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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JULEANA STEWART,  
Plaintiff,  
v.  
CITY OF OAKLAND, et al.,  
Defendants.

Case No. [17-cv-04478-MMC](#)

**ORDER GRANTING CITY OF OAKLAND AND CHIEF WHENT'S MOTION TO DISMISS; GRANTING COUNTY OF ALAMEDA AND SHERIFF AHERN'S MOTION TO DISMISS; AFFORDING PLAINTIFF LEAVE TO AMEND; VACATING HEARING; CONTINUING CASE MANAGEMENT CONFERENCE**

Before the Court are two motions to dismiss: (1) Motion to Dismiss, filed November 24, 2017, by defendants City of Oakland ("City") and former Chief of Police Sean Whent ("Chief Whent") (collectively, "City Defendants"); and (2) Motion to Dismiss, filed October 23, 2017, by defendants County of Alameda ("County") and Sheriff Gregory J. Ahern ("Sheriff Ahern") (collectively, "County Defendants"). Both motions have been fully briefed. Having read and considered the papers filed in support of and in opposition to the motions, the Court deems the matters suitable for decision on the parties' respective written submissions, VACATES the hearing scheduled for January 26, 2018, and hereby rules as follows.

**BACKGROUND**

In her complaint, plaintiff Juleana Stewart ("Stewart") alleges that, in 2014, "her personal identity information" was "stolen" and that "her stolen personal identity information was later used to buy a car apparently involved in robberies that had occurred in Oakland." (See Compl. ¶ 1.)

Stewart alleges that defendant Frank Morrow ("Morrow"), a police officer employed

1 by the City,<sup>1</sup> obtained a warrant for Stewart's arrest by "wrongfully withholding pertinent  
2 information of which he was aware," specifically, by "repeatedly refer[ing] to the car  
3 involved in the Oakland robberies — a BMW — as 'Stewart's BMW,'" and "even though  
4 defendant Morrow had been told by [Stewart] that she did not own the vehicle, that her  
5 identity information had been stolen over a year earlier, and that she had promptly  
6 reported the identity theft to her local police department shortly after that had occurred"  
7 (see Compl. ¶¶ 6, 19), Morrow's affidavit in support of his application for the arrest  
8 warrant "mis-represented that [Stewart] had only reported the identity theft several  
9 months later, after several of the Oakland robberies had been committed using a rental  
10 car rented in [Stewart's] name" (see Compl. ¶ 19).

11 Stewart alleges that, on December 9, 2015, she was arrested by City police  
12 officers<sup>2</sup> on the "wrongfully obtained arrest warrant" and that, during the course of the  
13 arrest, the officers "pulled firearms and aimed them at her without cause when they  
14 pulled over the car she was driving" (see Compl. ¶¶ 1, 67), after which she was  
15 transferred to the Alameda County jail, where she "was not given pain medication for a  
16 prior serious back injury" during the three days she was detained in that facility (see  
17 Compl. ¶ 20).

18 Stewart further alleges that the Oakland Police Department "had" a "custom and  
19 policy" to "use excessive force" and "provide misleading information to obtain arrest  
20 warrants" (see Compl. ¶ 27) and that the Alameda County Sheriff's Department "had" a  
21 "custom and policy" to be "deliberately indifferent to the medical needs of persons  
22 detained in jail" (see Compl. ¶ 29).

23 Based on the above-cited allegations, Stewart asserts three causes of action  
24 against the City Defendants and the County Defendants, specifically, the Second Cause  
25 of Action, titled "Violation of Civil Rights, 42 U.S.C. § 1983," the Third Cause of Action,

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27 <sup>1</sup>To date, Morrow has not filed an appearance in the above-titled action.

28 <sup>2</sup>The officers are not named in the complaint.

1 titled "Violations of California Civil Code § 52.1," and the Fifth Cause of Action, titled  
2 "Negligence."<sup>3</sup>

3 **LEGAL STANDARD**

4 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure "can be  
5 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged  
6 under a cognizable legal theory." See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
7 699 (9th Cir. 1990). Rule 8(a)(2), however, "requires only 'a short and plain statement of  
8 the claim showing that the pleader is entitled to relief.'" See Bell Atlantic Corp. v.  
9 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, "a  
10 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual  
11 allegations." See id. Nonetheless, "a plaintiff's obligation to provide the grounds of his  
12 entitlement to relief requires more than labels and conclusions, and a formulaic recitation  
13 of the elements of a cause of action will not do." See id. (internal quotation, citation, and  
14 alteration omitted).

15 In analyzing a motion to dismiss, a district court must accept as true all material  
16 allegations in the complaint, and construe them in the light most favorable to the  
17 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). "To  
18 survive a motion to dismiss, a complaint must contain sufficient factual material, accepted  
19 as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S.  
20 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "Factual allegations must be  
21 enough to raise a right to relief above the speculative level[.]" Twombly, 550 U.S. at 555.  
22 Courts "are not bound to accept as true a legal conclusion couched as a factual  
23 allegation." See Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

24 **DISCUSSION**

25 In their respective motions, the City Defendants and the County Defendants argue  
26

27 \_\_\_\_\_  
28 <sup>3</sup>The remaining causes of action are alleged against Morrow and/or the "Doe"  
defendants.

1 that all claims against them are subject to dismissal. The Court considers the motions, in  
2 turn.

3 **A. City Defendants' Motion to Dismiss**

4 As noted, Stewart alleges three causes of action against the City Defendants. In  
5 her response to the City Defendants' motion to dismiss those three claims, Stewart states  
6 that "Chief Whent should be dismissed without prejudice" from the instant action (see  
7 Pl.s' Opp. to City Defs.' Mot. at 6:3), and, as the City Defendants observe, does not  
8 address in any respect the City Defendants' motion to dismiss her § 52.1 claim against  
9 the City.

10 Accordingly, all of Stewart's claims against Chief Whent and her § 52.1 claim  
11 against the City will be dismissed without prejudice. The Court next turns to the two  
12 remaining causes of action against the City.

13 **1. 42 U.S.C. § 1983**

14 Stewart seeks to hold the City liable for alleged deprivation of her constitutional  
15 rights by City police officers. The City Defendants argue Stewart's § 1983 claim is  
16 deficient for the reason that the complaint lacks any facts identifying a municipal policy,  
17 custom, or practice under which those officers allegedly acted. The Court agrees.

18 Where a plaintiff has been deprived of a constitutional right by a municipal  
19 employee, such plaintiff, in order to state a claim against the municipality, must allege the  
20 municipality "had a deliberate policy, custom, or practice that was the moving force  
21 behind the constitutional violation." See AE ex rel. Hernandez v. County of Tulare, 666  
22 F.3d 631, 636 (9th Cir. 2012) (internal quotation and citation omitted). At the pleading  
23 stage, the plaintiff must allege "facts regarding the specific nature" of the challenged  
24 policy, custom or practice. See id. at 637. Here, Stewart alleges in general terms that  
25 the City had a "custom and policy . . . to use excessive force and to provide misleading  
26 information to obtain arrest warrants" (see Compl. ¶ 27), as well as a "policy, practice and  
27 custom" of "deliberate indifference" to its "fail[ure] to adequately train, instruct, monitor,  
28 supervise or otherwise direct its officers, deputies, and employees" (see Compl. ¶ 45)

1 and "fail[ure] to use adequate hiring procedures and training procedures" (see Compl.  
2 ¶ 46). Stewart fails to allege, however, any facts describing the specific nature of any  
3 such custom or policy or any such deficiency in the City's training, instructing, monitoring,  
4 supervising, directing or hiring of police officers. See, e.g., Young v. City of Visalia, 687  
5 F. Supp. 2d 1141, 1149 (E.D. Cal. 2009) (holding plaintiff alleging municipal liability claim  
6 based on inadequate training must "identify what the training . . . practices were," as well  
7 as "how the training . . . practices were deficient").

8 Accordingly, to the extent Stewart's § 1983 claim is asserted against the City, the  
9 claim is subject to dismissal. As Stewart has requested leave to amend, and the City  
10 Defendants have not shown the above-discussed deficiency could not be cured, the  
11 Court will grant that request.

12 **2. Negligence**

13 Stewart alleges that the City "breached" duties owed to Stewart and, in addition,  
14 that the City is "vicariously liable for the negligent conduct of [City employees]." (See  
15 Compl. ¶ 64.) The City Defendants argue Stewart's negligence claim is subject to  
16 dismissal for the reason that the complaint fails to include facts to support a finding that  
17 the City can be held either directly or vicariously liable. The Court again agrees.

18 First, to state a negligence claim against a governmental entity under a theory of  
19 direct liability, a plaintiff must "identify a specific statute declaring the entity to be liable, or  
20 at least creating some specific duty of care by the agency in favor of the injured party."  
21 See de Villers v. County of San Diego, 156 Cal. App. 4th 238, 247 (2007) (internal  
22 quotation, alteration and citation omitted). Here, the complaint identifies no such statute,  
23 and, consequently, Stewart has failed to allege a cognizable basis for a claim against the  
24 City predicated on direct liability. See id. at 255-56 (holding "a direct claim against a  
25 governmental entity asserting negligent hiring and supervision, when not grounded in the  
26 breach of a statutorily imposed duty owed by the entity to the injured party, may not be  
27 maintained").

28 Second, to state a negligence claim against a governmental entity under a theory

1 of vicarious liability, a plaintiff must establish that "the employee who acted or failed to act  
2 would have been personally liable for the injury." See id. at 247, 249-50 (holding county  
3 could not be held liable for negligence under vicarious liability theory, where plaintiff failed  
4 to show county employees were negligent). Here, as the City Defendants correctly point  
5 out, the complaint does not identify each specific wrongful act or the specific employee  
6 who committed it. Rather, Stewart alleges such conduct in collective and/or general  
7 terms. (See, e.g., Compl. ¶ 23 (alleging "Morrow and the Doe defendants . . . negligently  
8 . . . failed to use reasonable care to ensure no excessive force was used");<sup>4</sup> Compl. ¶ 61  
9 (listing eight "general duties of reasonable care"); Compl. ¶ 62 (alleging Chief Whent and  
10 Does were negligent by failing to "properly and adequately hire, investigate, train,  
11 supervise, monitor and discipline" police officers)); see also Iqbal, 556 U.S. at 678  
12 (holding "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice" to state cognizable claim).

14 Accordingly, to the extent Stewart's negligence claim is asserted against the City,  
15 the claim is subject to dismissal. As Stewart has requested leave to amend, and the City  
16 Defendants have not shown the above-discussed deficiencies could not be cured, the  
17 Court will grant that request.

## 18 **B. County Defendant's Motion**

19 As noted, Stewart alleges three causes of action against the County Defendants.  
20 In her response to the County Defendants' motion to dismiss those claims, Stewart  
21 "stipulates to the dismissal of Sheriff Ahern and of every cause of action against the  
22 County of Alameda other than her 42 U.S.C. § 1983 cause of action based on deliberate  
23 indifference to medical needs while she was a pre-trial detainee at the County Jail." (See  
24 Pl.'s Opp. to County Defs.' Mot. at 1:20-22.) In their reply, the County Defendants join

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26 <sup>4</sup>The Court notes there are no factual allegations suggesting Morrow was present  
27 at the time of Stewart's arrest or any factual allegations describing conduct on the part of  
28 Morrow that is characterized as negligent, and, indeed, the first sentence of Stewart's  
opposition states Morrow "intentionally submitted false statements to obtain [the]  
warrant." (See Pl.'s Opp. at 1:17-18.)

1 such stipulation. The Court thus turns to the one remaining claim against the County.

2 The County Defendants argue, and the Court agrees, that Stewart's § 1983  
3 deliberate indifference claim against the County fails for two reasons, specifically, that  
4 Stewart does not allege sufficient facts to support a finding that any jail official was  
5 deliberately indifferent and, additionally, that Stewart does not allege sufficient facts to  
6 support a finding that any deliberate indifference was the result of a municipal custom or  
7 policy.

8 First, a claim of municipal liability under § 1983 requires the plaintiff to show, inter  
9 alia, a "constitutional injury." See City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986)  
10 (holding, where plaintiff based § 1983 claim against city on theory city's regulations  
11 "authorized the use of constitutionally excess force," claim failed in light of finding officer  
12 did not violate plaintiff's constitutional rights). Here, Stewart's claim of constitutional  
13 injury is based on her allegation that jail officials were deliberately indifferent to her  
14 medical needs. A claim alleging deliberate indifference requires a showing that jail  
15 officials "[knew] of and disregard[ed] an excessive risk to inmate health and safety." See  
16 Lolli v. County of Orange, 351 F.3d 410, 419 (9th Cir. 2003) (internal quotation and  
17 citation omitted). Here, however, although Stewart alleges she "was not given pain  
18 medication for a prior serious back injury" (see Compl. ¶ 20), she does not allege that any  
19 jail official knew of her medical condition or her need for medication.

20 Second, as set forth above, a plaintiff who is deprived of a constitutional right and  
21 who seeks to hold a municipality liable for such deprivation must, at the pleading stage,  
22 allege "facts regarding the specific nature" of the challenged municipal policy, custom or  
23 practice. See AE, 666 F.3d at 631, 636-37. Here, although Stewart alleges that the  
24 County had a "custom and policy . . . to be deliberately indifferent to the medical needs of  
25 persons detained in jail" (see Compl. ¶ 29), as well as "deliberate indifference" to its  
26 "fail[ure] to adequately train, instruct, monitor, supervise or otherwise direct its officers,  
27 deputies, and employees" (see Compl. ¶ 45) and "fail[ure] to use adequate hiring  
28 procedures and training procedures" (see Compl. ¶ 46), Stewart alleges no facts

1 identifying the specific nature of any such custom or policy or any such deficiency in the  
2 County's training, instructing, monitoring, supervising, directing and/or hiring of jail  
3 employees with respect to medical needs of detainees.

4 Accordingly, to the extent Stewart's § 1983 claim is asserted against the County,  
5 the claim is subject to dismissal. As Stewart has requested leave to amend, and the  
6 County Defendants have not shown the above-discussed deficiencies could not be cured,  
7 the Court will grant that request.

8 **CONCLUSION**

9 For the reasons stated:

10 1. The City Defendants' motion to dismiss is hereby GRANTED, with leave to  
11 amend as set forth above.

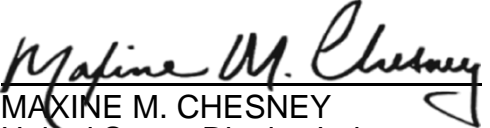
12 2. The County Defendants' motion to dismiss is hereby GRANTED, with leave to  
13 amend as set forth above.

14 3. If Stewart wishes to file a First Amended Complaint, such amended pleading  
15 shall be filed no later than February 16, 2018.

16 4. In light of the dismissal of the claims against the City Defendants and County  
17 Defendants, and lack of proof of service of the summons and complaint upon Morrow, the  
18 Case Management Conference is hereby CONTINUED from February 9, 2018, to April  
19 20, 2018, at 10:30 a.m. A Joint Case Management Conference Statement shall be filed  
20 no later than April 13, 2018.

21 **IT IS SO ORDERED.**

22  
23 Dated: January 18, 2018

24   
25 MAXINE M. CHESNEY  
26 United States District Judge  
27  
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