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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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DESIREE MARTINEZ,

No. 1:15-cv-00683-JAM-MJS

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Plaintiff,

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v.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS', THE CITY OF CLOVIS, THE CITY OF SANGER, KRISTINA HERSHBERGER, JESUS SANTILLAN, CHANNON HIGH, ANGELA YAMBUPAH, RALPH SALAZAR, AND FRED SANDERS, MOTION TO DISMISS PLAINTIFF'S FIRST, SECOND, FOURTH AND ELEVENTH CLAIMS FOR RELIEF IN THE FIRST AMENDED COMPLAINT

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KYLE PENNINGTON; KIM PENNINGTON; CONNIE PENNINGTON; KRISTINA HERSHBERGER; JESUS SANTILLAN; CHANNON HIGH; THE CITY OF CLOVIS; ANGELA YAMBUPAH; RALPH SALAZAR; FRED SANDERS; THE CITY OF SANGER; AND DOES 1 through 20,

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Defendants.

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Plaintiff Desiree Martinez ("Plaintiff") brought this lawsuit against eleven defendants. Eight of the eleven defendants have filed this motion to dismiss four of the claims for relief in Plaintiff's first amended complaint ("FAC") (Doc. #16).¹ Plaintiff opposed the motion (Doc. #36).

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Defendants Kyle Pennington ("KP"), Kim Pennington ("Mr. Pennington"), and Connie Pennington ("Mrs. Pennington") did not

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for December 2, 2015.

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1 join in this motion to dismiss, nor did any of the Pennington
2 defendants file their own motions to dismiss. Thus, this order
3 addresses only the four claims brought against defendants the
4 City of Clovis ("Clovis"), the City of Sanger ("Sanger"),
5 Kristina Hershberger ("Hershberger"), Jesus Santillan
6 ("Santillan"), Channon High ("High"), Angela Yambupah
7 ("Yambupah"), Ralph Salazar ("Salazar"), and Fred Sanders
8 ("Sanders").

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10 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

11 Plaintiff began a relationship with KP, an officer with the
12 Clovis Police Department ("CPD"), in February 2013. FAC ¶ 16.
13 KP and Plaintiff began living together soon after they started
14 dating. Id. In April of the same year, KP allegedly physically
15 attacked Plaintiff for the first time by choking her in a hotel
16 room. Id. Plaintiff alleges that on May 2, 2013, KP threatened
17 to harm Plaintiff again, so Plaintiff contacted the CPD. Id.
18 ¶ 18(a). Plaintiff alleges that KP "was already under
19 investigation by the [CPD] for abusing his prior significant
20 other." Id. ¶ 17.

21 Defendants Hershberger and Santillan, both of whom were
22 officers with the CPD, responded to Plaintiff's call. Id.
23 Plaintiff alleges that Hershberger and Santillan did not separate
24 KP and Plaintiff before asking Plaintiff about the alleged
25 threats. Id. Hershberger asked Plaintiff questions, but
26 Plaintiff gave "equivocal accounts" of the incident. Id.
27 Plaintiff alleges that she gave Hershberger an "equivocal
28 account[]" of what happened because Plaintiff was intimidated by

1 KP's presence. Id. Hershberger determined that the officers
2 lacked probable cause to arrest KP. Id. Plaintiff alleges that
3 Hershberger and Santillan did not tell Plaintiff about a right to
4 make a private person's arrest or to seek a long term restraining
5 order. Id. Plaintiff alleges that KP physically and emotionally
6 abused Plaintiff after Hershberger and Santillan left. Id.
7 ¶ 18(b).

