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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Elaine Munoz Sanchez,

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No. CV-09-1150-PHX-LOA

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Plaintiff,

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**ORDER**

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vs.

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Joseph Arpaio, et al.,

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Defendants.

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This matter arises on the Motion of Defendants Deputy Brian Woolf, Deputy Robert Kent, Sheriff Arpaio, and Maricopa County for Summary Judgement. Based Upon Qualified Immunity. (Doc. 51) Plaintiff opposes the motion. (Doc. 72) All parties have consented in writing to magistrate-judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). After consideration of the parties’ briefing, the Court will grant the Motion in part and deny it in part.

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**I. Background**

23

In her Complaint, Plaintiff Elaine Munoz Sanchez (“Plaintiff”) asserts violations of her federal constitutional rights and also alleges several state law claims against Defendants Joseph M. Arpaio, Sheriff of Maricopa County; Robert Kent, Deputy Sheriff of Maricopa County Sheriff’s Office (“MCSO”); Brian Woolf, Deputy Sheriff of MCSO; the Maricopa County Sheriff’s Office; and Maricopa County, Arizona. (Doc. 1)

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1 Plaintiff's claims arise out of her arrest on May 28, 2008. She seeks monetary damages  
2 under 42 U.S.C. § 1983 and Arizona law. The Complaint contains nine causes of action:  
3 (1) Count One - violation of 42 U.S.C. § 1983 and deprivation of her rights under the  
4 Fourth and Fourteenth Amendments; (2) Count Two - negligent supervision and/or  
5 training; (3) Count Three - negligent hiring; (4) Count Four - assault; (5) Count Five -  
6 battery; (6) Count Six - false arrest and false imprisonment; (7) Count Seven - negligence  
7 and gross negligence; (8) Count Eight - abuse of process/malicious prosecution; and (9)  
8 Count Nine - deprivation of State constitutional rights. (Doc. 1)

9 Defendants Deputy Woolf, Deputy Kent, Sheriff Arpaio, and Maricopa  
10 County move for summary judgment in their favor on Count One on qualified immunity  
11 grounds. (Doc. 51) Because the Court has already granted Defendant Maricopa County's  
12 separate summary judgment motion as to Count One, the Court will deny, as moot, the  
13 pending Motion for Summary Judgment as it pertains to Maricopa County. (Doc. 80)

## 14 **II. Facts**

15 Because this matter arises on Defendants' Motion for Summary Judgment,  
16 the Court presents the facts in the light most favorable to Plaintiff. *Adams v. Speers*, 473  
17 F.3d 989, 990-91 (9<sup>th</sup> Cir. 2007). On May 28, 2008, at approximately 1:00 a.m., Deputies  
18 Kent and Woolf were patrolling in a marked car in the Town of Guadalupe, Arizona.  
19 (Doc. 52, DSOF ¶ 1; Doc. 73, PSOF ¶ 3-4) Deputy Woolf was the Field Training Officer  
20 ("FTO") assigned to Deputy Kent that evening. (*Id.*) Deputy Woolf was training Deputy  
21 Kent in the proper procedures for traffic stops. (Doc. 52, SOF ¶ 1; Doc. 73, PSOF ¶ 5-6)  
22 Deputy Kent was driving and had control of the radio. (Doc. 73, PSOF ¶ 4)

23 At that same time, Plaintiff was driving home from eating at the Native  
24 New Yorker restaurant in Tempe, Arizona with her husband, Manuel Valenzuela. (Doc.  
25 73; PSOF ¶ 9) Plaintiff's brother, Andrew Sanchez, had also been with Plaintiff at the  
26 restaurant. (Doc. 73; PSOF ¶ 10) Plaintiff's brother had driven the van that Plaintiff was  
27 driving several days earlier and had been stopped by police for a light being out. (Doc.  
28 73, PSOF ¶ 12) Although which light was out has not identified, Andrew discovered a

1 brake light was not functioning properly and had it repaired before May 28, 2008. (Doc.  
2 52, DSOF ¶ 5) Because Plaintiff knew there had recently been problems with the van's  
3 lights, she routinely checked to make sure they were working. On May 28, 2008, she  
4 checked the van's lights and confirmed they were working before leaving the Native New  
5 Yorker to drive home. (*Id.*, DSOF ¶ 6; Doc. 73, PSOF ¶ 13-14)

6           After leaving the restaurant, Plaintiff drove to Guadalupe and stopped at a  
7 stop sign at a street named Calle Iglesias. While stopped, Plaintiff observed a marked  
8 Maricopa County Sheriff's vehicle approaching in the opposite direction. She continued  
9 driving and saw the MCSO vehicle u-turn and proceed to follow her. (Doc. 73, PSOF ¶  
10 15) Deputy Kent reportedly observed Plaintiff's van in his rearview mirror and noticed  
11 that the rear license plate was not illuminated. (*Id.*) Deputy Kent u-turned and started  
12 following Plaintiff's van. He was able to read the license plate because it was illuminated  
13 by his own head-lights and called the license plate number into the dispatcher to make  
14 sure it was safe to stop the van, *i.e.*, that it was not reported stolen and there were no  
15 outstanding warrants for the vehicle which would dictate against turning on the police  
16 vehicle's emergency lights that might prompt a driver to take evasive action. (Doc. 52,  
17 DSOF ¶ 1; Doc. 73, PSOF ¶ 23, ¶ 31-33 - citing Kent deposition, pg. 40, 42, 44, 46, 50)

18           According to Plaintiff, the MCSO vehicle did not activate its emergency  
19 lights or attempt to stop her van from the point she first saw the MCSO vehicle until she  
20 had turned into her home's driveway. (Doc. 73, PSOF ¶ 29) Kent, on the other hand,  
21 states that he activated the emergency lights just before Plaintiff pulled into her driveway.  
22 (PSOF ¶ 23, ¶ 31-33) Plaintiff states that the emergency lights were not turned on until  
23 she was handcuffed and had been taken to the police vehicle. (Doc. 73; PSOF ¶ 29)

24           Plaintiff turned into her driveway, drove to the back of the house, and  
25 parked the van. (Doc. 52, DSOF ¶ 2; Doc. 73, PSOF ¶ 37) Plaintiff and her husband  
26 exited the van and Plaintiff proceeded to the back door of her residence. After Plaintiff  
27 had parked and exited her vehicle, the Deputies drove into her driveway - without  
28 activating the emergency lights. "At that time the Deputies only had their headlights on."

1 (Doc. 73, PSOF ¶ 44; Exh. D, Plaintiff's depo, page 34 lines 5-13) "When she saw the  
2 Deputies, Plaintiff was very confused and afraid and banged on the door of her house  
3 yelling for her mother" because she needed witnesses. (*Id.*, PSOF ¶¶ 44, 45, Plaintiff's  
4 Affidavit ¶ 7) Plaintiff was not able to enter the back because it was locked. (*Id.*, PSOF ¶  
5 57) When Plaintiff was at the back door of her residence, banging on the door and yelling  
6 for her mother, Deputy Woolf "grabbed [Plaintiff] by the arm and then forced [her]  
7 towards [her] van and pushed [her] against [her] van." (*Id.*; PSOF ¶ 46, Plaintiff's depo,  
8 page 34, lines 11-16)

9 Plaintiff, who was 32 years of age, is 5'2" and weighed 160 pounds, "was  
10 struggling" because Deputy Woolf "was using too much force on her but she was not  
11 trying to get away and didn't try to run or anything." (*Id.*, PSOF ¶¶ 8, 47, 51, Plaintiff's  
12 depo, page 34, lines 23-25) Then both "Deputies pushed her down to the ground and  
13 used force on her" by "slamm[ing] her face on the dirt." (*Id.*; PSOF ¶ 48, Plaintiff's depo,  
14 page 34, lines 23-25; Plaintiff's Affidavit ¶ 9) One Deputy had his knee on her back, and  
15 the other one held her down. (*Id.*, PSOF ¶ 50, Plaintiff's depo, page 35, lines 1-3)  
16 Plaintiff described the force used as "significant," causing her "pain, fear, and shock."  
17 (*Id.*, Plaintiff's Affidavit ¶ 10)

18 Defendants offer a different version of the events. According to Deputy  
19 Kent, he activated the MCSO vehicle's emergency lights before following Plaintiff's van  
20 into her driveway. When Plaintiff and the passenger started to exit the vehicle, Deputies  
21 Kent and Woolf ordered them to return to the vehicle several times, but they did not  
22 comply. Plaintiff did not respond to Deputy Kent's order, but proceeded to the back door,  
23 tried to open the door, and then started knocking on the door and yelling "mom." (*Id.*,  
24 PSOF ¶ 57, Kent depo, page 57-58, 62) Deputy Woolf then grabbed Plaintiff's left arm  
25 to escort her back to the van. Because Plaintiff "was slightly resisting" and non-  
26 compliant, Deputy Woolf grabbed her other arm and escorted back to the van because,  
27 not knowing who or what was inside the house, he wanted her away from the house. (*Id.*,  
28 PSOF ¶ 59, Kent depo, page 59, lines 4-10) Deputy Woolf took Plaintiff to her vehicle

1 and, within seconds, Plaintiff “attempted to sprint back to the house again,” so it was  
2 necessary to take her to the ground and handcuff her. (*Id.*, PSOF ¶ 59, ¶ 63, Woolf depo,  
3 page 59) Deputy Kent also states that Plaintiff was actively trying to get away from them  
4 by pushing and pulling her arms away from the Deputies and yelling, “somebody help  
5 me.” (*Id.*; PSOF ¶¶ 61, 64, Kent depo, page 58-62) The Deputies then took Plaintiff to  
6 the ground by each taking an arm and trying to take her off balance and put her on the  
7 ground in a “controlled fall.” (*Id.*, PSOF ¶ 62, Kent depo, page 64)

8 Plaintiff was placed in the back of the patrol car, advised she was under  
9 arrest, and transported to the Guadalupe substation where she was cited for Disorderly  
10 Conduct, a misdemeanor, in violation of Arizona Revised Statute (“A.R.S.”) § 13-  
11 2904(A)(1), interviewed, and released about 30 minutes later. (Doc. 1; Doc. 73, PSOF ¶¶  
12 67-68, ¶ 72, Exh. G) The disorderly conduct charge was subsequently dismissed in the  
13 Guadalupe Justice Court. (Doc. 73, PSOF ¶ 74)

### 14 **III. Summary Judgment Standard**

15 A moving party may, at any time, move for summary judgment on all or  
16 any part of a claim. Fed.R.Civ.P. 56. The Court may only grant summary judgment if the  
17 pleadings and supporting documents, viewed in the light most favorable to the non-  
18 moving party, determines that “there is no genuine issue of material fact and that the  
19 moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c); *Celotex*  
20 *Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Substantive law determines which facts  
21 are material. *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 248 (1986). “Only disputes  
22 over facts that might affect the outcome of the suit under the governing law will properly  
23 preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 248. In considering the  
24 evidence, the Court is not to weigh the evidence and determine the truth of the matter, but  
25 to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. The  
26 moving party need not disprove matters on which the opponent has the burden of proof at  
27 trial. *Celotex*, 477 U.S. at 323.

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1           The party opposing summary judgment “may not rest upon the mere  
2 allegations or denials of [the party’s] pleadings, but . . . must set forth specific facts  
3 showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e); *Matsushita Elec.*  
4 *Industries Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 685-87 (1986). There is no  
5 genuine issue for trial unless there is sufficient evidence favoring the non-moving party.  
6 If the evidence is merely colorable or is not significantly probative, summary judgment  
7 may be granted. *Anderson*, 477 U.S. at 249-50. However, “[t]he evidence of the non-  
8 movant is to be believed, and all justifiable inferences are to be drawn in his [or her]  
9 favor.” *Id.* at 255. Allegations of civil rights violations are to be liberally construed.  
10 *Thomas v. Youngblood*, 545 F.2d 1171, 1192 (9<sup>th</sup> Cir. 1976).

11           When considering a motion for summary judgment based on qualified  
12 immunity, district “courts are required to view the facts and draw reasonable inferences  
13 ‘in the light most favorable to the party opposing the [summary judgment] motion.’” *Scott*  
14 *v. Harris*, 550 U.S. 372, 378 (2007) (alteration in original) (citations omitted). “However,  
15 when the facts, as alleged by the non-moving party, are unsupported by the record such  
16 that no reasonable jury could believe them, we need not rely on those facts for purposes  
17 of ruling on the summary judgment motion.” *Wilkinson v. Torres*, 610 F.3d 546, 550 (9<sup>th</sup>  
18 Cir. 2010) (citing *Scott*, 550 U.S. at 380); *City of Vernon v. Southern Cal. Edison Co.*,  
19 955 F.2d 1361, 1369 (9<sup>th</sup> Cir. 1992), *cert. denied*, 506 U.S. 908 (1992) (a party cannot  
20 defeat a summary judgment motion by producing a “mere scintilla of evidence to support  
21 its case.”).

#### 22 **IV. Analysis of Qualified Immunity**

23           Police officers and other state officials are entitled to qualified immunity  
24 from section 1983 suits. *Davis v. Scherer*, 468 U.S. 183, 194 n. 12 (1984); *Wood v.*  
25 *Ostrander*, 879 F.2d 583, 591 (9<sup>th</sup> Cir. 1989). “Qualified immunity balances two  
26 important interests - the need to hold public officials accountable when they exercise  
27 power irresponsibly and the need to shield officials from harassment, distraction, and  
28 liability when they perform their duties reasonably. The protection of qualified immunity

1 applies regardless of whether the [police officer’s] error is a mistake of law, a mistake of  
2 fact, or a mistake based on mixed questions of law and fact.” *Pearson v. Callahan*, \_\_\_  
3 U.S. \_\_\_, 129 S.Ct. 808, 815 (2009) (citation and internal quotation marks omitted).

4           In *Saucier v. Katz*, 533 U.S. 194 (2001), *receded from by Pearson v.*  
5 *Callahan*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 808, 815 (2009), the Supreme Court instructed lower  
6 courts deciding summary judgment motions based on qualified immunity to consider “this  
7 threshold question: Taken in light most favorable to the party asserting the injury, do the  
8 facts alleged show the officer’s conduct violated a constitutional right?” *Id.* at 201. If not,  
9 then “there is no necessity for further inquiries concerning qualified immunity.” *Id.* If so,  
10 then “the next, sequential step is to ask whether the right was clearly established.” *Id.* A  
11 constitutional right is clearly established when, “on a favorable view of the other parties’  
12 submissions” “it would be clear to a reasonable officer that his conduct was unlawful in  
13 the situation he confronted.” *Id.*

14           If the right is not clearly established, the individual public officials are  
15 entitled to qualified immunity if a reasonable official could have believed that his or her  
16 conduct was lawful. *Thompson v. Souza*, 111 F.3d 694, 698 (9<sup>th</sup> Cir. 1997). The Supreme  
17 Court’s 2009 decision in *Pearson*, clarified that a district court is “permitted to exercise  
18 [its] sound discretion in deciding which of the two prongs of the qualified immunity  
19 analysis should be addressed first in light of the circumstances in the particular case at  
20 hand.” *Pearson*, 129 S.Ct. at 818. The Court will consider the pending motion for  
21 summary judgment in view of the foregoing principles.

#### 22           **A. Traffic Stop**

23           Plaintiff alleges that Defendants Woolf and Kent violated the Fourth  
24 Amendment because they lacked reasonable suspicion to conduct a traffic stop. Deputies  
25 Woolf and Kent assert that they are entitled to qualified immunity on this claim because  
26 they had “probable cause” to initiate a traffic stop. (Doc. 51 at 7) “The temporary  
27 detention of individuals during an automobile stop by the police, even if only for a brief  
28 period, constitutes a seizure within the meaning of the Fourth Amendment. Therefore, an

1 auto-mobile stop is subject to the Constitutional requirement that the seizure not be  
2 ‘unreason-able’ under the circumstances.” *Litzenberger v. Vanim*, 2002 WL 1759370  
3 (E.D.Pa. 2002) (citing *Whren v. United States*, 517 U.S. 806, 809-10 (1996)). Traffic  
4 stops are investigatory stops, which require only a showing of reasonable suspicion, *i.e.*,  
5 whether under the totality of the circumstances, Deputies Kent and Woolf had a  
6 reasonable suspicion that a traffic law violation occurred. *United States v. Willis*, 431  
7 F.3d 709, 714 (9th Cir. 2005); *United States v. Miranda-Guerena*, 445 F.3d 1233, 1237-  
8 38 (9<sup>th</sup> Cir. 2006) (a traffic stop may be based on traffic violations observed by another  
9 officer). *See also Terry v. Ohio*, 392 U.S. 1, 23-27 (1968) (recognizing that a limited stop  
10 and frisk of an individual could be conducted without a warrant based on less than  
11 probable cause); *Arizona v. Johnson*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 781, 784 (2009) (permitting  
12 a limited stop “when the police officer reasonably suspects” a traffic violation); *United*  
13 *States v. Lopez- Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000) (“[T]he Fourth Amendment  
14 requires only reasonable suspicion in the context of traffic stops.”). Reasonable suspicion  
15 requires “specific, articulable facts which, together with objective and reasonable  
16 inferences, form a basis for suspecting that a particular person is engaged in criminal  
17 conduct.” *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000) (internal  
18 quotations omitted). Reasonable suspicion is less than probable cause, but more than an  
19 “inchoate and unpar-ticularized suspicion or ‘hunch.’” *United States v. Sokolow*, 490 U.S.  
20 1, 7 (1989) (quoting *Terry*, 392 U.S. at 27).

21 Here, Deputy Kent had reasonable suspicion that Plaintiff had violated  
22 Arizona’s traffic laws. Specifically, that Plaintiff violated A.R.S. § 28-925(C) which  
23 provides that:

24 Either a tail lamp or a separate lamp shall be constructed and placed  
25 in a manner that illuminates with a white light the rear license plate  
26 and renders it clearly legible from a distance of fifty feet to the rear.  
27 A tail lamp or tail lamps together with any separate lamp for  
28 illuminating the rear license plate shall be wired to provide that the  
tail lamp or lamps are lighted whenever the head lamps or auxiliary  
driving lamps are lighted.

A.R.S. § 28-925 (West 2010) (Although § 28-925 was amended in 2009, the amendment

1 did not change the relevant portion of that statute, *see* AZ LEGIS 187 (2009)).

2 At about 1:00 a.m. on May 28, 2008, Deputies Kent and Woolf were patrolling in  
3 a marked MCSO vehicle in Guadalupe, Arizona. Deputy Kent, who was driving,  
4 observed Plaintiff's van in his rear view mirror and noticed that the rear license plate light  
5 was not illuminated as is legally required. Deputy Kent shared this information with  
6 Deputy Woolf who instructed Kent to stop the vehicle. Deputy Kent u-turned and fol-  
7 lowed Plaintiff's vehicle. Deputy Kent did not see the license plate illuminated by its own  
8 lighting. Plaintiff, who admittedly knew there had recently been problems with her van's  
9 lights, argues that she had checked the lights before driving home and noted that all the  
10 lights were working. Plaintiff's statements, however, regarding checking the lights before  
11 driving that night and her opinion that the license plate light was in working order does  
12 not undermine the existence of reasonable suspicion to conduct a traffic stop. Plaintiff  
13 was inside her vehicle at the relevant time and was not in a position to observe whether  
14 her license plate was properly illuminated at the moment the Deputies drove behind her  
15 vehicle. Other than her own speculation, Plaintiff has not provided any evidence to create  
16 a genuine issue of material fact regarding whether Deputy Kent had noticed that the  
17 license plate was not illuminated. "Prior to an investigatory stop a police officer is not  
18 required to have absolute certainty, or even probable cause, that wrongdoing has oc-  
19 curred; rather, the officer is required to have merely reasonable suspicion." *Houston v.*  
20 *City of Coquille*, 2007 WL 4287769 (D.Or., 2007) (finding that officer had reasonable  
21 suspicion to stop plaintiff for failure to have proper light illuminating license plate).  
22 Deputy Kent observed the absence of proper lighting on the license plate before following  
23 Plaintiff's vehicle into her driveway. The law allows an officer to conduct an  
24 investigatory traffic stop if he or she has a reasonable suspicion to believe that an offense  
25 has occurred. Deputy Kent's observations provided him reasonable suspicion to believe  
26 that Plaintiff violated Arizona's traffic laws. *United States v. Choudhry*, 461 F.3d 1097,  
27 1100 (9th Cir. 2006) ("A traffic violation alone is sufficient to establish reasonable  
28 suspicion."); *United States v. Padilla*, 2010 WL 1859988 (D.Ariz. 2010) (finding police

1 officer had reasonable suspicion to stop a driver for lack of illuminated license plate).  
2 Therefore, a traffic stop was authorized and there was no violation of Plaintiff's Fourth  
3 Amendment rights based on the investigatory traffic stop. Because Plaintiff fails to create  
4 a question of fact regarding a constitutional violation based on the initial traffic stop,  
5 Defendants are immune from suit on this claim. *Saucier, supra*.

#### 6 **B. Probable Cause to Arrest**

7 Plaintiff also alleges that Deputies Woolf and Kent violated the Fourth  
8 Amendment because they lacked probable cause to arrest her for disorderly conduct.  
9 "Unsurprisingly, it is clearly established that an arrest without probable cause violates a  
10 person's Fourth Amendment rights." *Knox v. Southwest Airlines*, 124 F.3d 1103, 1107 (9<sup>th</sup>  
11 Cir. 1997) (citing *Los Angeles Police Dep't*, 901 F.2d 702, 706 (9th Cir. 1989)); *Turner v.*  
12 *County of Washoe*, 759 F.Supp. 630, 634 (D.Nev. 1991) (stating that "a police officer  
13 who arrests without probable cause has committed a civil rights violation."). The Court,  
14 therefore, will consider whether the facts show that the Deputies' conduct violated the  
15 Fourth Amendment.

16 Defendants claim that they had probable cause to arrest Plaintiff for  
17 violating Arizona's disorderly conduct statute. Resolving all factual disputes and drawing  
18 all reasonable inferences in Plaintiff's favor, the Court concludes that there is a triable  
19 issue of fact regarding probable cause for the arrest. The elements of Disorderly Conduct  
20 are knowingly or intentionally disturbing the peace by any of several categories of  
21 conduct. A.R.S. § 13-2904.<sup>1</sup> The record indicates that Plaintiff was cited for violating

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22  
23 <sup>1</sup> Arizona's disorderly conduct statute provides:

24 **A.** A person commits disorderly conduct if, with intent to disturb the  
25 peace or quiet of a neighborhood, family or person, or with knowledge  
26 of doing so, such person:

- 27 1. Engages in fighting, violent or seriously disruptive behavior; or  
28 2. Makes unreasonable noise; or

1 A.R.S. § 13-2904(A)(1) which provides that “[a] person commits disorderly conduct if,  
2 with the intent to disturb the peace or quiet of a neighborhood, family or person, or with  
3 know-ledge of doing so, such person . . . [e]ngages in fighting, violent or seriously  
4 disruptive behavior.” *Id.*

5 In determining whether an arrest was lawful under the Fourth Amendment,  
6 “[f]ederal law asks only whether the officers had probable cause to believe that the  
7 predicate offense, as the state has defined it, has been committed.” *Williams v. Jaglowski*,  
8 269 F.3d 778, 782 (7th Cir. 2001). “Probable cause exists if ‘at the moment the arrest  
9 was made . . . the facts and circumstances within [the police officer’s] knowledge and of  
10 which [the police officer] had reasonably trustworthy information were sufficient to  
11 warrant a prudent man in believing’ that [the arrestee] had violated [the law].” *Hunter v.*  
12 *Bryant*, 502 U.S. 224, 228 (1991) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). “The  
13 validity of the arrest does not depend on whether the suspect actually committed a crime;  
14 the mere fact that the suspect is later acquitted of the offense for which [s]he is arrested is  
15 irrelevant to the validity of the arrest. We have made clear that the kinds and degree of  
16 proof and the procedural requirements necessary for a conviction are not prerequisites to

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17  
18 3. Uses abusive or offensive language or gestures to any person present in a  
19 manner likely to provoke immediate physical retaliation by such person; or

20 4. Makes any protracted commotion, utterance or display with the intent to  
21 prevent the transaction of the business of a lawful meeting, gathering or  
22 procession; or

23 5. Refuses to obey a lawful order to disperse issued to maintain public safety  
24 in dangerous proximity to a fire, a hazard or any other emergency; or

25 6. Recklessly handles, displays or discharges a deadly weapon or dangerous  
instrument.

26 A.R.S. § 13-2904. Disorderly conduct, without the use of a weapon or dangerous instrument,  
27 is a Class 1 misdemeanor and carries a maximum term of incarceration of six months. A.R.S.  
28 §§ 13-2904(B), 13-707(A)(1).

1 a valid arrest.” *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979) (citations omitted);  
2 *Wright v. City of Philadelphia*, 409 F.3d 595, 603-04 (3d Cir. 2005) (noting it is irrelevant  
3 to the probable cause analysis what crime a suspect is eventually charged with, and  
4 finding no constitutional violation where probable cause supported one of the four  
5 charges on which the defendant was arrested); *Beauregard v. Wingard*, 362 F.2d 901, 903  
6 (9th Cir. 1996). Thus, the fact that the disorderly conduct charge against Plaintiff was  
7 later dis-missed, is not relevant to determining the existence of probable cause at the time  
8 of arrest.

9           Whether a police officer has probable cause to arrest is ascertained by  
10 looking at the facts known to the officer at the time of the arrest. *Turner*, 759 F.Supp. at  
11 634. In Arizona, a police officer may execute a warrantless arrest if the officer has  
12 probable cause to believe:

- 13           1. A felony has been committed and probable cause to believe the person  
14           to be arrested has committed the felony.
- 15           2. A misdemeanor has been committed in his presence and probable cause  
16           to believe the person to be arrested has committed the offense.

17                                   \*                   \*                   \*                   \*

- 18           4. A misdemeanor or a petty offense has been committed and probable  
19           cause to believe the person to be arrested has committed the offense. . . .

20           B. A peace officer may stop and detain a person as is reasonably necessary  
21           to investigate an actual or suspected violation of *any traffic law* committed  
22           in the officer’s presence and may serve a copy of the traffic complaint for  
23           any alleged civil or criminal traffic violation. . . .

24 A.R.S. § 13-3883(A) (2010) (emphasis added)<sup>2</sup>; *State v. Keener*, 206 Ariz. 29, 75 P.3d  
25 119, 121 (Az.Ct.App. 2003) (police officers had authority to arrest defendant for  
26 misdemeanor offense of driving with a suspended license, even though they did not  
27 witness defendant driving, provided they had probable cause to believe offense had  
28 occurred and defendant had committed it.).

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<sup>2</sup>This statute was amended in 2010 but the amendment did not change the version that is applicable to this case.

1                   Construing all evidence in Plaintiff’s favor, an ordinarily prudent officer  
2 could not reasonably have concluded Plaintiff had committed the offense of Disorderly  
3 Conduct. The incident happened at 1:00 a.m. in the back of Plaintiff’s own residence.  
4 Although the Deputies contend that Plaintiff actively (“slightly”) struggled against them  
5 and resisted, the Court must accept Plaintiff’s version that she only minimally struggled  
6 with the Deputies. Moreover, there is no evidence that Plaintiff engaged in “fighting” or  
7 “violent” behavior. A.R.S. § 13-3904(A)(1). Plaintiff’s conduct - yelling, “mom,” and  
8 banging on the back door of her own home for a few moments - is unlikely to constitute  
9 “unreasonable noise” or a “protracted commotion” with the intent or knowledge of  
10 disturbing a person for purposes of violating either subsection 2 or 3 of the disorderly  
11 conduct statute. *Theilen v. Maricopa County*, 2010 WL1743961 (D.Ariz. 2010) (stating  
12 that clapping for a short period at a public meeting is unlikely to constitute “unreasonable  
13 noise” or “protracted commotion” with the intent or knowledge of disturbing a person,  
14 and that concluding that plaintiffs adequately allege that they were arrested without  
15 probable cause.); A.R.S. § 13-2904(A).

16                   Under Supreme Court law, an arrest is lawful even though there is no  
17 probable cause to support the offense cited by the arresting officer so long as the facts  
18 known to the officer establish probable cause for some offense, even if that offense is not  
19 closely related. *Devenpeck v. Alford*, 543 U.S. 146, 153-56 (2004). In *Devenpeck*, the  
20 Supreme Court held that an officer’s subjective intent for an arrest is irrelevant: Even if  
21 probable cause did not exist with respect to the stated basis for the arrest, the arrest is  
22 valid if any valid basis existed. *Id.*

23                   To the extent Defendants argue that there was probable cause to arrest  
24 Plaintiff for resisting arrest, there are material questions of fact that preclude summary  
25 judgment on that issue. Under Arizona law, resisting arrest by a peace officer is a Class 6  
26 felony. A.R.S. § 13-2508(B). The statute “plainly states that ‘a person commits resisting  
27 arrest by intentionally *preventing* or attempting to *prevent*’ an arrest by a police officer if  
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1 either (A)(1) or (A)(2) is satisfied.” *State v. Lee*, 217 Ariz. 514, 176 P.3d 712  
2 (Az.Ct.App. 2008) (quoting A.R.S. § 13-2508(A) (emphasis in original)).

3 [T]he language of subsection (A)(1) does not require any particular  
4 type of physical conduct so long as that conduct qualifies as  
5 “physical force against the peace officer or another.” A.R.S. §  
6 13-2508(A)(1). Those who use physical force against police officers  
7 attempting to arrest them are not entitled to engage in “minor  
8 scuffling” whether it is usual or unusual in the context of an arrest.  
9 This is consistent with our prior decisions. See *State v. Stroud*, 207  
10 Ariz. 476, 480-81, ¶¶ 15-17, 88 P.3d 190, 194-95 (App.2004) (In  
11 attempting to flee from an arrest, the defendant was “kicking his  
12 feet” and “pushing on [the officer's] arm.”), *rev'd on other grounds*,  
13 209 Ariz. 410, 103 P.3d 912 (2005); *State v. Sorkhabi*, 202 Ariz.  
14 450, 451-52, ¶¶ 2, 9-10, 46 P.3d 1071, 1072-73 (App.2002)  
15 (conviction for resisting arrest appropriate when “defendant  
16 struggled with” the arresting officers). . . .

17 *Lee*, 217 Ariz. at 517, 176 P.3d at 715 (“Lee’s conduct in jerking her arm away from the  
18 officers, physically resisting the placement of the handcuffs, and kicking the officers after  
19 the handcuffs were placed, meets the (A)(1) requirement.”).

20 Here, viewing the record in the light most favorable to Plaintiff, when  
21 Deputy Woolf grabbed Plaintiff’s arm and when both Deputies forced her to the ground,  
22 the Deputies had not activated the MCSO vehicle’s emergency lights or otherwise  
23 indicated to Plaintiff it was their intent to arrest her. *State v. Womack*, 174 Ariz. 108,  
24 118, 847 P.2d 609, 615 (Ariz.Ct.App.1992) (defendant must be aware by officer’s  
25 conduct that officer intends to effectuate an arrest). Although Plaintiff slightly struggled  
26 with Deputy Woolf, she was only attempting to move away from Deputy Woolf because  
27 he was using too much force on her. There is no evidence she used “physical force  
28 against” either of the Deputies, A.R.S. § 13-2508(A), or tried to hit or kick either of them.  
Plain-tiff disputes the Deputies’ claim that she was non-compliant, tried to pull her arms  
away from the Deputies, and that she tried to run from them. In view of the conflicting  
versions of the events - whether Deputies had indicated their intent to arrest Plaintiff and  
the manner in which Plaintiff slightly struggled or resisted the Deputies - there are  
material issues of fact precluding summary judgment on the issue of probable cause to  
arrest. *State v. Stroud*, 207 Ariz. 476, 480-81, 88 P.3d 190, 194-95 (Az.Ct.App.2004),

1 *vacated on other grounds*, 209 Ariz. 410, 103 P.3d 912 (Ariz. 2005) (affirming conviction  
2 for resisting arrest where defendant struggled and was generally combative with officer  
3 trying to arrest him).

4 Defendants also argue that there was probable cause to arrest Plaintiff for  
5 failure to comply with a police officer's order. Under Arizona law, the failure to comply  
6 with a police officer's lawful order is a Class 2 misdemeanor that carries up to four  
7 months in jail.<sup>3</sup> A.R.S. § 28-622(A) ("A person shall not wilfully fail or refuse to comply  
8 with any lawful order or direction of a police officer invested by law with authority to  
9 direct, control or regulate traffic.") In 2009, the Arizona Court of Appeals in *State v.*  
10 *Gonzalez*, 221 Ariz. 82, 84, 210 P.3d 1253, 1255 (Az.Ct.App. 2009) determined that the  
11 misdemeanor offense of Failure to Obey a Police Officer pursuant to A.R.S. § 28-622  
12 "requires proof that: (1) a person (2) wilfully (3) failed or refused to comply with (4) any  
13 lawful order or direction (5) of a police officer invested by law with authority to direct,  
14 control or regulate traffic." 210 P.3d at 1255. Arizona law is not clear, however, whether  
15 A.R.S. § 28-622(A) is limited to police orders related to directing, controlling, or  
16 regulating vehicular traffic and the operators of motor vehicles.<sup>4</sup> Arguably, if Plaintiff's  
17 version of the events are believed, A.R.S. § 28-622(A) may be inapplicable because  
18 Plaintiff's van was stopped, parked on private property off the public roadway, and she  
19 was out of the van at or near her back door when the Deputies ordered her to return to her  
20 van. Even if A.R.S. § 28-622(A) were sufficiently related to directing, controlling, or  
21 regulating vehicular traffic to empower the Deputies to give Plaintiff a lawful order,  
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24 <sup>3</sup> See A.R.S. 13-707(A)(2) (stating that the sentence for "a class 2 misdemeanor" is  
"four months.").

25  
26 <sup>4</sup> This Court's recent ruling in *Bohnert v. Mitchell*, 2010 WL 3767566, \* 9 (D.Ariz.  
27 2010) is not inconsistent with this ruling. *Bohnert* involved a wrong-way driver on Interstate  
28 8 who was ordered to exit his vehicle while the vehicle was still on the roadway. Clearly, the  
DPS officer's order in *Bohnert* was directly related to "direct[ing], control[ing], or  
regulat[ing] traffic" and the operator of the vehicle. A.R.S. § 28-622.

1 summary judgment is inappropriate.

2 Here, the facts are disputed regarding at what point the Deputies  
3 communicated to Plaintiff that they intended to conduct a traffic stop. According to  
4 Plaintiff's version of the facts, the Deputies drove behind her without turning on their  
5 emergency lights or otherwise signaling Plaintiff to stop the van. Plaintiff drove into her  
6 driveway, proceeded to drive to the back of her house, exited and stepped away from her  
7 van before the Deputies entered her property and, at that point, the Deputies still had not  
8 activated their emergency lights. According to Plaintiff, it was at this time that the  
9 Deputies directed Plaintiff to return to her van. Plaintiff admits, however, that, rather  
10 than complying with the Deputies' order, she took "two steps" to the back door of her  
11 house and banged on the door and yelled for her mother. (Doc. 73-5, Sanchez depo, page  
12 34) Although Defendants contend that Deputy Kent activated the emergency lights just  
13 before the Deputies pulled into the drive-way behind Plaintiff, they observed Plaintiff exit  
14 the van and directed her to return to the vehicle – an order she admittedly ignored -- the  
15 Court must accept Plaintiff's version of the facts on summary judgment.

16 Viewing the record in the light most favorable to Plaintiff, the Court will  
17 deny Defendants' Motion for Summary Judgment on the basis of qualified immunity on  
18 Plaintiff's claim that Defendants' lacked probable cause to arrest her in violation of the  
19 Fourth Amendment. Assuming *arguendo* that A.R.S. § 28-622(B) applies to this case,  
20 whether taking two steps while on private property after the Deputies directed Plaintiff to  
21 return to her van and whether Plaintiff's conduct under the circumstances was "wilful"  
22 sufficiently establish probable cause to arrest the scared Plaintiff for the crime of Failure  
23 to Obey a Police Officer pursuant to A.R.S. § 28-622, a crime for which Plaintiff was not  
24 cited, is for a jury to decide.

25 **C. Excessive Force**

26 Plaintiff further claims that the Deputies used excessive force in arresting  
27 her in violation of the Fourth Amendment. The Ninth Circuit has held that a § 1983 claim  
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1 may be based upon the Fourth Amendment if the police used excessive force during an  
2 arrest. *Robins v. Harum*, 773 F.2d 1004 (9<sup>th</sup> Cir. 1985). Police officers may only use force  
3 that is objectively reasonable under the circumstances. *Graham v. Connor*, 490 U.S. 386  
4 (1989). In the Ninth Circuit, courts evaluate claims of excessive force under the objective  
5 reasonableness standard. *Pierce v. Multnomah County*, 76 F.3d 1032, 1043 (9<sup>th</sup> Cir.  
6 1996). “[T]he reasonableness inquiry in an excessive force case is an objective one: the  
7 question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts  
8 and circumstances confronting them, without regard to their underlying intent or  
9 motivation.” *Graham*, 490 U.S. at 397. Trial courts must balance “the nature and quality  
10 of the intrusion on the individual’s Fourth Amendment interests against the  
11 countervailing governmental interests at stake.” *Id.* at 396 (internal citations omitted).  
12 Assessing the “nature and quality” of a given “intrusion” requires the fact finder to  
13 evaluate the “type and amount of force inflicted.” *Chew v. Gates*, 27 F.3d 1432, 1440 (9<sup>th</sup>  
14 Cir. 1994). The governmental interest is measured by considering: (1) the severity of the  
15 crime at issue; (2) whether the suspect posed an immediate threat to the safety of the  
16 officers or others; (3) whether the suspect was actively resisting arrest, and any other  
17 exigent circumstances present at the time. *Graham*, 490 U.S. at 394; *Deorle v.*  
18 *Rutherford*, 272 F.3d 1272, 1280 (9<sup>th</sup> Cir. 2001). Because this balancing “nearly always  
19 requires a jury to sift through disputed factual contentions, and to draw inferences  
20 therefrom, [the Ninth Circuit] has held on many occasions that summary judgment or  
21 judgment as a matter of law in excessive force cases should be granted sparingly.”  
22 *Santos v. Gates*, 287 F.3d 846, 853 (9<sup>th</sup> Cir. 2002).

23           Defendants argue that they are entitled to qualified immunity on Plaintiff’s  
24 claim of excessive force. The Court must determine, viewed in the light most favorable to  
25 Plaintiff, whether the facts alleged show the Deputies’ conduct violated a constitutional  
26 right. *Saucier*, 533 U.S. at 201. Where the facts are disputed, their resolution and  
27 determinations of credibility “are manifestly the province of the jury.” *Santos*, 287 F.3d  
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1 at 852.

2 It is clearly established that “[t]he use of excessive force by police officers  
3 in an arrest violates the arrestee’s Fourth Amendment right to be free from an  
4 unreasonable seizure.” *White v Pierce County*, 797 F.2d 812, 816 (9<sup>th</sup> Cir. 1986). Here,  
5 Plaintiff contends that Defendant Woolf grabbed her arm and forced her back to her  
6 vehicle. Plaintiff, who is 5’2” and weighed 160 pounds, slightly struggled because  
7 Deputy Woolf “was using too much force,” but, according to Plaintiff, she did not try to  
8 run. Deputy Kent and Woolf together forced her to the ground and slammed her face into  
9 the dirt. One Deputy had his knee on her back and the other held her down. The  
10 Deputies hand-cuffed Plaintiff while she was face down on the ground. Plaintiff claims  
11 that she neither resisted the Deputies nor struggled once arrested. Although Plaintiff  
12 admits she did not suffer a physical injury, the absence of a physical injury does not  
13 defeat her claim of excessive force. *Marlowe v. Pinal County*, 2008 WL 4264724  
14 (D.Ariz. 2008) (finding that plaintiff’s claim that he was never so upset or terrified during  
15 the incident and that it was the worst thing that had ever happened to him outside the  
16 death of his son, sufficient to support claim of excessive force); *Flores v. City of*  
17 *Palacios*, 381 F.3d 391, 400-01 (5<sup>th</sup> Cir. 2004) (noting that psychological injuries can be  
18 sufficient to support a claim of excessive force.).

19 Defendants tell a different story. Defendants contend that when Plaintiff  
20 and the passenger started to exit the vehicle, they were instructed several times to return  
21 to the vehicle, but did not comply. Plaintiff did not respond to Deputy Kent’s order, but  
22 simply proceeded to the back door, tried to open the door, knocked on the door and yelled  
23 for her “mom.” (Doc. 73, PSOF ¶ 57, Kent depo, page 57-58, 62) Deputy Woolf states  
24 that when he first contacted Plaintiff, he grabbed her left arm. Plaintiff was slightly  
25 resisting and non-compliant, so he grabbed her other arm and escorted back to the car  
26 because, not knowing what was inside the house, he wanted her away from the house.  
27 Deputy Woolf took Plaintiff to her vehicle and, within seconds, Plaintiff tried to “sprint”  
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1 back to her house, so it was necessary to take her to the ground and handcuff her. (Doc.  
2 73, PSOF ¶ 59, ¶ 63 Woolf depo, page 59) Deputy Kent also states that Plaintiff was  
3 actively trying to get away from the Deputies by pushing and pulling her arms away from  
4 the Deputies and yelling, “somebody help me.” (Doc. 73; PSOF ¶ 61, 64, Kent depo,  
5 page 58-62) The Deputies then took Plaintiff to the ground by each taking an arm and  
6 trying to take her off balance and put her on the ground in a “controlled fall.” (Doc. 73,  
7 PSOF ¶ 62, Kent depo, page 64)

8           The Fourth Amendment guarantees “[t]he right of the people to be secure in  
9 their persons, houses, papers, and effects, against unreasonable searches and seizures.”  
10 U.S. Const., Amend. IV. Viewing the record in the light most favorable to Plaintiff, a  
11 reasonable jury could find the Deputies violated her rights under the Fourth Amendment  
12 by using excessive and unnecessary force against her. If Plaintiff’s version of the facts is  
13 believed, Defendants used excessive and unnecessary force during her arrest.

14           Under the qualified immunity analysis, “[i]f a [Constitutional] violation  
15 could be made out on a favorable view of the party’s submissions” the Court must ask the  
16 next question: whether the right was clearly established. *Saucier*, 533 U.S. at 201. The  
17 doctrine of qualified immunity operates “to protect officers from the sometimes ‘hazy  
18 border between excessive and acceptable force.’” *Id.* at 206. “Because the focus is on  
19 whether the officer had fair notice that [the officer’s] conduct was unlawful,  
20 reasonableness is judged against the backdrop of the law at the time of the conduct. If the  
21 law at that time did not clearly establish that the officer’s conduct would violate the  
22 Constitution, the officer should not be subject to liability or even the burdens of litigation.  
23 *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (“Of course, in an obvious case, the[]  
24 standards [enunciated in *Graham*] can ‘clearly establish’ the answer, even without a body  
25 of relevant case law”). “The relevant, dispositive inquiry in determining whether a right is  
26 clearly established is whether it would be clear to a reasonable officer that his conduct  
27 was unlawful in the situation confronted.” *Saucier*, 533 U.S. at 202. The Fourth  
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1 Amendment prohibits a wide range of governmental intrusions on the person. “The  
2 Fourth Amendment’s requirement that a seizure be reasonable prohibits more than the  
3 unnecessary strike of a nightstick, sting of a bullet, and thud of a boot.” *Fontana v.*  
4 *Haskin*, 262 F.3d 871, 878 (9<sup>th</sup> Cir. 2001). Even “[t]he use of handcuffs is the use of  
5 force, and such force must be objectively reasonable under the circumstances.” *Muehler*  
6 *v. Mena*, 544 U.S. 93, 102 (2005) (concurring opinion of Justice Kennedy citing  
7 *Graham*).

8 Plaintiff argues that, although she struggled a bit with Deputy Woolf, she  
9 did not resist arrest and she was not a threat to the safety of the Deputies or others. The  
10 incident took place behind Plaintiff’s own home. There is no evidence that Plaintiff used,  
11 or threatened to use, force against the Deputies, or that she appeared to have any sort of  
12 weapon in her possession. At most, Plaintiff posed a *de minimus* threat to the Deputies  
13 because she admittedly disregarded their order to return to her car when she was at or  
14 near her back door, unsuccessfully attempted to gain access to her residence, and the  
15 Deputies did not know who, or what, was inside the residence. *Chew*, 27 F.3d at 441(the  
16 “threat posed is the most significant *Graham* factor.”)

17 The Deputies followed Plaintiff based on a very minor traffic violation - an  
18 improperly illuminated license plate. Plaintiff was charged with disorderly conduct,  
19 which is not a particularly serious crime. The nature of the offense in this case provides  
20 little, if any, basis for the use of physical force. *Winterrowd v. Nelson*, 480 F.3d 1181,  
21 1184, 1187 (9<sup>th</sup> Cir. 2007) (finding that no reasonable officer could conclude that a  
22 individual suspected of driving with expired license plates “posed a threat that would  
23 justify slamming him against the hood of a car” and stating that a “passive offense[]”,  
24 such as failing to display a license plate, cannot give rise to a reasonable inference that  
25 the suspect is dangerous.).

26 The Ninth Circuit has repeatedly stated that whether the force used to arrest  
27 an individual is reasonable is “ordinarily a question of fact for the jury.” *Liston v. County*  
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1 of *Riverside*, 120 F.3d 965, 976 n. 10 (9<sup>th</sup> Cir. 1997 ) (citing *Forrester v. City of San*  
2 *Diego*, 25 F.3d 804, 806 (9<sup>th</sup> Cir. 1994)). Viewing the record in the light most favorable  
3 to Plaintiff on her excessive force claim, the Court finds that she has established the  
4 existence of disputed issues of material fact which may only be resolved by a jury.  
5 Because Plaintiff and the Defendants offer varying accounts of the events surrounding  
6 Plaintiff’s arrest - namely whether Plaintiff failed to obey the Deputies, resisted arrest,  
7 tried to run from the Deputies, and whether they forced her to the ground, slammed  
8 her face into the ground, and placed a knee in her back and held her down, the Court finds  
9 that summary judgment is inappropriate.

10 **V. Claims Against Defendant Sheriff Arpaio**

11 Defendant Arpaio contends that he is entitled to summary judgment on  
12 Count One. Count One does not contain any specific allegations against Defendant  
13 Arpaio. (Doc. 1 at 6) Rather, Plaintiff generally asserts that Sheriff Arpaio is  
14 responsible for the actions of Maricopa County sheriff’s deputies including, but not  
15 limited to, Deputy Kent and Deputy Woolf. (Doc. 1 at 3) Plaintiff further asserts that  
16 Sheriff Arpaio is “responsible for the actions of [his] individual deputies and employees  
17 under the doctrine of *respondeat superior*.” (*Id.* at 16)

18 There is no *respondeat superior* liability under § 1983, and thus Sheriff  
19 Arpaio cannot be held liable based solely on his position as Maricopa County Sheriff.  
20 *Hansen v. Black*, 885 F.2d 642, 645-46 (9<sup>th</sup> Cir. 1989). It is undisputed Sheriff Arpaio  
21 was not present during the incident at issue and thus had no personal involvement in  
22 Plaintiff’s arrest. Because Plaintiff failed to raise a genuine issue of material fact as to  
23 whether Sheriff Arpaio personally participated in, or had any knowledge, of the claimed  
24 deprivations, or that he otherwise directed or set into motion the Deputies’ actions - by a  
25 policy or custom, the Court will grant summary judgment in favor of Defendant Arpaio  
26 on Count One. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691-94 (1978) (section 1983  
27 does not impose liability upon state officials for the acts of their subordinates under a  
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1 *respondeat superior* theory of liability); Fed. R. Civ. P. 56(e) (The party opposing  
2 summary judgment “may not rest upon the mere allegations or denials of [the party’s]  
3 pleadings, but . . . must set forth specific facts showing that there is a genuine issue for  
4 trial.”).

5 **VI. Conclusion**

6 In conclusion, Defendants’ Motion for Summary Judgment is denied, as  
7 moot, as to Defendant Maricopa County in view of the prior order, doc. 80, granting  
8 summary judgment to Maricopa County on Count One. The Court will grant summary  
9 judgment in favor of Defendant Arpaio on Count One and Defendants Kent and Woolf on  
10 Plaintiff’s allegations in Count One that the Deputies lacked reasonable suspicion to  
11 conduct a traffic stop. The Court will deny summary judgment on Plaintiff’s Fourth  
12 Amendment claims that Defendants Kent and Woolf lacked probable cause to arrest her  
13 and used excessive force in effectuating her arrest.

14 Accordingly,

15 **IT IS ORDERED** that Motion of Defendants Deputy Woolf, Deputy Kent,  
16 Sheriff Arpaio, and Maricopa County for Summary Judgement Based Upon Qualified  
17 Immunity, doc. 51, is **GRANTED** in part and **DENIED** in part.

18 **IT IS FURTHER ORDERED** that the Defendants’ Motion for Summary  
19 Judgment, doc. 51, is **GRANTED** in favor of Defendant Arpaio on Count One and  
20 Defendants Kent and Woolf on Plaintiff’s allegations in Count One that the Deputies  
21 lacked reasonable suspicion to conduct a traffic stop.

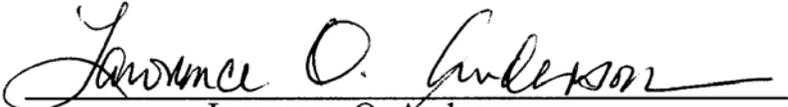
22 **IT IS FURTHER ORDERED** that the Defendants’ Motion for Summary  
23 Judgment, doc. 51, is **DENIED** as to Plaintiff’s Fourth Amendment claims that  
24 Defendants Kent and Woolf lacked probable cause to arrest her and used excessive force  
25 in effectuating her arrest.

26 **IT IS FURTHER ORDERED** that the Defendants’ Motion for Summary  
27 Judgment, doc. 51, is **DENIED** as moot as to Plaintiff’s claims asserted against  
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Defendant Maricopa County in Count One.

Dated this 5<sup>th</sup> day of October, 2010.

  
Lawrence O. Anderson  
United States Magistrate Judge