



1 (See Def.'s Mot. for Summ. J. (#54) Ex. A 3:12–18). Plaintiff's account of the events following  
2 her arrest is as follows. Plaintiff was crying when she arrived at the Clark County Detention  
3 Center (the "CCDC"). (*Id.* at 37:9–22). Officer Humble called Plaintiff over to her and asked  
4 Plaintiff why she was crying. (*Id.* at 37:24–38:7). Plaintiff explained that she was upset  
5 because her mother had a massive heart attack and she felt ashamed for putting herself in  
6 a position where she might miss her flight to see her mother. (*Id.* at 37:8–22).

7 Officer Humble then asked Plaintiff if she was wearing a wig. (*Id.* at 39:1). Plaintiff told  
8 Officer Humble that she was not. (*Id.* at 39:1–2). Officer Humble said that Plaintiff was  
9 wearing a wig and pulled at Plaintiff's hair. (*Id.* at 39:2–3). Plaintiff then admitted that she  
10 was wearing a wig. (*Id.* at 39:3–4). Officer Humble ordered Plaintiff to take it off. (*Id.* at  
11 39:4–5). Plaintiff asked if she had to remove her wig. (*Id.* at 39:5). Officer Humble adopted  
12 an aggressive demeanor and told Plaintiff to take off her sweater and wig. (*Id.* at 39:6–14).  
13 Plaintiff removed her wig. (*Id.* at 39:14).

14 Initially, Plaintiff testified that Officer Humble ordered her to stand up. When Plaintiff  
15 stood up, Officer Humble pushed her back down. Plaintiff kept standing back up and Officer  
16 Humble kept pushing her back down. (*Id.* at 39:15–19). But, later, Plaintiff testified that her  
17 memory was "fuzzy" as to what Officer Humble ordered her to do and that she was "pretty  
18 sure" Officer Humble ordered her to sit down. (*Id.* at 64:5–65:18). Officer Humble swore at  
19 Plaintiff and threatened to lose her in jail. (*Id.* at 39:20–40:9).

20 Officer Humble then ordered Plaintiff to take off her shoes and pick them up. (*Id.* at  
21 40:10–11; 66:13–67:17). Plaintiff bent down to take off her shoes, then looked up at Officer  
22 Humble and asked, "ma'am, do you have to talk to me like this?" (*Id.* at 40:11–13). Plaintiff  
23 took off her shoes and then asked, "ma'am, do I really have to take off my shoes?" (*Id.* at  
24 40:21–25). Plaintiff admits that she did not comply with Officer Humble's first request to  
25 remove her shoes, but did comply with the second request. (*Id.* at 66:4–12). Plaintiff did not  
26 comply with Officer Humble's request to pick up her shoes. (*Id.* at 67:11–17).

27 Officer Humble walked away and Plaintiff continued to cry, placing her head in her lap.  
28 (*Id.* at 40:25–41:5). Plaintiff then felt Officer Humble and other officers approach her, place  
their hands on her hands and head, push her head down, pull her hands up in the air, and

1 twist her arms back. (*Id.* at 41:3–16). The officers then asked Plaintiff to pick up her shoes  
2 again, but she could not because of the pain in her arm. She tried to pick them up but kept  
3 dropping them. (*Id.* at 66:13–21).

4 The officers marched her back to a jail cell and swore at her. (*Id.* at 41:17–42:1). At  
5 some point, the officers placed Plaintiff in handcuffs. (*See id.* at 42:7–15). Plaintiff believed  
6 her arm was sprained. (*Id.* at 56:15–18). Her neck was also in pain. (*Id.* at 61:8–62:21).  
7 Plaintiff did not complain of her injury to Officer Humble. (Def.’s Mot. for Summ. J. (#54) Ex.  
8 C at ¶ 10). Plaintiff asked all night long for medical treatment. The next day, a nurse saw her.  
9 (*Id.* at 56:19–57:5). Plaintiff only complained of pain in and limited movement of her right arm.  
10 (*Id.* at 57:17–58:15). Plaintiff was released from jail two days later. (*Id.* at 68:12–16).

11 On January 10, 2008, Plaintiff, acting pro se, filed a complaint with this Court against  
12 Defendants. She alleges a claim under 42 U.S.C. § 1983 for violations of her rights under the  
13 Eight and Fourteenth Amendments. She alleges that the use of force on her at the CCDC was  
14 cruel and unusual punishment and that Defendants acted with deliberate indifference to her  
15 medical needs. She also alleges that Officers Humble and Kaku acted with malice. (Compl.  
16 (#6)).

## 17 **II. LEGAL STANDARD**

18 Summary judgment “should be rendered if the pleadings, the discovery and disclosure  
19 materials on file, and any affidavits show that there is no genuine issue as to any material fact  
20 and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c)(2). The  
21 moving party bears the burden of demonstrating the absence of a genuine issue of material  
22 fact and the material lodged by the moving party must be viewed in the light most favorable  
23 to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). “[A] material  
24 issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the  
25 differing versions of the truth.” *Lynn v. Sheet Metal Workers’ Int’l Ass’n*, 804 F.2d 1472, 1483  
26 (9th Cir. 1986) (quoting *Admiralty Fund v. Hugh Johnson & Co.*, 677 F.2d 1301, 1306 (9th Cir.  
27 1982)). “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving  
28 party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not

1 significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*,  
2 477 U.S. 242, 249–50 (1986) (citations omitted). "A mere scintilla of evidence will not do, for  
3 a jury is permitted to draw only those inferences of which the evidence is reasonably  
4 susceptible; it may not resort to speculation." *British Airways Bd. v. Boeing Co.*, 585 F.2d 946,  
5 952 (9th Cir. 1978); see also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596  
6 (1993) ("[I]n the event the trial court concludes that the scintilla of evidence presented  
7 supporting a position is insufficient to allow a reasonable juror to conclude that the position  
8 more likely than not is true, the court remains free . . . to grant summary judgment.").  
9 Moreover, "[i]f the factual context makes the non-moving party's claim of a disputed fact  
10 implausible, then that party must come forward with more persuasive evidence than otherwise  
11 would be necessary to show there is a genuine issue for trial." *Blue Ridge Ins. Co. v.*  
12 *Stanewich*, 142 F.3d 1145, 1149 (9th Cir. 1998) (citing *Cal. Architectural Bldg. Prods., Inc. v.*  
13 *Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that  
14 are unsupported by factual data cannot defeat a motion for summary judgment. *Taylor v. List*,  
15 880 F.2d 1040, 1045 (9th Cir. 1989).

### 16 III. ANALYSIS

#### 17 A. Defendant is entitled to judgment as a matter of law on Plaintiff's claim for 18 violation of the Eighth Amendment.

19 As Defendants state, the Eighth Amendment is not applicable until a subject is  
20 convicted and sentenced. See *Graham v. Connor*, 490 U.S. 386, 392 n. 6 (1989). Plaintiff  
21 does not oppose on Eighth Amendment grounds. Therefore, Defendant is entitled to judgment  
22 as a matter of law on Plaintiff's claim based on violation of the Eighth Amendment.

#### 23 B. Defendant is entitled to judgment as a matter of law on Plaintiff's claim for 24 excessive force under the Fourth Amendment.

25 Though Plaintiff did not cite to the Fourth Amendment, her claim may be interpreted as  
26 one for excessive force in violation of the Fourth Amendment, applicable to the States via the  
27 Fourteenth Amendment. See *Baker v. McCollan*, 443 U.S. 137, 142 (1979).

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1           “The doctrine of qualified immunity protects government officials ‘from liability for civil  
2 damages insofar as their conduct does not violate clearly established statutory or  
3 constitutional rights of which a reasonable person would have known.’” *Pearson v. Callahan*,  
4 555 U.S. \_\_\_, 129 S. Ct. 808, 815 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818  
5 (1982)). To decide if qualified immunity applies, courts must determine whether the  
6 allegations or facts (depending on the state of the proceedings) make out a Constitutional  
7 violation and whether the Constitutional right was clearly established. *Pearson*, 129 S. Ct. at  
8 815–16. Courts may address either prong of the qualified immunity test first. *Id.* at 818. A  
9 right may be clearly established in the absence of a ruling declaring the very action unlawful.  
10 Instead, in light of pre-existing law, the unlawfulness of the action must be apparent. *Hope*  
11 *v. Pelzer*, 536 U.S. 730, 739 (2002).

12           The Fourth Amendment gives Plaintiff a right to be free from unreasonable seizures of  
13 her person. Neither Defendants nor Plaintiff have provided any case law that more  
14 specifically applies to these circumstances.<sup>2</sup> The Court need look no further. Defendants’  
15 actions were objectively reasonable. Plaintiff had lied to Officer Humble and disobeyed her  
16 orders. Plaintiff was emotional. Officer Humble would have put herself at risk if she bent over  
17 to pick up Plaintiff’s shoes herself. (See Def.’s Mot. for Summ. J. (#54) Ex. C at ¶ 7). Plaintiff  
18 refused to pick them up, so Officer Humble and other officers restrained Plaintiff by grabbing  
19 her head and arms. Defendants actions were not unreasonable under clearly established law.

20           **C. Defendant is entitled to judgment as a matter of law on Plaintiff’s claim for**  
21           **deliberate indifference under the Fourteenth Amendment.**

22           Jail officials violate a pretrial detainee’s rights under the Fourteenth Amendment “if they  
23 are deliberately indifferent to his serious medical needs.” *Anderson v. County of Kern*, 45  
24 F.3d 1310, 1313, 1316 (9th Cir. 1995). Mere negligence does not establish a constitutional  
25 violation. *Id.* at 1316. Jail officials act with deliberate indifference if their action “constitutes  
26 an infliction of pain or a deprivation of the basic human needs, such as adequate food,  
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28           <sup>2</sup> Defendants cite at length *Hudson v. McMillian*, 503 U.S. 1 (1992). This case involved  
an excessive force analysis regarding a *prisoner’s* right to be free from cruel and unusual  
punishment under the *Eighth Amendment*. *Id.* at 4.

1 clothing, shelter, sanitation, and medical care” and the infliction of pain is unnecessary and  
2 wanton. *Id.* at 1312–13, n.1 (applying the same standard for Eighth Amendment and  
3 Fourteenth Amendment, but noting the standards could possibly diverge). “The test for  
4 whether a prison official acts with deliberate indifference is a subjective one: the official must  
5 ‘know[ ] of and disregard[ ] an excessive risk to inmate health and safety; the official must both  
6 be aware of the facts from which the inference could be drawn that a substantial risk of serious  
7 harm exists, and he must also draw the inference.’” *Id.* at 1313 (quoting *Farmer v. Brennan*,  
8 511 U.S. 825, 837 (1994)).

9         The Court must decide whether it was clearly established at the time of the incident that  
10 the jail officials’ actions constituted deliberate indifference. If not, they are entitled to qualified  
11 immunity. First, Plaintiff has cited to no authority establishing that, objectively, a jail official  
12 causes excessive risk to a detainee’s health by not providing medical treatment for a sprained  
13 arm until the next day. Given the nature of her injury and given that a nurse saw to it the next  
14 day, the jail officials did not act to deprive Plaintiff of basic medical care. Second, Plaintiff has  
15 alleged no facts that suggest Defendants were subjectively aware of any excessive risk to her  
16 health. Though Plaintiff testified that she asked for medical treatment all night, she does not  
17 provide any evidence as to whom she asked. There is no indication that Officer Humble or  
18 Officer Kaku were aware of her requests for medical treatment. Therefore, Officers Humble  
19 and Kaku are protected by qualified immunity and entitled to judgment as a matter of law on  
20 Plaintiff’s claim for deliberate indifference.

21         **D. Las Vegas Metro is not subject to municipal liability because Plaintiff**  
22         **produced no evidence of a policy or custom that violated her rights.**

23         Las Vegas Metro may only be directly liable for a § 1983 claim; there is no vicarious  
24 liability under § 1983. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978). Thus, for Las  
25 Vegas Metro to be liable, Plaintiff must show that her rights were violated as a result of its  
26 policy or custom. *Id.* at 694. Plaintiff has completely failed to produce any evidence that her  
27 civil rights were violated due to a policy or custom of Las Vegas Metro. Therefore, Las Vegas  
28

1 Metro is entitled to judgment as a matter of law.<sup>3</sup>

2 **E. Plaintiff has not shown justification to allow her additional discovery to**  
3 **oppose Defendants' motion for summary judgment.**

4 Plaintiff argues that she cannot adequately oppose Defendants' motion because she  
5 failed to conduct discovery. (Pl.'s Opp'n (#59) 9:24–12). She requests 120 days of additional  
6 discovery so she can obtain affidavits from her medical care providers. (*Id.* at 11:8–12). She  
7 failed to conduct discovery due to her lack of understanding of civil procedure. (*Id.* at  
8 10:2–15).

9 If a party opposing the motion shows by affidavit that, for specified reasons, it  
cannot present facts essential to justify its opposition, the court may:

- 10 (1) deny the motion;  
11 (2) order a continuance to enable affidavits to be obtained, depositions to be  
taken, or other discovery to be undertaken; or  
12 (3) issue any other just order.

13 Fed. R. Civ. P. 56(f). The party seeking more discovery must show what facts she hopes to  
14 discover that will raise material issues of fact and that such evidence exists. *Terrel v. Brewer*,  
935 F.2d 1015, 1018 (9th Cir. 1991).

15 Plaintiff has failed to provide justification for denying Defendants' motion or allowing  
16 her additional time to obtain affidavits. Affidavits of her medical providers are not relevant to  
17 this motion. They will not add any evidence regarding Defendants' use of force on Plaintiff  
18 and subsequent treatment of her medical condition. Plaintiff's deposition is on record and  
19 provides Plaintiff with her best evidence to support her claims. Furthermore, the Court has  
20 Officer Humble's affidavit and a video recording of the incident on record. Reopening  
21 discovery would be futile. Finally, Plaintiff had ample opportunity to conduct discovery, but  
22 failed to do so. See *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1005 (9th Cir. 2002) ("The  
23 failure to conduct discovery diligently is grounds for the denial of a Rule 56(f) motion."). "[A]  
24 *pro se* litigant, like any other litigant, must comply with the Federal Rules of Civil Procedure."  
25 *Sindram v. Merriwether*, 506 F. Supp. 2d 7, 11 (D.D.C. 2007). Therefore, the Court will not  
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27 \_\_\_\_\_  
28 <sup>3</sup> Defendants also assert that Las Vegas Metro, as a municipality, is immune from  
punitive damages. (Def.'s Mot. for Summ. J. (#54) 18:23–19:3). Municipalities are immune  
from punitive damages under § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247,  
270 (1981).

1 deny Defendants' motion or delay its ruling so that Plaintiff may conduct additional discovery.

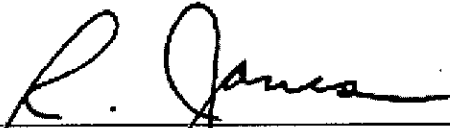
2 **IV. Conclusion**

3 Accordingly, IT IS ORDERED that Defendants' Motion for Summary Judgment (#54)  
4 is GRANTED.

5 The Clerk of the Court shall enter judgment accordingly.

6 DATED: This 9<sup>th</sup> day of June, 2010.

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Robert C. Jones  
UNITED STATES DISTRICT JUDGE