8 Less than three weeks later, Plaintiff contacted Officer
9 Gary Taylor ("Taylor") of the CPD. Id. ¶ 18(c). Plaintiff told
10 Taylor that KP was abusing her and showed Taylor her injuries.
11 Id. Plaintiff alleges that Taylor did not tell Plaintiff about
12 citizen's arrests or emergency or long-term restraining orders.
13 Id. Eight days after Plaintiff's call to Taylor, Plaintiff
14 called the CPD anonymously. Id. ¶ 18(f). Sergeant Tom Roberts
15 ("Roberts") returned Plaintiff's call and interviewed her,
16 allegedly while KP was with Plaintiff. Id. Plaintiff alleges
17 that Roberts did not tell Plaintiff about her rights to a
18 citizen's arrest, restraining orders, or a domestic violence
19 advocate. Id.

20 A few days after Plaintiff's anonymous call to the CPD,
21 Plaintiff alleges that defendant High called and informed KP that
22 Plaintiff had called the CPD to report abuse by KP. Id. ¶ 18(g).
23 Plaintiff alleges that because of High's call to KP, KP severely
24 abused Plaintiff from June 1 to June 4 of 2013. Id. ¶ 18(h).

25 Sometime between February and June 2013, Plaintiff alleges
26 that she and KP moved from Clovis to Sanger. Id. On June 4,
27 2013, at least one of Plaintiff and KP's neighbors allegedly
28 called 911 to report that KP was abusing Plaintiff. Id. ¶ 18(i).

1 Defendants Yambupah and Salazar, both officers for the Sanger
2 Police Department ("SPD"), were dispatched to KP and Plaintiff's
3 home in response to the 911 calls. Id. Plaintiff alleges that
4 she had "many obvious injuries." Id. Yambupah and Salazar
5 allegedly did not separate Plaintiff from KP to question her
6 about the abuse. Id. Plaintiff alleges that as a result of not
7 being separated from KP, she felt intimidated and indicated that
8 she did not want to press charges. Id. Yambupah and Salazar
9 left without arresting KP. Id. Plaintiff also alleges that
10 Yambupah and Salazar did not tell Plaintiff about her rights to a
11 citizen's arrest and a restraining order. Id. KP allegedly beat
12 and sexually assaulted Plaintiff later that night. Id.
13 Plaintiff contacted both the CPD and SPD. Id. ¶ 18(j). An
14 arrest warrant and a restraining order were issued against KP on
15 June 5, 2013. Id. ¶ 18(j), 18(m).

16 After his June arrest, KP continued to live with Plaintiff,
17 even though there was a restraining order requiring KP to stay
18 away from Plaintiff. Id. ¶ 18(n). Between June and August 2013,
19 KP allegedly continued to physically, sexually, and emotionally
20 abuse Plaintiff. Id. ¶ 18(k)-(l). Plaintiff alleges that she
21 reported KP's violations of the restraining order to the CPD.
22 Id. ¶ 18(m). High and another unidentified records clerk for the
23 CPD allegedly would alert KP whenever Plaintiff called the CPD.
24 Id. Plaintiff alleges that when KP found out about Plaintiff's
25 calls to the CPD, KP would physically abuse Plaintiff. Id. From
26 June through the beginning of September 2013, KP was never
27 arrested for violating the restraining order or abusing
28 Plaintiff. Id. ¶ 18(n).

1 KP was arrested on September 18, 2013, allegedly for
2 brutally beating Plaintiff. Id. ¶ 18(m). KP was forced to move
3 away from Plaintiff, and Plaintiff moved from Sanger to Clovis
4 around October 2013. Id. ¶ 18(n)-(o). KP allegedly continued to
5 contact Plaintiff in violation of the restraining order. Id.
6 ¶ 18(o). Plaintiff alleges that numerous reports were made to
7 the CPD about KP's violation of the restraining order, but KP was
8 never arrested for violating the restraining order. Id.

9 KP was eventually charged with several violations of the
10 California Penal Code relating to domestic violence, threats,
11 false imprisonment, violating a restraining order, and more. Id.
12 ¶ 18(j). A jury convicted KP on multiple counts of violating the
13 restraining order, but hung on the other charges. Id. ¶ 19. KP
14 pled guilty to one domestic violence charge to avoid a retrial.
15 Id.

