



1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 The Court takes the facts alleged by Plaintiff as true for  
3 purposes of this motion. Plaintiff was in a relationship with  
4 Kyle Pennington ("KP"), an officer with the Clovis Police  
5 Department ("CPD"). SAC ¶¶ 4, 16. Throughout the relationship,  
6 KP physically and emotionally abused Plaintiff. Id. ¶ 16. On  
7 May 2, 2013, Plaintiff called the police to report that KP had  
8 threatened to harm her. Id. ¶ 18(a). CPD officers Kristina  
9 Hershberger ("Hershberger") and Jesus Santillan ("Santillan")  
10 responded to Plaintiff's call. Id. The officers asked Plaintiff  
11 questions, but did not separate KP and Plaintiff during the  
12 questioning. Id. Hershberger and Santillan did not arrest KP.  
13 Id. KP physically and emotionally abused Plaintiff after  
14 Hershberger and Santillan left. Id. ¶ 18(b).

15 About three weeks later, Plaintiff contacted the CPD to tell  
16 an officer that KP was abusing her. Id. ¶ 18(c). The officer  
17 did not arrest KP or tell Plaintiff about her rights. Id. Eight  
18 days later, Plaintiff called the CPD anonymously. Id. ¶ 18(f).  
19 A few days after that, defendant Channon High ("High") called and  
20 informed KP that Plaintiff had called the CPD to report abuse by  
21 KP. Id. ¶ 18(g). After High's call to KP, KP severely abused  
22 Plaintiff. Id. ¶ 18(h).

23 At some point, Plaintiff and KP moved from Clovis to Sanger.  
24 Id. On June 4, 2013, a neighbor called 911 to report that KP was  
25 abusing Plaintiff. Id. ¶ 18(i). Officers Angela Yambupah  
26 ("Yambupah") and Ralph Salazar ("Salazar") and Sgt. Fred Sanders  
27 ("Sanders") of the Sanger Police Department ("SPD") responded to  
28 the 911 calls. Id. Plaintiff had "many obvious injuries." Id.

1 The SPD officers did not separate Plaintiff from KP to question  
2 Plaintiff about the abuse. Id. Plaintiff, feeling intimidated,  
3 stated that she did not want to press charges. Id. The officers  
4 left without arresting KP. Id. KP beat and sexually assaulted  
5 Plaintiff later that night. Id. Plaintiff contacted both the  
6 CPD and SPD. Id. ¶ 18(j). An arrest warrant and a restraining  
7 order were issued against KP on June 5, 2013. Id. ¶ 18(j)-(m).

8       Though there was a restraining order requiring KP to stay  
9 away from Plaintiff, KP continued to live with Plaintiff. Id.  
10 ¶ 18(n). Between June and August 2013, KP physically, sexually,  
11 and emotionally abused Plaintiff. Id. ¶ 18(k)-(l). Plaintiff  
12 reported KP's violations of the restraining order to the CPD.  
13 Id. ¶ 18(m). High and another unidentified records clerk for the  
14 CPD alerted KP whenever Plaintiff called the CPD. Id. When KP  
15 found out about Plaintiff's calls to the CPD, KP would physically  
16 abuse Plaintiff. Id. From June through early September 2013, KP  
17 was never arrested for violating the restraining order or abusing  
18 Plaintiff. Id. ¶ 18(n). KP was finally arrested on September  
19 18, 2013. Id. ¶ 18(m). KP and Plaintiff moved away from each  
20 other, but KP continued to contact Plaintiff in violation of the  
21 restraining order. Id. ¶ 18(n)-(o).

22       KP was eventually charged with domestic violence, threats,  
23 false imprisonment, violating a restraining order, and more. Id.  
24 ¶ 18(j). A jury convicted KP of violating the restraining order  
25 but were unable to reach a unanimous verdict on the other  
26 charges. Id. ¶ 19. KP pled guilty to one domestic violence  
27 charge to avoid a retrial. Id.

28       Plaintiff sued KP, KP's parents Kim and Connie Pennington,

1 the cities of Clovis and Sanger, and High, Hershberger,  
2 Santillan, Yambupah, Salazar, and Sanders (Doc. #1). Following  
3 the Court's January 6, 2016 Order granting in part and denying in  
4 part Defendants' motion to dismiss, Plaintiff filed her SAC (Doc.  
5 #44).

6 Defendants Clovis, Sanger, High, Hershberger, Santillan,  
7 Yambupah, Salazar, and Sanders now move to dismiss Plaintiff's  
8 first and second causes of action (Doc. #50).

## 9 II. OPINION

10 The only substantive addition to Plaintiff's complaint is  
11 paragraph 22. That paragraph alleges, among other things, that  
12 "Clovis and Sanger fail to require their police officers to abide  
13 by the Federal Violence Against Women Act, or the corresponding  
14 California laws." SAC ¶ 22. It also alleges "on information and  
15 belief" that police officers in Clovis and Sanger are trained and  
16 permitted to enforce domestic violence laws differently than  
17 other laws. Id. Defendants argue that despite the addition of  
18 paragraph 22 to Plaintiff's complaint, Plaintiff fails to allege  
19 equal protection violations against all Defendants and fails to  
20 allege a due process claim against Sanger. MTD at 5-7.

### 21 A. Plaintiff's Equal Protection Claims Against Clovis and 22 Sanger

23 To allege a § 1983 claim against a city, a plaintiff must  
24 state facts to show that the city had a custom or policy that  
25 caused the plaintiff's constitutional injury. Monell v. Dep't of  
26 Soc. Servs. of N.Y.C., 436 U.S. 658, 694 (1978). A "policy or  
27 custom" under Monell is a "longstanding practice . . . which  
28 constitutes the 'standard operating procedure' of the local

1 government entity." Ulrich v. City & Cty. of San Francisco, 308  
2 F.3d 968, 984-85 (9th Cir. 2002). "[T]he complaint must allege  
3 the policy, as well as its causal relationship to the  
4 constitutional injury, in sufficient detail." Hass v. Sacramento  
5 Cty. Sheriff's Dept., 2014 WL 1616440, at \*5 (E.D. Cal Apr. 18,  
6 2014).

7 The Equal Protection Clause of the Fourteenth Amendment  
8 requires government actors to treat similarly situated people  
9 alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432,  
10 439 (1985). Thus, a plaintiff alleging an equal protection claim  
11 must allege that she was treated differently from others in a  
12 similar position. The Ninth Circuit has allowed a plaintiff to  
13 proceed on the theory that a municipality violated equal  
14 protection by not treating domestic violence victims the same as  
15 victims of other types of abuse. Navarro v. Block, 72 F.3d 712,  
16 716-17 (9th Cir. 1995).

17 Defendants move to dismiss Plaintiff's equal protection  
18 claim on the basis that none of the new allegations in the SAC  
19 "provide enough facts to support Plaintiff's claim that she as a  
20 victim of domestic violence was treated any differently by the  
21 CPD or SPD from victims of other crimes." MTD at 5.

22 Plaintiff argues that the allegations in paragraph 22—that  
23 the Clovis and Sanger police departments failed to properly train  
24 and enforce domestic violence laws—are sufficient to withstand a  
25 motion to dismiss because the facts to support such claims are  
26 solely controlled and possessed by Defendants. Opp. at 4-5.  
27 Plaintiff cites to Estate of Duran v. Chavez, which states that  
28 "where most of the information needed to support a claim is in

1 the defendants' custody and not available to plaintiffs prior to  
2 discovery, a more conclusory and formulaic approach to pleadings  
3 is acceptable." 2015 WL 8011685, at \*9 (E.D. Cal. Dec. 7, 2015).  
4 Duran further held that "[p]laintiffs need only provide  
5 information sufficient to supply notice to Defendants as to the  
6 sorts of information they will need to provide to refute, if they  
7 can, Plaintiffs' allegations in a subsequent motion for summary  
8 judgment." Id. (quoting Phillips v. Cty. of Fresno, 2013 WL  
9 6243278, at \*10 (E.D. Cal. Dec. 3, 2013)) (internal quotation  
10 marks omitted).

11 The Phillips court, cited by the Duran Court, held that  
12 allegations based on "information and belief" may be sufficient  
13 to establish a "causal connection between the existing or non-  
14 existing policies, procedures and practices and the harms [the  
15 plaintiff] experienced" when "the facts that might demonstrate  
16 the causal connection—such as . . . corrective actions taken or  
17 not taken—are not available to the pleading party prior to  
18 discovery." Phillips, 2013 WL 6243278, at \*10. As to the  
19 plaintiff's failure to train theory in Phillips, the court  
20 stated:

21 Defendants' motion to dismiss Plaintiffs['] claim for  
22 entity and supervisory liability on the theory of  
23 failure to supervise, train or discipline . . . is out  
24 of place in a motion to dismiss where most or all the  
25 information pertaining to training and discipline are  
26 not available to Plaintiffs prior to discovery.  
27 Again, Plaintiffs have alleged "on knowledge and  
28 belief" that a laundry list of training, supervision  
and discipline functions have gone unperformed or  
performed deficiently so as to have caused Decedent's  
harm. While this approach is conclusory and sparsely  
supported with alleged facts, it is sufficient to  
supply notice to Defendants as to the sorts of  
information they will need to provide to refute . . .  
Plaintiffs' allegations . . . [T]his conclusory and

1 somewhat formulaic approach to alleging claims for  
2 entity and supervisory liability is sufficient where,  
3 as here, Defendants may be presumed to be in sole  
4 possession of the facts needed to support or refute  
5 the claims and discovery has not made those facts  
6 available.

7 Id. at \*11.

8 Here, Plaintiff alleges that she will support her  
9 contentions with "a review of the historic performance of Clovis  
10 and Sanger police officers in response to domestic violence  
11 requests for service" and "records confirming the lack of  
12 discipline of such officers." SAC ¶ 22. The SPD and CPD are in  
13 sole possession of historic performance records and discipline  
14 records regarding officers' responses to domestic violence calls  
15 versus calls for other crimes. Plaintiff's complaint puts  
16 Defendants on notice of what they "will need to provide to  
17 refute . . . Plaintiff's allegations." See Phillips, 2013 WL  
18 6243278, at \*11.

19 Defendants do not address the Phillips and Duran cases in  
20 their Reply. Defendants only state that Plaintiff's argument  
21 regarding allegations based on information and belief "is a red  
22 herring." Reply at 3. Defendants' argument is insufficient.  
23 Applying the Phillips and Duran holdings to the case at bar, the  
24 Court finds that Plaintiff has sufficiently and properly alleged  
25 equal protection claims against Clovis and Sanger.

26 B. Plaintiff's Due Process Claim Against Sanger

27 In Plaintiff's SAC, she alleges that Sanger had a policy or  
28 custom of not providing proper responses to domestic violence  
calls. SAC ¶¶ 22, 24. This Court previously dismissed  
Plaintiff's due process claim against Sanger because a "single

1 instance is not enough to allege a policy of lax domestic  
2 violence enforcement." 1/06/16 Order at 8. Plaintiff has now  
3 added allegations that other instances of lax enforcement of  
4 domestic violence laws have occurred that will be revealed  
5 through "a review of historic performance" of SPD officers. SAC  
6 ¶ 22. Plaintiff's allegations are not supported by more than one  
7 factual incident, but the SPD has control and possession of  
8 information regarding how other domestic violence cases were  
9 handled. Plaintiff will not be able to include in her  
10 allegations any other such incidents until after the pleading  
11 stage. Thus, under Phillips and Duran, the Court finds that  
12 Plaintiff has stated a viable cause of action against Sanger for  
13 violation of due process and Sanger's motion to dismiss is  
14 denied.

15 C. Plaintiff's Equal Protection Claims Against Individual  
16 Defendants

17 Plaintiff also brings equal protection claims against  
18 Hershberger, Santillan, High, Yambupah, Salazar, and Sanders.  
19 SAC ¶¶ 28-31. To plead equal protection claims against the  
20 individual officer defendants, Plaintiff must show that the  
21 defendants treated Plaintiff differently than victims of other  
22 crimes. See Giles v. Olmeide, 2011 WL 3300062, at \*4 (C.D. Cal.  
23 May 19, 2011). Plaintiff must allege facts showing that each  
24 defendant individually violated Plaintiff's right to equal  
25 protection under the law.

26 1. Defendants Hershberger and Santillan

27 Plaintiff alleges that when Hershberger and Santillan  
28 responded to Plaintiff's call reporting KP's abuse, the officers



1 did not speak to Plaintiff outside KP's view and earshot. SAC  
2 ¶ 18(a). Plaintiff also alleges that the officers did not  
3 arrest KP and did not inform Plaintiff of her rights to a  
4 private person's arrest or a restraining order. Id. Plaintiff  
5 pleads facts showing how Santillan and Hershberger treated her  
6 as a domestic violence victim, but she does not include any  
7 facts regarding how Santillan and Hershberger treated other  
8 victims differently. However, such facts are known only to  
9 Santillan, Hershberger, and the CPD. Absent discovery, it is  
10 difficult if not impossible for Plaintiff to plead specific  
11 facts regarding how Santillan and Hershberger treated other  
12 domestic violence victims in other cases. Additionally, the  
13 allegations in the SAC are sufficient to put Santillan and  
14 Hershberger on notice of what information and evidence they will  
15 need to produce to refute Plaintiff's claims. Because such  
16 information is in the possession and control of these  
17 Defendants, Plaintiff's allegations that she was treated  
18 differently from other domestic violence victims is sufficient  
19 to allege equal protection claims against Hershberger and  
20 Santillan.

21 2. Defendant High

22 Plaintiff alleges that High called KP to tell KP that  
23 Plaintiff had reported KP's abuse. SAC ¶ 18(g). Plaintiff does  
24 not provide any facts regarding High's treatment of other  
25 domestic violence victims, but, again, such information is in  
26 the control and possession of High and CPD. Plaintiff's equal  
27 protection allegations against High are sufficient to defeat  
28 High's motion to dismiss for the same reasons as those set forth

1 above with regard to Plaintiff's allegations against Santillan  
2 and Hershberger.

3           3.   Defendants Salazar, Yambupah, and Sanders

4           Plaintiff alleges that SPD officers Salazar, Yambupah, and  
5 Sanders responded to a 911 call concerning a fight between KP  
6 and Plaintiff but that the officers did not separate Plaintiff  
7 from KP to talk to her. SAC ¶ 18(i). The SPD officers also  
8 did not arrest KP or inform Plaintiff of any of her rights as a  
9 domestic violence victim. Id. As with the CPD officers, the  
10 SPD officers possess and control information regarding how they  
11 have treated domestic violence victims other than Plaintiff.  
12 Such information will be sought by Plaintiff as part of her  
13 discovery in this case. And she has sufficiently pled enough  
14 facts to put these individual defendants on notice as to what  
15 evidence and information they will need to produce to refute  
16 Plaintiff's allegations. Thus, Plaintiff's allegations against  
17 Salazar, Yambupah, and Sanders regarding their treatment of  
18 Plaintiff are sufficient under Phillips and Duran to state equal  
19 protection claims against these three defendants.

20                                   III. ORDER

21           For the reasons set forth above, the Court DENIES  
22 Defendants' motion to dismiss. These eight Defendants must file  
23 their Answers to the SAC within twenty days from the date of this  
24 order.

25           IT IS SO ORDERED.

26 Dated: August 8, 2016

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28   
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE