Practices against all Defendants;

- Fifth Cause of Action: Municipal Liability – Failure to Train, Supervise, and/or Discipline against all Defendants;
- Sixth Cause of Action: Violation of Safe Street Act against the County, LASD officers, LADA officials, and Doe Defendants;
- Seventh Cause of Action: Violation of Cal. Constitution Art. I § 7 – Equal Protection against all Defendants;
- Eighth Cause of Action: Violation of Cal. Constitution Art. I § 13 – Unreasonable Search and Seizure against the County, LASD officers, LADA officials, and Doe Defendants;
- Ninth Cause of Action: Violation of Cal. Constitution Art. I § 1 – Right to Privacy against the County, LASD officers, LADA officials, and Doe Defendants;
- Tenth Cause of Action: Violation of Cal. Constitution Art. I § 28(b) – Victims' Bill of Rights against all Defendants;
- Eleventh Cause of Action: Intentional Infliction of Emotional Distress against all Defendants;
- Twelfth Cause of Action: Violation of Unruh Civil Rights Act against all Defendants;
- Thirteenth Cause of Action: Violation of Tom Bane Act against the County and Jara;
- Fourteenth Cause of Action: Negligent Supervising, Disciplining, and Retaining Employees against the City, the County, Reynoso, Villanueva, Lacey, and Doe Defendants; and
- Fifteenth Cause of Action: Conversion/Claim and Delivery against the County, LASD officers, LADA officials, and Doe Defendants.

Plaintiff seeks declaratory and injunctive relief and monetary damages.

III.

STANDARD OF REVIEW

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the sufficiency of a statement of claim for relief. A complaint may be dismissed for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990) (as amended). In determining whether a complaint states a claim on which relief may be granted, its allegations of material fact must be taken as true and construed in the light most favorable to the plaintiff. See Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

To survive a Rule 12(b)(6) dismissal, a complaint must allege enough specific facts to provide both "fair notice" of the particular claim being asserted and "the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007) (citation omitted); see Fed. R. Civ. P. 8(a). While detailed factual allegations are not required, a complaint with "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" and "'naked assertion[s]' devoid of 'further factual enhancement'" would not suffice. Iqbal, 556 U.S. at 678 (citation omitted). Instead, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citation omitted).

Pro se complaints are "to be liberally construed" and are held to a less stringent standard than those drafted by a lawyer. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam); see also Jackson v. Carey, 353 F.3d 750, 757

(9th Cir. 2003) ("In civil rights cases where the plaintiff appears pro se, the court must construe the pleadings liberally and must afford plaintiff the benefit of any doubt." (citation omitted)). Even so, "a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled." Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

Upon finding that a complaint should be dismissed for failure to state a claim, a court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that "[a] pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment"). If, after careful consideration, it is clear that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend. Cato, 70 F.3d at 1105-06; see, e.g., Chaset v. Fleer/Skybox Int'l, LP, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that "there is no need to prolong the litigation by permitting further amendment" where an amendment would not cure the "basic flaw" in the pleading); Lipton v. Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that "[b]ecause any amendment would be futile, there was no need to prolong the litigation by permitting further amendment").

IV.

DISCUSSION

A. Federal Civil Rights Claims

To state a civil rights claim under 42 U.S.C. § 1983, a plaintiff must allege that a defendant, while acting under color of state law, caused a

deprivation of the plaintiff's federal rights. West v. Atkins, 487 U.S. 42, 48 (1988). Causation "must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). An individual "causes" a constitutional deprivation when he or she (1) "does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation"; or (2) "set[s] in motion a series of acts by others which the [defendant] knows or reasonably should know would cause others to inflict the constitutional injury." Lacey v. Maricopa Cty., 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (citation omitted).

1. Plaintiff has Standing

Article III of the United States Constitution limits the jurisdiction of federal courts to actual cases and controversies. "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III" and contains three elements: (1) the plaintiff must have suffered an injury in fact that is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) the injury must be fairly traceable to the challenged conduct; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992); see also DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 (2006). While the plaintiff bears the burden of establishing standing, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Lujan, 504 U.S. at 561 (citation omitted).

Here, the County Defendants claim the SAC should be dismissed for lack of standing. They argue that Plaintiff has no cognizable constitutional

claim against the County Defendants "based on them having allegedly failed to investigate or prosecute her matter" and "[h]er interest in seeing her alleged assailant arrested and prosecuted does not confer standing in federal court." According to the County Defendants, they have not caused Plaintiff "any concrete injury," the Court cannot "redress her injury," and dismissal of her claims is appropriate. County Motion at 2-3.

As an initial matter, lack of Article III standing is not a ground for dismissal under Fed. R. Civ. P. 12(b)(6). While lack of statutory standing requires dismissal for failure to state a claim, lack of Article III standing requires dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011); Cetacean Cmty. v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004). The County Defendants' reliance on Vaughn v. Bay Envtl. Mgmt, Inc., 567 F.3d 1021, 1022 (9th Cir. 2009) (as amended) is misplaced as the case involved statutory standing, while they raise Article III standing in their Motion. As such, the Court construes the County Defendants' Article III standing argument under Rule 12(b)(1).

As the County Defendants correctly note, the Supreme Court has recognized that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973); see also United States v. Van Dyck, 866 F.3d 1130, 1133 (9th Cir. 2017) ("As a general rule, individuals lack standing to intervene in criminal prosecutions."). However, there is a distinction between the right to force the prosecution of a case and the right of access to judicial procedures to redress an alleged wrong. As the Tenth Circuit has explained, the right to present a criminal complaint is a form of the right to petition for redress of grievances, which represents one of the most basic of all constitutional rights. See Meyer v. Bd. of Cty. Comm'rs of Harper Cty., 482 F.3d 1232, 1243 n. 5 (10th Cir. 2007) (citing with approval a district court's decision in which it

concluded that "[w]hile Plaintiff did not have a right to force the local prosecutor to pursue her charges, she possessed the right to access judicial procedures for redress of her claimed wrongs and to 'set in motion the governmental machinery'" (citation omitted)); see also Entler v. Gregorie, 872 F.3d 1031, 1043-44 (9th Cir. 2017) (citing Meyer). Similarly, "[t]here is a constitutional right . . . to have police services administered in a nondiscriminatory manner—a right that is violated when a state actor denies such protection to disfavored persons." Estate of Macias v. Ihde, 219 F.3d 1018, 1028 (9th Cir. 2000); see also DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 197 n.3 (1989) ("The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause."); Elliot-Park v. Manglona, 592 F.3d 1003, 1006-07 (9th Cir. 2010).

The County Defendants contend that Estate of Macias is distinguishable because that case involved "police protection" and "the right to have police services administered in a nondiscriminatory manner" while Plaintiff claims "a substantive right in the prosecution of another." County Reply at 4. While the Court agrees with the County Defendants that Plaintiff lacks standing to challenge the decision not to prosecute Suarez, and as such, may not pursue injunctive relief compelling Lacey and/or LADA to file criminal charges against him (SAC ¶ 259), Plaintiff has standing to pursue her other federal civil rights claims. See, e.g., Elliot-Park, 592 F.3d at 1007 (rejecting contention that "equal protection clause only protects against selective denial of protective services, and that investigation and arrest aren't protective services unless there is a continuing danger to the victim"). As Plaintiff notes in her Opposition to the County Motion, "this case is not simply about the decision of nonprosec[ution] which was the by-product of Plaintiff's constitutional injuries." Opp. Cty. Mtn. at 14. Plaintiff has asserted claims based on alleged

discrimination during the investigation of her case and the unlawful search of her personal property. The County Defendants have cited no authority that Plaintiff lacks standing to pursue these claims, which, at least based on Plaintiff's allegations, implicate her constitutional rights.

Accordingly, while Plaintiff lacks standing to pursue a claim based on the failure to prosecute, she has standing to pursue federal civil rights claims implicating her constitutional rights.

2. The SAC Fails to State a Federal Civil Rights Claim Based on Municipal Liability

Plaintiff has named the City and/or County in all her federal civil rights claims. However, a local government entity "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978)). The municipal entity may not be held liable for the alleged actions of its employees or agents unless "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or if the alleged constitutional deprivation was "visited pursuant to a governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." Id. at 690-91.

To state a claim against a municipal entity, Plaintiff must demonstrate: (1) she possessed a constitutional right of which she was deprived; (2) the local government entity had a policy; (3) the policy amounted to a deliberate indifference to her constitutional right; and (4) the policy was the moving force behind the constitutional violation. See Dougherty v. City of Covina, 654 F.3d

892, 900 (9th Cir. 2011); Anderson v. Warner, 451 F.3d 1063, 1070 (9th Cir. 2006). To "withstand a motion to dismiss for failure to state a claim, a Monell claim must consist of more than mere 'formulaic recitations of the existence of unlawful policies, conducts, or habits.'" Bedford v. City of Hayward, 2012 WL 4901434, at *12 (N.D. Cal. Oct. 15, 2012) (citation omitted); see also Iqbal, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."); Oviatt v. Pearce, 954 F.2d 1470, 1477 (9th Cir. 1992) ("The existence of a policy, without more, is insufficient to trigger local government liability under section 1983."). "Monell allegations must be [pled] with specificity as required under Twombly and Iqbal." Galindo v. City of San Mateo, 2016 WL 7116927, at *5 (N.D. Cal. Dec. 7, 2016). "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996); Navarro v. Block, 72 F.3d 712, 714 (9th Cir. 1996) (as amended).

A failure to train may amount to a policy of deliberate indifference "if the need to train was obvious and the failure to do so made a violation of constitutional rights likely." Dougherty, 654 F.3d at 900. Deliberate indifference may be shown through evidence of a "failure to investigate and discipline employees in the face of widespread constitutional violations." Rodriguez v. Cty. of L.A., 891 F.3d 776, 803 (9th Cir. 2018) (citation omitted).

Only the Fourth and Fifth Causes of Action allege "Municipal Liability" based on policies, customs, and/or inadequate training, claims which also have been asserted against all Defendants, regardless of their respective positions or conduct. In the Fourth Cause of Action, Plaintiff alleges that "[m]any different members of the same department refused to take Plaintiff's

allegation seriously and that this behavior indicated a practice so widespread that the City and the County must have known about it and condoned it," demonstrating a "policy to discourage vigorous prosecution of sex crimes." SAC ¶¶ 193-194. She claims that "Defendants and their supervising and managerial employees, agents, and representatives" "knowingly maintained, enforced and applied officially recognized policies, practices or customs of:" (a) employing and retaining law enforcement personnel "who had dangerous propensities for discriminating against rape victims and conducting illegal searches and seizures"; (b) inadequately supervising, training, controlling, assigning, and disciplining employees that the City and County "knew or in the exercise of reasonable care should have known had the aforementioned propensities and character traits"; (c) failing or refusing to competently and impartially investigate allegations of misconduct and failing or refusing to enforce established administrative procedures to ensure victim and community safety; (d) maintaining a custom of discriminatory under-policing, selective under-enforcement, favoritism towards rapists, and/or hostile provision of services to Plaintiff; and (e) fostering and encouraging an atmosphere of lawless, abuse, and unconstitutional misconduct to encourage personnel to believe that discriminatory under-policing, selective under-enforcement, and illegal searches and seizures would be tolerated, and unlawful acts would be overlooked without discipline. Id. ¶ 195.

Plaintiff's conclusory allegations are insufficient to state a claim for municipal liability. As explained, to state a Monell claim, Plaintiff must assert more than the mere "formulaic recitations of the existence of unlawful policies, conducts, or habits." Bedford, 2012 WL 4901434, at *12 (citation omitted). The SAC is devoid of any allegations identifying a specific policy or custom of the City or County, any specific regulations, or any officially adopted or promulgated decisions, the execution of which allegedly led to the infliction of

the injuries about which Plaintiff is complaining. Plaintiff's reliance on pre-Iqbal cases to support her position that bare allegations of a policy are sufficient is unpersuasive. "Since Iqbal, courts have repeatedly rejected conclusory Monell allegations that lack factual content from which one could plausibly infer Monell liability." Wilson ex rel. Bevard v. City of W. Sacramento, 2014 WL 1616450, at *2 (E.D. Cal. Apr. 22, 2014); see also, e.g., Rodriguez v. City of Modesto, 535 F. App'x 643, 646 (9th Cir. 2013) (affirming district court's dismissal of Monell claim based only on conclusory allegations and lacking factual support). Plaintiff's claim, based on the investigation of a single case, is insufficient to establish a policy or custom "founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." Trevino, 99 F.3d at 918. Although Plaintiff also cites to a news article reporting on another case in which the LADA declined to prosecute a different sexual assault case (SAC ¶ 14(i)), proof of random acts or isolated incidents are insufficient to establish custom. Trevino, 99 F.3d at 918. Likewise, Plaintiff's citations to various news articles regarding unrelated criticism of the EMPD and bare statistics regarding the frequency of rape prosecutions, or an eleven-year old report regarding rape kit backlogs (see SAC ¶¶ 12, 14(m), 41) are insufficient to plausibly allege any specific unlawful policy or custom. To the contrary, at least with respect to the City, based on evidence attached to the SAC, EMPD has specific policies prohibiting "[d]iscourteous, disrespectful or discriminatory treatment of any member of the public" and establishing guidelines for the investigation of sexual assaults. See SAC, Exh. 6 § 319.5.9(f), Policy 601. Plaintiff does not explain how any of these specific policies violated her constitutional rights. The vague and conclusory allegations in the SAC fall far short of pleading a viable Monell claim.

In her Fifth Cause of Action, Plaintiff claims that "the overwhelming majority of law enforcement personnel who handle sexual assaults remain woefully untrained, and fundamentally biased against sexual assault victims." SAC ¶ 202. She alleges that the training policies of the EMPD, LASD, and LADA are not adequate to train their personnel regarding how to provide protection in a nondiscriminatory manner, understanding crime elements, employing investigative tools, conducting reasonable searches and seizures, prosecuting sexual assaults, selecting unbiased juries, and treating victims equally and fairly. Id. ¶ 205. According to Plaintiff, the inadequate training fails to teach personnel to properly handle sexual assault investigations and prosecution and "the City and County's performance evidenced a purposeful tolerance to civil rights violations," amounting to deliberate indifference. Id. ¶¶ 206, 208. Plaintiff's conclusory allegations are insufficient to plausibly show that the City's or County's deficiency in training reflected a deliberate indifference to her constitutional rights. See City of Canton v. Harris, 489 U.S. 378, 391 (1989) (explaining that allegations that "an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct" are insufficient to state Monell claim based on failure to train).

As such, Plaintiff has not stated a claim against the City or the County.

3. The Federal Civil Rights Claims Against Individual Defendants

i. Plaintiff has Not Stated a Federal Civil Rights Claim Against Reynoso, Villanueva, and Lacey

Plaintiff names Chief of Police Reynoso, Sheriff Villanueva, and District Attorney Lacey as defendants, but as the Supreme Court has emphasized, "[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior." Iqbal, 556 U.S. at 676. Rather, Plaintiff must allege that these defendants through their own

individual actions or inactions violated the Constitution. Id. at 677 ("each Government official, his or her title notwithstanding, is only liable for his or her own misconduct"). Plaintiff's SAC fails to so allege.

"A defendant may be held liable as a supervisor under § 1983 'if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.'" Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (citation omitted). A causal connection can be established "by setting in motion a series of acts by others" or "knowingly refusing to terminate a series of acts by others, which the supervisor knew or reasonably should have known would cause others to inflict a constitutional injury." Id. at 1207-08 (citations and alterations omitted). "A supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others." Id. at 1208 (citation omitted).

As to Reynoso, Plaintiff alleges that "Reynoso served as the highest official for EMPD and made the City and EMPD policy for that office; he "has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the unconstitutional actions, policies, customs and practices" as alleged in the SAC; by "failing to discipline," Reynoso "endorsed or approved the unconstitutional conduct of individual officers"; and he was "well aware" of a policy, custom, or practice "of failure to address citizen complaint," citing to a 2018 article in the San Gabriel Valley Tribune describing that police departments, including EMPD, were looking for ways to improve the citizen complaint process prompted by a grand jury investigation. SAC ¶¶ 12, 60-61.

Plaintiff's contentions against Reynoso are insufficient to plausibly show his personal participation in the alleged constitutional violations or a

"sufficient causal connection" between his conduct and the alleged constitutional violations. See Starr, 652 F.3d at 1207. Plaintiff has not provided any factual allegations to support a claim that Reynoso directly or indirectly caused the alleged constitutional violations. Plaintiff vaguely alleges that Reynoso was aware of unrelated complaints regarding the filing of citizen complaints, but does not allege any specific instances in which Reynoso was placed on notice of alleged violations of Plaintiff's constitutional rights. At the hearing on the Motions, Plaintiff vaguely claimed that she filed "complaints" and therefore, Reynoso was on notice, though she conceded that she did not have any further facts to support this contention other than those asserted in her Opposition briefs. Even assuming that Reynoso received one of these "complaints," the mere receipt is insufficient to impose liability on this defendant. See Iqbal, 556 U.S. at 677 (rejecting argument that "a supervisor's mere knowledge of his subordinate's discriminatory purpose amounts to the supervisor's violating the Constitution"). Plaintiff's conclusory allegations are insufficient to plausibly show that Reynoso violated Plaintiff's constitutional rights. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) ("A plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights."). Although pro se pleadings are liberally construed, vague and conclusory allegations are insufficient to state a Section 1983 claim. See Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (per curiam) (as amended); see also Iqbal, 556 U.S. at 677.

Plaintiff's allegations against Villanueva similarly fail to plausibly allege a federal civil rights claim against this defendant. Plaintiff alleges that Villanueva "holds the command and policy making position with regards to the LASD" and by "failing to discipline," Villanueva endorsed or approved the unconstitutional conduct of individual officers. Plaintiff further alleges that "Villanueva has caused, created, authorized, condoned, ratified, approved or

protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985) (citation omitted). To state an equal protection claim, the plaintiff must allege facts plausibly showing that "the defendants acted with an intent or purpose to discriminate against [her] based upon membership in a protected class." Barren, 152 F.3d at 1194. Where the governmental classification does not involve a suspect or protected class or impinge upon a fundamental right, the classification will not "'run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose.'" Nurre v. Whitehead, 580 F.3d 1087, 1098 (9th Cir. 2009) (quoting Cent. State Univ. v. Am. Ass'n of Univ. Professors, 526 U.S. 124, 127-28 (1999) (per curiam)); see also Heller v. Doe, 509 U.S. 312, 320 (1993).

The City Defendants contend that Plaintiff has no constitutional right to have a particular criminal investigation conducted by law enforcement officers, and as such, no legal claim exists against law enforcement officers for their conduct in inadequately investigating or failing to investigate alleged criminal conduct. City Motion at 11. The City Defendants further maintain that even if a constitutional right existed, the City Defendants are entitled to qualified immunity because the officers' actions in recording her statement and preparing a written report did not clearly violate Plaintiff's rights. Id. at 12.

The County Defendants maintain it is "clear from the face of the SAC" that Jara and Ruiz lawfully conducted an investigation of Plaintiff's complaints regarding the alleged sexual assault, but determined there was a lack of probable cause to arrest the alleged assailant. The County Defendants argue, in such circumstances, "it would be clear to a reasonable officer that they were upholding the Constitution rather than participating in unlawful conduct." County Motion at 5. The County Defendants further argue that Plaintiff's

equal protection claim fails because she cannot show that she was a member of a protected class, that she was treated differently, or that the County Defendants' actions were motivated by discriminatory animus. Id. at 6-7.

While the "police have no affirmative obligation to investigate a crime in a particular way or to protect one citizen from another even when one citizen deprives the other of liberty of property," Gini v. Las Vegas Metro. Police Dep't, 40 F.3d 1041, 1045 (9th Cir. 1994), as explained, "[t]here is a constitutional right . . . to have police services administered in a nondiscriminatory manner—a right that is violated when a state actor denies such protection to disfavored persons." Estate of Macias, 219 F.3d at 1028; see also DeShaney, 489 U.S. at 197 n.3; Elliot-Park, 592 F.3d at 1006-07. In Elliot-Park, the Ninth Circuit explained that while an officer's "discretion in deciding whom to arrest is certainly broad," that discretion "cannot be exercised in a racially discriminatory fashion." 592 F.3d at 1006. This right is violated even where some services, as opposed to a complete withdrawal of police services, are provided because "diminished police services" does not satisfy the government's obligation to provide services on a non-discriminatory basis. Id. at 1007. The Ninth Circuit rejected the officers' argument that "investigation and arrest" are not "protective services" unless there is a continuing danger to the victim, reasoning that "[i]f police refuse to investigate or arrest people who commit crimes against a particular ethnic group, it's safe to assume that crimes against that group will rise." Id.

Here, Plaintiff's allegations are not sufficient to state an equal protection claim based on the manner in which her complaint was investigated. While Plaintiff claims she, as a sexual assault victim, was treated differently than other assault/crime victims, she has not alleged any facts demonstrating that she was intentionally treated differently than other assault victims without a

rational relationship to a legitimate state purpose.[2] To the contrary, the allegations of the SAC indicate a rational basis for declining to further pursue her complaint. The allegations of the SAC reflect that Plaintiff's complaint was investigated by both police departments. Her initial complaint with EMPD was transferred for jurisdictional reasons. Upon transfer, Jara conducted an investigation and forwarded the matter to the LADA. According to the SAC, the LADA declined to prosecute for a number of reasons, including credibility concerns, lack of evidence, and the involvement of alcohol. There are no allegations to plausibly suggest that her case was treated any different because she was an alleged victim of a sexual assault. Plaintiff's mere disagreement with how the investigation was conducted or the conclusions reached is insufficient to show that any of the individual defendants violated her equal protection rights.

Accordingly, Plaintiff has failed to state an equal protection claim against Tate, Buckhannon, Jara, and Ruiz.

b. Second Cause of Action: Fourth Amendment

In her Second Cause of Action, Plaintiff alleges the County Defendants violated the scope of her consent to search of her smartphone, in violation of

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[2] Although the Ninth Circuit has recognized that victims of certain crimes may constitute a cognizable class for equal protection purposes, see Navarro, 72 F.3d at 717 (concluding that domestic violence victims were a cognizable class for equal protection purposes and that discrimination against this group is subject to rational basis review), it appears that the Ninth Circuit has not recognized a "class of one" equal protection claim based on police inaction. See, e.g., Mancini v. City of Cloverdale Police Dep't, 2015 WL 4512274, at *5 (N.D. Cal. July 24, 2015) (noting that circuit courts are divided on whether class-of-one claims can be brought in the failure to investigate context and that the Ninth Circuit has not decided the issue); Le Fay v. Le Fay, 2015 WL 106262, at *5-6 (E.D. Cal. Jan. 7, 2015) ("the Ninth Circuit has not directly addressed the question of whether, or under what circumstances, an Equal Protection claim on a class-of-one theory may be alleged in the context of police non-action"). Plaintiff has not cited any authority suggesting otherwise.

her Fourth Amendment rights. She contends she did not consent to search the entire contents of her phone, but rather only to download the communications between herself and Suarez. SAC ¶¶ 71, 169, 171, 173. She contends that "Jara was well aware" that she "handed over her cell phone solely for Jara to download her conversations with Suarez" and Ruiz "had personal knowledge of the illegal search and seizure" and "was part of it." Id. ¶¶ 97, 169. Based on a conversation with Ruiz and a translation done on her cellular phone, she believes the County Defendants exceeded the scope of her consent.

Under the Fourth Amendment to the U.S. Constitution, individuals have the right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Generally, law enforcement officials must obtain a warrant before searching the contents of a phone. Carpenter v. United States, 585 U.S. --, 138 S. Ct. 2206, 2214 (2018); Riley v. California, 573 U.S. 373, 401 (2014).

Consent is a recognized exception to the Fourth Amendment protection against unreasonable searches and seizures. United States v. Russell, 664 F.3d 1279, 1281 (9th Cir. 2012). However, "[t]he existence of consent to a search is not lightly to be inferred" and the government always has the burden of proving effective consent. United States v. Reid, 226 F.3d 1020, 1025 (9th Cir. 2000) (citation omitted). The scope of the search by consent is limited by the terms of its authorization. Walter v. United States, 447 U.S. 649, 656 (1980). Under the Fourth Amendment, the standard for measuring the scope of an individual's consent is "that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the [person giving consent]?" Florida v. Jimeno, 500 U.S. 248, 251 (1991).

The County Defendants contend Plaintiff's Fourth Amendment claim is conclusory and speculative, with the elements of a Fourth Amendment violation not sufficiently alleged to put Defendants on notice of the contours of

the claim. County Motion at 8. For similar reasons, the County Defendants maintain they are entitled to qualified immunity since Plaintiff has not alleged facts showing a constitutional violation. Id. at 5. Beyond this conclusory assertion, however, the County Defendants do not substantively address the application of qualified immunity to a Fourth Amendment violation.

At this stage of the case and construing the allegations in the SAC in the light most favorable to Plaintiff, the Court finds that Plaintiff has sufficiently stated a Fourth Amendment claim against Jara and Ruiz. As the County Defendants have not sufficiently addressed their qualified immunity argument with respect to the Fourth Amendment claim, the Court concludes that Jara and Ruiz have not shown entitlement to qualified immunity. However, this finding is without prejudice to the County Defendants reasserting qualified immunity at a later stage of the proceedings upon a further showing.

c. Third Cause of Action: Civil Conspiracy

In her Third Cause of Action, Plaintiff contends that all Defendants "conspired among themselves and with others for the purpose of depriving, directly or indirectly, Plaintiff of equal protection under the law with the intent to deny her right to [be] free from discrimination and unreasonable search and seizure." SAC ¶ 179. According to Plaintiff, the "object" of the conspiracy was to "conceal the fact that the complaints of crime made by female rape victims are less important" to the EMPD, LASD, and LADA than complaints made by similarly situated male rape victims. Id. ¶ 181.

"Section 1985 prohibits conspiracies to deny an individual [her] civil rights." Cerrato v. S.F. Cmty. Coll. Dist., 26 F.3d 968, 975 n.19 (9th Cir. 1994). In order to state a claim based on a violation of Section 1985(3), the plaintiff must show: (1) a conspiracy; (2) for the purpose of depriving a person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy;

(4) "whereby a person is either injured in [her] person or property or deprived of any right or privilege of a citizen of the United States." Fazaga v. FBI, 916 F.3d 1202, 1245 (9th Cir. 2019) (citation omitted). Claims brought under Section 1985 must be supported by allegations of specific facts; "[a] mere allegation of conspiracy without factual specificity is insufficient." Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621,626 (9th Cir. 1988). Further, a plaintiff must first have a cognizable claim under Section 1983 in order to state a claim for conspiracy under Section 1985. Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 930 (9th Cir. 2004).

Here, Plaintiff alleges no specific facts suggesting an agreement or common objective among Defendants to violate her rights. See Olsen, 363 F.3d at 929 (affirming dismissal of conspiracy claim where plaintiff failed to allege sufficiently that the defendants conspired to violate her civil rights). Plaintiff must allege more than the alleged co-conspirators did or said the same thing. See Myers v. City of Hermosa Beach, 299 F. App'x 744, 747 (9th Cir. 2008). Plaintiff's naked assertion that a conspiracy existed, without more, is insufficient to state a claim. See Twombly, 550 U.S. at 557 ("a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality"). The SAC fails to set forth essential, specific acts of each defendant that support the existence of the claimed conspiracy. The mere fact that Suarez was not criminally prosecuted does not establish liability, or the existence of a conspiracy.

iii. District Attorney Defendants (Cagney, Thorp, and Chung)

The County Defendants contend that these defendants are absolutely immune from Plaintiff's federal civil rights claims. They contend that prosecutors have absolute immunity when acting within the scope of their duties as an advocate for the state and are entitled to sovereign immunity to extent they are being sued in their official capacity. County Motion at 3-4.

Section 1983 claims for monetary damages against prosecutors are barred by absolute prosecutorial immunity where the claimed violations are "intimately associated with the judicial phase of the criminal process." Van de Kamp v. Goldstein, 555 U.S. 335, 341 (2009) (quoting Imbler v. Pachtman, 424 U.S. 409, 430 (1976)). "[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protection of absolute immunity." Kalina v. Fletcher, 522 U.S. 118, 126 (1997) (citation omitted). "The intent of the prosecutor when performing prosecutorial acts plays no role in the immunity inquiry." McCarthy v. Mayo, 827 F.2d 1310, 1315 (9th Cir. 1987) (as amended). Such immunity is "an extreme remedy," justified only where "any lesser degree of immunity could impair the judicial process itself." Patterson v. Van Arsdel, 883 F.3d 826, 830 (9th Cir. 2018) (quoting Lacey, 693 F.3d at 912). An official seeking absolute immunity bears the burden of showing that such immunity is essential for the function in question. Id. When the prosecutor steps outside of the advocate's role, her conduct is protected only "to the extent that any other individual would be protected performing the same function." Id. (citation omitted).

As explained, Plaintiff lacks standing to the extent she challenges the decision not to criminally prosecute Suarez. Further, any claim regarding the decision to prosecute would fall squarely within that protected by prosecutorial immunity. See, e.g., Imbler, 424 U.S. at 430-31 (prosecutorial immunity applies to conduct "intimately associated with the judicial phase of the criminal process," protecting prosecutors when performing traditional activities related to the initiation and presentation of criminal prosecutions); Botello v. Gammick, 413 F.3d 971, 976 (9th Cir. 2005) (prosecutorial immunity applies to the decision not to prosecute a particular case or group of cases); see also Van de Kamp, 555 U.S. at 348-49 (prosecutorial immunity

applied to claims that the supervision, training, and information-system management was constitutionally inadequate). Despite Plaintiff's attempt to re-frame her allegations against these defendants, at essence, Plaintiff's equal protection and civil conspiracy claims are premised on these Defendants' failure to pursue a criminal prosecution against Suarez, and as such, they are entitled to prosecutorial immunity as to these claims. Although, as Plaintiff notes (SAC ¶ 14), prosecutorial immunity only extends to claims for damages, Gobel v. Maricopa Cty., 867 F.2d 1201, 1203 n.6 (9th Cir. 1989), abrogated on other grounds by Merritt v. Cty. of L.A., 875 F.2d 765 (9th Cir. 1989), as discussed above, Plaintiff does not have standing to pursue her claim for injunctive relief seeking the prosecution of Suarez. Plaintiff's claim for declaratory relief merely duplicates her claims for damages. See Kimball v. Flagstar Bank, F.S.B., 881 F. Supp. 2d 1209, 1220 (S.D. Cal. 2012) (dismissing declaratory relief claim "based upon the same allegations supporting [plaintiffs'] other causes of action" and "duplicative of their other claims"). As such, Plaintiff cannot pursue her equal protection and civil conspiracy claims against the district attorney defendants.

The Fourth Amendment claim is a closer call. The Supreme Court has held that "[a] prosecutor's administrative duties and those investigatory functions that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity." Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993). For instance, district courts have recognized that the refusal to return property after criminal charges are dismissed does not constitute conduct that is "intimately associated with the judicial phase of the criminal process," and therefore, may not be covered by the doctrine of prosecutorial immunity. See Inman v. Anderson, 294 F. Supp. 3d 907, 917 (N.D. Cal. 2018); see also Ellawendy v. CSUMB Police Dep't, 2020 WL 1820669, at *5 (N.D. Cal. Apr. 10, 2020). In this case, however,

regardless of whether the district attorney defendants would be entitled to prosecutorial immunity, Plaintiff has not sufficiently stated a claim against these defendants based on a violation of the Fourth Amendment.

Plaintiff alleges that LASD technical personnel extracted, stored, and submitted her private cellular phone data to LADA officials. SAC ¶ 97. The LADA declined to file charges against Suarez on or about August 23, 2019, but retained her cellular phone until October 2019. SAC ¶¶ 102, 131 (alleging that she retrieved her phone from LADA in late October 2019). These allegations are insufficient to state a Fourth Amendment claim against the district attorney defendants.

The Supreme Court has recognized that a Fourth Amendment violation is "fully accomplished" by the illegal search or seizure and the governments' use of evidence obtained in violation of the Fourth Amendment does not itself violate the Constitution. Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 362 (1998). Plaintiff affirmatively alleges that LASD performed the allegedly unlawful search. Although Plaintiff claims the cellular phone was ultimately in the possession of unidentified district attorney officials,[3] she has not alleged any specific facts to connect any particular district attorney defendant to the alleged violation of the Fourth Amendment, let alone alleged that any individual district attorney defendant was aware of the alleged limited scope of her consent or that any of them were in possession of information derived from an unlawful search. To the contrary, she appears to concede in her Opposition, that the unlawful search was limited to the law enforcement defendants. In her Opposition to the County Motion, she argues that "Jara, Ruiz, and other unknown LASD personnel participated in the illegal search and seizure of Plaintiff's private electronic data in her smartphone." Opp. Cty. Mtn. at 9.

[3] The Court notes that Plaintiff claimed in her Motion for a Preliminary Injunction that she retrieved her cellular phone from LASD. Dkt. 43 at 6.

At the hearing on the Motions, Plaintiff argued that she believes Cagney was in possession of information derived from an unlawful search. In support of this contention, Plaintiff cited to an October 11, 2019 email from Cagney attached to the Motion for Preliminary Injunction in which he stated:

> Thank you for your email. We have already contacted LASD to acquire the texts and recorded interview. This review is going to take me weeks to do so I ask for your patience.

Dkt. 43-1. Plaintiff also referenced a telephone call with Cagney on January 20, 2020, in which he allegedly stated he reviewed the "texts" and recorded interview. Plaintiff maintains that "texts" in this context refers to all her text messages, noting the message with her female friend that was translated.

These additional contentions are insufficient to plausibly show that Cagney violated Plaintiff's Fourth Amendment rights. The fact that he may have looked at some text messages does not establish he violated her Fourth Amendment rights, or that he knew any information he reviewed had been obtained without her consent. The Court cannot reasonably infer from the reference to "texts" that this included any materials other than those between Plaintiff and Suarez or infer that Cagney had knowledge of any limits imposed by Plaintiff as to her consent provided to Jara. Likewise, Plaintiff's speculation that these messages may have been shared with the other district attorney defendants does not constitute sufficient factual support to state a Fourth Amendment claim against the remaining district attorney defendants.

The Court concludes Plaintiff has failed to state a Fourth Amendment claim against the district attorney defendants.

B. Plaintiff Has Not Stated a Claim Under the Safe Streets Act

In her Sixth Cause of Action, Plaintiff alleges the County Defendants' handling of sexual assault cases has an unnecessary disparate impact on sexual assault victims, in violation of the Omnibus Crime Control and Safe Streets

Act of 1968. SAC ¶¶ 214-215. The County Defendants maintain that this claim should be dismissed because Plaintiff failed to allege that she exhausted her administrative remedies prior to bringing this claim. County Motion at 12.

Title 34 of United States Code, Section 10228 (formerly 42 U.S.C. § 3789d) prohibits discrimination in any program or activity funded by this Act based on "race, color, religion, national origin, or sex." 34 U.S.C. § 10228(c)). In order to exhaust administrative remedies under 34 U.S.C. § 10228, an "administrative complaint [must be] filed with the Office of Justice Programs or any other administrative enforcement agency." 34 U.S.C. § 10228(c)(4)(A).

Here, the SAC does not aver that Plaintiff exhausted her administrative remedies, precluding the Court from granting relief. See Horde v. Elliot, 2018 WL 987683, at *14 (D. Minn. Jan. 9, 2018), report and recommendation adopted by 2018 WL 985294 (D. Minn. Feb. 20, 2018); Nash v. City of Oakwood, 541 F. Supp. 220, 223 (S.D. Ohio 1982). Although Plaintiff claims in her Opposition to the County Motion that she attempted to file a complaint with the Department of Justice (Opp. Cty. Mtn. at 35; Declaration of Plaintiff filed in support of Opp. Cty. Mtn. ¶¶ 2-3), the Court may not consider such allegations in ruling on a Rule 12(b)(6) motion to dismiss. Schneider v. Cal. Dep't of Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss."); see also Sagan v. Apple Comput., Inc., 874 F. Supp. 1072, 1076 n.1 (C.D. Cal. 1994) (explaining that the court's "analysis is limited to the four corners of the complaint.").

In any event, Plaintiff has not stated a claim under Section 10228. Plaintiff has not identified any program administered by the Omnibus Crime Control and Safe Streets Act of 1968 connected to the alleged discrimination asserted in the SAC. See Horde, 2018 WL 987683, at *14 (because plaintiff

"has not identified any program funded by the Safe Streets Act connected to the discrimination [she] has alleged, there is no plausible basis for claims under this statute" (citation omitted)); Agent Anonymous v. Gonzalez, 2016 WL 8999471, at *6 (S.D. Cal. Dec. 14, 2016). This claim should be dismissed.

C. The Basis for the Court's Findings Applies Equally to Doe Defendants

Although the Doe Defendants have not been identified or served in this action, the basis for the Court's findings as to all Defendants except Jara and Ruiz applies equally to them. "A District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related." Silverton v. Dep't of Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981); accord Abagninin v. AMVAC Chem. Corp., 545 F.3d 733, 742 (9th Cir. 2008) ("As a legal matter, we have upheld dismissal with prejudice in favor of a party which had not appeared, on the basis of facts presented by other defendants which had appeared."). The absence of any specific factual allegations to support Plaintiff's claims applies equally to Doe Defendants. Accordingly, the Court recommends that these Defendants be dismissed.

By this Report, Plaintiff is placed on notice that the Court recommends dismissing Does 1-10; if Plaintiff disagrees and believe she can state a claim as to these Defendants, she should make that showing in Objections to the Report and Recommendation.

D. Further Leave to Amend Would be Futile

As explained, a pro se litigant must ordinarily be given leave to amend unless it is absolutely clear that deficiencies in a complaint cannot be cured by further amendment. See Cato, 70 F.3d at 1106.

In this instance, Plaintiff has had multiple opportunities to amend her complaint in order to state a federal claim for relief. Despite two opportunities

to amend her complaint, Plaintiff fails to allege a valid federal claim against all but two of the Defendants, as to a single claim. Although the Court may not look beyond the SAC and facts subject to judicial notice in determining the propriety of a Rule 12(b)(6) dismissal, the Court has considered Plaintiff's additional factual allegations in the Oppositions, the Motion for Preliminary Injunction, and the arguments at the hearing in determining whether leave to amend should be granted. Plaintiff was provided an opportunity at the hearing on the Motions to identify any additional facts that would support her federal claims for relief. Plaintiff was unable to identify any additional facts beyond those already identified and considered that would be sufficient to state a federal claim to relief. The Court finds that the deficiencies of the SAC cannot be cured by further amendment.

As such, the Court recommends that the federal claims and all defendants, except for the Fourth Amendment claim against Jara and Ruiz, be dismissed without further leave to amend. See Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001); see also, e.g., Fid. Fin. Corp. v. Fed. Home Loan Bank of S.F., 792 F.2d 1432, 1438 (9th Cir. 1986) ("The district court's discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend his complaint."); Ismail v. Cty. of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012) ("[A] district court's discretion over amendments is especially broad where the court has already given a plaintiff one or more opportunities to amend his complaint." (quoting DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 n.3 (9th Cir. 1987))).

E. Denial of Supplemental Jurisdiction as to all State Law Claims Except Those Alleged Against Defendants Jara and Ruiz

In addition to federal claims, Plaintiff asserts nine state law claims based on the conduct discussed above. Based on the Court's initial review of

Plaintiff's state law claims, as well as the briefing on the Motions with respect to these claims, it appears most of Plaintiff's state law claims, with the possible exception of the Eighth Cause of Action (California Constitution – Unreasonable Search and Seizure) and the Ninth Cause of Action (California Constitution – Right to Privacy), are subject to dismissal for failure to state a claim for the reasons set forth above, among other reasons.

However, when a federal court has dismissed all claims over which it has original jurisdiction, it may, at its discretion, decline to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3); Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639-40 (2009).

As only one federal claim, out of six, against two defendants, out of twelve, survives Defendants' Motions to Dismiss, as a matter of comity, the Court should decline to exercise supplemental jurisdiction over the nine remaining state law claims as asserted against all Defendants except Jara and Ruiz, rending the Motions to Dismiss as to those claims moot.

With respect to the state law claims against Jara and Ruiz, as a matter of judicial efficiency, the Court should decline to rule on the challenges by Jara and Ruiz to Plaintiff's nine remaining state law claims at this time and instead will stay those claims pending further proceedings as to the sole claim the Court finds sufficient in the SAC, the Second Cause of Action alleging a Fourth Amendment violation against Defendants Jara and Ruiz.

V.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order, to be reflected in a final judgment where appropriate:

1. approving and accepting this Report and Recommendation;
2. granting the City's and County's Motions as follows:

a. dismissing the First, Third, Fourth, Fifth, and Sixth Causes of Action without leave to amend and with prejudice as to the City, the County, Reynoso, Tate, Buckhannon, Villanueva, Jara, Ruiz, Lacey, Cagney, Thorp, and Chung; and

b. dismissing the Second Cause of Action without leave to amend and with prejudice as to the County, Villanueva, Cagney, Thorp, Chung, and Lacey;

3. denying the County's Motion as to the Second Cause of Action against Jara and Ruiz in their individual and official capacities;

4. dismissing all federal claims against Does 1-10 without leave to amend;

5. declining to exercise supplemental jurisdiction over the state law claims against the City, the County, Reynoso, Tate, Buckhannon, Villanueva, Lacey, Cagney, Thorp, Chung, and Does 1-10 without prejudice to Plaintiff raising them in state court;

6. staying further proceedings with respect to the state law claims against Jara and Ruiz until further order of the Court; and

7. modifying the May 22, 2020 Preliminary Injunction and releasing Villanueva, Lacey, Cagney, Thorp, and Chung therefrom.

DATED: June 26, 2020

JOHN D. EARLY
United States Magistrate Judge