16 Plaintiff filed suit against defendants KP, Mr. Pennington,
17 Mrs. Pennington, High, Clovis, and Sanger on May 1, 2015 (Doc.
18 #1). Plaintiff amended her complaint and added defendants
19 Hershberger, Santillan, Yambupah, Salazar, and Sanders two weeks
20 later (Doc. #6). Defendants Clovis, Sanger, High, Hershberger,
21 Santillan, Yambupah, Salazar, and Sanders moved to dismiss each
22 cause of action asserted against them (Doc. #16).

23 24 II. OPINION

25 As noted above, Plaintiff brings eleven causes of action in
26 her FAC. FAC at 15-24. Plaintiff's third and fifth through
27 tenth claims for relief are brought only against defendants that
28 did not join in this motion to dismiss. Id. at 18, 20-24.

1 Thus, only Plaintiff's first, second, fourth, and eleventh
2 claims for relief are at issue in this motion to dismiss.

3 A. Plaintiff's First Claim For Relief

4 Plaintiff brings her first claim for relief against the
5 cities of Clovis and Sanger under theories of municipal liability
6 pursuant to 42 U.S.C. § 1983. Id. at 15. Plaintiff alleges two
7 causes of action under her first claim for relief: 1) violation
8 of Plaintiff's substantive due process rights and 2) violation of
9 Plaintiff's right to equal protection under the law. Id. To
10 survive a motion to dismiss on Plaintiff's due process and equal
11 protection claims against the cities, Plaintiff must allege facts
12 sufficient to show that the cities had a custom or policy that
13 inflicted the constitutional injury. Monell v. Dep't of Soc.
14 Servs. of N.Y.C., 436 U.S. 658, 694 (1978). A "policy or custom"
15 under Monell is a "longstanding practice . . . which constitutes
16 the standard operating procedure of the local government entity."
17 Ulrich v. City & Cty. of San Francisco, 308 F.3d 968, 984-85 (9th
18 Cir. 2002). "[T]he complaint must allege the policy, as well as
19 its causal relationship to the constitutional injury, in
20 sufficient detail." Hass v. Sacramento Cty. Sheriff's Dept.,
21 2014 WL 1616440, at *5 (E.D. Cal Apr. 18, 2014).

22 1. Plaintiff's Due Process claims against Clovis and
23 Sanger

24 Plaintiff alleges that the CPD and the SPD had "customs,
25 policies, and/or practices of insensitivity toward domestic
26 violence victims and lax enforcement of domestic violence laws."
27 FAC ¶ 18. Plaintiff also alleges that both the CPD and the SPD
28 "frequently did not comply with the laws intended to protect

1 domestic violence victims." Id. ¶ 24. Plaintiff also alleges
2 that the CPD and SPD officers' "fail[ure] to provide [Plaintiff]
3 with the services that she was entitled to as a victim of
4 domestic violence . . . directly resulted in additional harm to
5 [Plaintiff]." Id. ¶ 18.

6 In general, government actors have no obligation to protect
7 individual citizens from harm. DeShaney v. Winnebago Cty. Dept.
8 of Soc. Servs., 489 U.S. 189, 195-96 (1989). The government,
9 however, may be liable for violating an individual's substantive
10 due process rights if a government actor places the individual in
11 a worse position than she would have been without the government
12 action. See id. at 201.

13 Plaintiff alleges that Clovis' custom of lax enforcement of
14 domestic violence laws placed Plaintiff "in a worse situation
15 than she otherwise would have been." Id. ¶ 23. Plaintiff
16 provides at least three examples of how her situation became
17 worse after her interactions with law enforcement. First, she
18 alleges that after her interaction with Hershberger and Santillan
19 on May 2, 2013 ended, Plaintiff "suffered further physical and
20 emotional abuse from [KP]." Id. ¶ 18(b). Second, Plaintiff
21 alleges that on May 21, 2013, KP "was advised by another member
22 of the [CPD]" that Plaintiff had contacted the CPD that day. Id.
23 ¶ 18(d). Plaintiff alleges that "[w]hen [KP] found out that
24 [Plaintiff] ha[d] contacted law enforcement, he again physically
25 abused her." Id. Plaintiff alleges that she showed a CPD
26 officer her "fresh injuries that resulted from [KP's] abuse" on
27 the following day. Id. ¶ 18(e). Finally, Plaintiff alleges that
28 "[a]s a direct result of High's improper disclosure of

1 [Plaintiff's] [May 29, 2013] anonymous call, [Plaintiff] suffered
2 one of the worse periods of abuse by [KP]." Id. ¶ 18(h).

3 Plaintiff suggests that if CPD officers had handled her
4 allegations against KP properly, KP would not have been able to
5 continually abuse Plaintiff. See id. ¶ 23-25.

6 Plaintiff also supports her allegations of an impermissible
7 policy or practice against the CPD with factual examples.
8 Plaintiff alleges at least five interactions with officers of the
9 CPD who did not inform Plaintiff of her rights as a domestic
10 violence victim. Id. ¶ 18(a)-(g). Plaintiff also alleges at
11 least three instances where officers of the CPD did not separate
12 Plaintiff and KP when asking Plaintiff about the alleged abuse.
13 Id. ¶ 18(a)-(b), (f)-(g). All of these factual allegations, when
14 taken as true, show a pattern of lax enforcement in domestic
15 violence cases by the CPD.

16 Defendants argue that Plaintiff fails to allege facts
17 sufficient to support a theory of Monell liability. Mot. at 5-6.
18 They argue that Plaintiff sets forth only conclusory allegations
19 against Clovis and Sanger. Mot. at 6. Defendants' argument that
20 the allegations against Clovis are conclusory and insufficient to
21 survive a motion to dismiss is unpersuasive. Plaintiff supports
22 her allegations against Clovis with several factual examples.
23 Against Sanger, however, Plaintiff alleges only one instance of
24 interaction with the SPD. See FAC ¶ 18(i). This single instance
25 is not enough to allege a policy of lax domestic violence
26 enforcement. Plaintiff can proceed under Monell liability
27 against Clovis for violation of her due process rights, because
28 the facts, taken as true, support Plaintiff's allegation of an

1 improper policy that led to her suffering more abuse than she
2 would have without interacting with the officers. Plaintiff does
3 not, however, plead facts to support that Sanger had an
4 impermissible policy that violated Plaintiff's due process
5 rights. Therefore, Plaintiff's due process cause of action
6 against the city of Sanger is dismissed with leave to amend.

7 2. Plaintiff's Equal Protection Claims Against the
8 Cities

9 The equal protection clause of the Fourteenth Amendment
10 requires government actors to treat similarly situated people
11 alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432,
12 439 (1985). Thus, a plaintiff alleging a violation of equal
13 protection must allege that she was treated differently from
14 others in a similar position.

15 Plaintiff alleges that Clovis and Sanger violated her
16 "constitutional right to have police services administered in a
17 nondiscriminatory manner." FAC ¶ 23. Plaintiff alleges that the
18 CPD and SPD each had a "widespread custom or practice of failing
19 to provide appropriate and non-discriminatory services to
20 domestic violence victims." Id. ¶ 25. Plaintiff also states
21 that she is in a "class of domestic violence victims who are
22 overwhelmingly female." Id. ¶ 26. Other courts have allowed
23 plaintiffs to proceed on the theory that a municipality violated
24 equal protection by not treating domestic violence victims the
25 same as victims of other types of abuse. See e.g. Thurman v.
26 City of Torrington, 595 F. Supp. 1521 (D. Conn. 1984); Dudosh v.
27 City of Allentown, 722 F. Supp. 1233 (E.D. Pa. 1989). Here,
28 however, Plaintiff does not provide enough facts to support her

1 claim that she as a victim of domestic violence was treated any
2 differently by the CPD or SPD from victims of other crimes.
3 Plaintiff's equal protection claim against Sanger and Clovis are
4 dismissed with leave to amend.

5 B. Plaintiff's Second Claim for Relief

6 Plaintiff's second claim for relief is actually two causes
7 of action brought against several defendants. Plaintiff brings
8 equal protection claims and due process claims against
9 Hershberger, Santillan, High, Yambupah, Salazar, and Sanders.
10 FAC at 16.

11 Defendants argue that the statute of limitations applicable
12 to § 1983 claims bars Plaintiff's claims against Hershberger and
13 Santillan. Mot. at 12. Defendants erroneously state that
14 Plaintiff's complaint was filed on May 4, 2015, which is more
15 than two years after Plaintiff's May 2, 2013 interaction with
16 Hershberger and Santillan. Mot. at 12. But Plaintiff filed her
17 complaint on May 1, 2015 (see Doc. #1). Thus, Plaintiff's claims
18 against Hershberger and Santillan are not time-barred.

19 1. Plaintiff's Due Process Claims Against Individual
20 Defendants

21 Plaintiff brings her due process claims against the officers
22 under the "state-created danger" doctrine. FAC ¶ 28. Typically,
23 state actors do not have an affirmative duty to protect
24 individuals from danger. DeShaney v. Winnebago Cnty Dept. of
25 Soc. Servs., 489 U.S. 189, 196 (1989). A state actor may be
26 required to protect an individual if the "state official
27 participated in creating a dangerous situation and acted with
28 deliberate indifference to the known or obvious danger in

1 subjecting the plaintiff to it." L.W. v. Grubbs, 92 F.3d 894,
2 896 (9th Cir. 1996).

3 Plaintiff alleges that defendants Hershberger, Santillan,
4 Yambupah, Salazar, and Sanders responded to Plaintiff's calls to
5 the SPD and CPD for alleged domestic violence "without providing
6 her with the benefits to which she was entitled as a domestic
7 violence victim and thereby exposed her to even greater danger
8 than if they had never responded at all." FAC ¶ 39. Defendants
9 argue that while they did not necessarily exemplify perfect
10 performance, their failure to inform Plaintiff about her rights
11 as a domestic violence victim did not amount to a constitutional
12 violation. Mot. at 10-11.

13 Taking Plaintiff's allegations as true, Plaintiff suffered
14 more abuse by KP than she would have if the officers from the CPD
15 and SPD had not shown up at all. See infra Part II(A). As to
16 defendants Hershberger and Santillan, Plaintiff alleges that
17 their "failure to provide [Plaintiff] with the services she was
18 entitled to as a victim of domestic violence" led to Plaintiff
19 "suffer[ing] further physical and emotional abuse from [KP]." FAC
20 ¶ 18(b). As to defendants Yambupah, Salazar, and Sanders,
21 Plaintiff alleges that their failure to arrest KP or provide
22 Plaintiff with resources afforded to domestic violence victims on
23 the morning on June 4, 2013 "resulted in [Plaintiff] being beaten
24 and sexually assaulted again" later that day. Id. ¶ 18(i). As
25 to defendant High, Plaintiff alleges that High's actions placed
26 Plaintiff in danger of abuse that she would not have suffered had
27 High not told KP about Plaintiff's calls to the CPD. Id.
28 ¶ 18(h). These facts sufficiently allege that each of the

1 individually named defendants violated Plaintiff's due process
2 rights by putting her in greater danger than she would have been
3 without the state action. Thus, the Court denies defendants'
4 motion to dismiss the due process claims against the named
5 individual defendants.

6 2. Plaintiff's Equal Protection Claims Against
7 Individual Defendants

8 As discussed above with respect to Plaintiff's equal
9 protection claims against Clovis and Sanger, Plaintiff does not
10 allege any facts which support a claim that she was treated
11 differently from any others similarly situated. Therefore,
12 Plaintiff's equal protection claims against the individual
13 defendants are dismissed with leave to amend.

14 C. Plaintiff's Fourth Cause of Action

15 Plaintiff brings her fourth cause of action against Clovis
16 and Sanger under 28 U.S.C. § 2201, which authorizes a district
17 court to grant declaratory relief. FAC at 19. Plaintiff seeks a
18 declaration that her equal protection and substantive due process
19 rights were violated. Id. ¶ 37. This claim duplicates
20 Plaintiff's equal protection and due process causes of action.
21 Plaintiff need only ask for declaratory relief in her prayer for
22 relief, rather than pleading it as a separate cause of action.
23 As such, Plaintiff's fourth claim for relief is dismissed without
24 prejudice as to each of the defendants who brought this motion to
25 dismiss.

26 D. Plaintiff's Eleventh Cause of Action

27 Plaintiff's brings her eleventh claim for injunctive and
28 declaratory relief against all defendants under California Code

1 of Civil Procedure §§ 526, 1060. FAC at 24. Plaintiff seeks a
2 lifetime injunction against KP, Mr. Pennington, and Mrs.
3 Pennington. FAC ¶ 67. Plaintiff does not explain how her
4 request for injunctive relief against the Penningtons also
5 entitles her to injunctive relief against Clovis, Sanger, and the
6 individual defendants who were employed by the CPD and SPD. As
7 such, Plaintiff's eleventh claim for relief is dismissed against
8 all the moving defendants herein with leave to amend.

9 E. Plaintiff's Request For Punitive Damages

10 Plaintiff requests punitive damages against only "each named
11 individual defendant[]." FAC at 25. Plaintiff cannot (and does
12 not) seek punitive damages against Clovis or Sanger, because a
13 municipality is immune from punitive damages under § 1983.
14 Newport v. Fact Concerts, Inc., 45 U.S. 247, 271 (1981).

15 Conversely, an individual defendant can be liable for
16 punitive damages under § 1983 "when [the] defendant's conduct is
17 shown to be motivated by evil motive or intent, or when it
18 involves reckless or callous indifference to the federally
19 protected rights of others." Smith v. Wade, 461 U.S. 30, 56
20 (1983). Plaintiff has not alleged that any defendants acted with
21 "evil motive or intent," but she has alleged and provided facts
22 to support allegations that the individual defendants acted with
23 "reckless or callous indifference" to her rights. See infra Part
24 II(B)(1). As such, the Court denies the moving defendants'
25 motion to dismiss Plaintiff's request for punitive damages
26 against the individual defendants from the FAC.

1 III. ORDER

2 For the reasons set forth above, the Court GRANTS IN PART
3 AND DENIES IN PART Defendants' motion to dismiss. The Court
4 dismisses without prejudice: 1) the first claim for relief
5 against Sanger for due process violations, 2) the first claims
6 for relief against Clovis and Sanger for equal protection
7 violations, 3) the second claims for relief against Hershberger,
8 Santillan, High, Yambupah, Salazar, and Sanders for equal
9 protection violations, 4) Plaintiff's fourth cause of action
10 against all defendants who brought this motion, and
11 5) Plaintiff's eleventh cause of action against all defendants
12 who brought this motion. The Court denies the defendants' motion
13 to dismiss Plaintiff's claims for due process violations against
14 Clovis and the individual defendants and denies the motion to
15 dismiss Plaintiff's request for punitive damages.

16 If Plaintiff elects to amend any of the claims dismissed
17 herein, she shall file her Second Amended Complaint within twenty
18 days of the date of this Order. Defendants shall file their
19 responsive pleadings within twenty days thereafter. If Plaintiff
20 elects not to file an amended complaint, this case shall proceed
21 on the remaining claims in the FAC and Defendants shall file
22 their Answers to the FAC within thirty days from the date of this
23 Order.

24 IT IS SO ORDERED.

25 Dated: January 5, 2016

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27 
28 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE