UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MELINDA BEECH,

Plaintiff,

v.

CITY OF STOCKTON, SAN JOAQUIN COUNTY; and Does 1 through 50,

Defendants.

No. 2:15-cv-00268-TLN-CDK

ORDER

This matter is before the Court on Defendant San Joaquin County's ("County") Motion for Summary Judgment (ECF No. 58) and Defendant Stockton Police Officers Kirsten McClure ("Officer McClure"), Joshua DeJong ("Officer DeJong"), and Christopher Pulliam's ("Officer Pulliam") (collectively, "Defendants") Motion for Summary Judgment (ECF No. 59). Plaintiff Melinda Beech ("Plaintiff") opposes both motions. (ECF Nos. 61, 66.) County and the individual Defendants both replied. (ECF Nos. 64, 67.) For the reasons set forth below, County's Motion for Summary Judgment (ECF No. 58) is GRANTED and Defendants' Motion for Summary Judgment (ECF No. 59) is DENIED.

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I. FACTUAL BACKGROUND[1]

On July 27, 2013, Plaintiff attended a party at a residence in Stockton, California, where she consumed at least two beers and one shot of hard alcohol and was involved in a physical altercation with the homeowners. (Defendant County's Statement of Undisputed Material Facts, ECF 58-2 ¶ 1 ("County UMF")[2]; Defendants Statement of Undisputed Material Facts, ECF No. 59-2 at 5–6 ("Defendants' UMF".) During the altercation, which lasted more than five minutes, one of the homeowners pushed Plaintiff into the wall and punched her in the nose, and the other homeowner punched her in the forehead. (Defendants' UMF at 6–7.) Plaintiff was pushed into the wall and her left shoulder made contact with the wall. (Defendants' UMF at 6.) Plaintiff was escorted out of the house by an individual who was holding her by the shoulder, and while being escorted, her body was touching the walls. (Defendants' UMF at 8.) Plaintiff was bleeding from injuries incurred in the altercation prior to any contact with police. (Defendants' UMF at 9.)

Officers DeJong and Pulliam were dispatched to the residence following a reported disturbance of a "female in a sundress being forced into a vehicle." (County UMF ¶ 2; Defendants' UMF at 4.) After Plaintiff exited the residence, Officers DeJong and Pulliam detained her at the rear of the patrol car. (County UMF ¶ 3; Defendants' UMF at 8.) Officers DeJong and Pulliam observed Plaintiff to be intoxicated and aggressive. (County UMF ¶ 4; Defendants' UMF at 10.) Plaintiff states she was not belligerent or irate and spoke to Officers DeJong and Pulliam in a calm manner. (Plaintiff's response to Defendants' Statement of Undisputed Facts, ECF No. 66-1 at 7.) Plaintiff informed Officers DeJong and Pulliam about the altercation with the homeowners. (Defendants' UMF at 10.)

Officer McClure subsequently arrived at the scene in a marked patrol car and approached

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[1] The background section provides a general overview of the action based on the evidence submitted by the parties, from which the Court largely finds there are no genuine disputed issues of material fact. The Court will note where a dispute exists.

[2] Plaintiff submits a "Statement of Undisputed Facts" in response to Defendant County's statement in which she admits each fact set forth by the County. (*See* ECF No. 62.) Accordingly, the Court finds no genuine dispute of material fact regarding any of the County's submitted undisputed facts.

Plaintiff. (*Id.* at 10–11.) Officers DeJong and Pulliam informed Officer McClure that Plaintiff was "acting irate" and they were currently ascertaining "what was going on." (*Id.* at 11.) Officer McClure asked Plaintiff "what's going on here tonight?" (*Id.*) Plaintiff did not like the tone Officer McClure used when speaking to her. (*Id.*) Officer McClure told Plaintiff charges were being filed against her and ordered Plaintiff to put her hands behind her back as she reached for Plaintiff's right wrist to place her in handcuffs. (*Id.* at 16.) Plaintiff placed her hands in the air away from Officer McClure and began yelling and using profanity. (*Id.*) At this point, Officer McClure used her body weight to bring Plaintiff to the ground. (*Id.*) Plaintiff contends Officer McClure used excessive force by slamming Plaintiff to the ground and placing her knee on her back. (County UMF ¶ 5; Defendants' UMF at 2, 12.) Officer McClure placed her knee on Plaintiff's back while she was on the ground, and Plaintiff yelled "you are hurting me" and "get off of me." (Defendants' UMF at 17.) Defendants contend Plaintiff was yelling, kicking her feet, and cursing at officers after she was taken to the ground.[3] (Defendants' UMF at 12.)

Defendants used a safety WRAP device to restrain Plaintiff while she was on the ground. (*Id.* at 13.) Plaintiff further contends Defendants used excessive force when throwing her in the back of the police car while she was handcuffed. (Defendants' UMF at 3; Defendants' UMF at 17.) Plaintiff alleges she suffered a broken collarbone as a result of Defendants' conduct during this incident. (Defendants' UMF at 18.) Officer McClure did not use a leg sweep while bringing Plaintiff to the ground. (*Id.* at 12–13.)

Defendants placed Plaintiff under arrest and transported her to San Joaquin General

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[3] Plaintiff disputes this fact by pointing to deposition testimony that purportedly shows Plaintiff was not cursing or kicking at Defendants. (ECF 66-1 at 8 (citing Beech Dep., ECF No. 60 at 52).) The testimony Plaintiff identifies is taken out of context. Plaintiff references the portion of her deposition pertaining to her actions preceding the takedown. Immediately following the referenced excerpt, however, Plaintiff unequivocally states in her deposition that, "[a]fter [the takedown] and I was on the ground, I was kicking my feet and I was screaming . . . ." (ECF No. 60 at 52–53.) Plaintiff's testimony is consistent with Officer DeJong's testimony that Plaintiff continued to kick, shout, and cuss at the officers while on the ground (ECF No. 60 at 102) and Officer Pulliam's testimony that Plaintiff's legs were violently flailing while on the ground (ECF No. 60 at 125, 130). Accordingly, Plaintiff fails to establish a disputed material issue of fact and the Court deems this fact undisputed for purposes of resolving Defendants' Motion. Fed. R. Civ. P. 56(e)(2).

Hospital for evaluation of injuries by the hospital medical staff. (County UMF ¶¶ 6, 7; Defendants' UMF at 13.) Plaintiff did not complain of her shoulder injury to Defendants.[4] (Defendants' UMF at 18.) Plaintiff suffered several apparent injuries as a result of her altercations including two large scrapes as a result of the weather stripping on the patrol car that she contacted when the officers placed her into the car. (Defendants' UMF at 14.) Plaintiff asserts the weather stripping also injured her right arm. (ECF No. 66 at 3.) While at the hospital for evaluation, Plaintiff did not complain of any injury or pain to her shoulder. (County UMF ¶ 8.) Following her evaluation, Plaintiff was medically cleared to be transported to the San Joaquin County Jail by the Stockton Police officers. (County UMF ¶ 9.)

That night, Plaintiff was booked at the San Joaquin County Jail, and a Booking Medical Screen Questionnaire was created at 11:58 p.m. (County UMF ¶ 10.) At some point while detained at the jail, Plaintiff requested medical attention for her shoulder. (County UMF ¶ 12.) Plaintiff alleges she informed a deputy on duty of her injury. (ECF No. 61-1 at 2.) Plaintiff was released from the jail the following morning at around 7:00 a.m. (County UMF ¶ 11.)

II. PROCEDURAL BACKGROUND

Plaintiff initiated this action on January 30, 2015, alleging three causes of action: (1) excessive force against Officers McClure, DeJong, and Pulliam; (2) denial of medical care against the DOE Sheriff's Deputy; and (3) denial of medical care constituting deliberate indifference to her medical needs against the County. (ECF No 1; ECF No. 20 at 5–6; Defendants' UMF at 2.) Plaintiff's excessive force claim arises out of her arrest. (Defendants' UMF at 2.)

On April 4, 2019, the County filed a Motion for Summary Judgment on the basis that Plaintiff fails to establish *Monell* liability or a deliberate indifference claim against the County or DOE Defendant. (ECF No. 58.) On April 18, 2019, Defendants moved for summary judgment

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[4] Plaintiff appears to dispute this fact. Defendants state "Plaintiff never told anyone from the time she left the scene until after she was booked in the San Joaquin County Jail that she had a shoulder injury." (Defendants' UMF at 18.) Plaintiff states she "informed the San Joaquin Deputy of her injury." (ECF No. 66-1 at 12.) However, the Deputy at issue is the DOE Defendant that Plaintiff interacted with after she was booked at the jail. (*See* ECF No. 60 at 84.) Accordingly, Plaintiff fails to establish a disputed material issue of fact, and the Court deems this fact undisputed for purposes of resolving Defendants' Motion. Fed. R. Civ. P. 56(e)(2).

on the basis that their actions were reasonable, or in the alternative, they are entitled to qualified immunity. (ECF No. 59.) Plaintiff opposes both motions. (*See* ECF Nos. 61, 66.)

III. STANDARD OF LAW

The purpose of summary judgment is to "pierce the pleadings and assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* (*Matsushita*), 475 U.S. 574, 587 (1986). Summary judgment is appropriate when the moving party demonstrates no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). "In cases that involve … multiple causes of action, summary judgment may be proper as to some causes of action but not as to others, or as to some issues but not as to others, or as to some parties, but not as to others." *Conte v. Jakks Pac., Inc.*, 981 F. Supp. 2d 895, 902 (E.D. Cal. 2013) (quoting *Barker v. Norman*, 651 F.2d 1107, 1123 (5th Cir. 1981)); *see also Robi v. Five Platters, Inc.*, 918 F.2d 1439 (9th Cir. 1990); *Cheng v. Comm'r Internal Revenue Serv.*, 878 F.2d 306, 309 (9th Cir. 1989). A court "may grant summary adjudication as to specific issues if it will narrow the issues for trial." *First Nat'l Ins. Co. v. F.D.I.C.*, 977 F. Supp. 1051, 1055 (S.D. Cal. 1977).

Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis of its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett* (*Celotex*), 477 U.S. 317, 323 (1986). To carry its burden of production on summary judgment, a moving party "must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.* (*Nissan Fire*), 210 F.3d 1099, 1102 (9th Cir. 2000). "If a moving party fails to carry its initial burden of production, the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial." *Nissan Fire*, 210 F.3d at 1102–03; *see Adickes*, 398

U.S. at 160. If, however, a moving party carries its burden of production, the burden then shifts to the nonmoving party to establish that a genuine issue as to any material fact actually does exist. *Matsushita*, 475 U.S. at 585–87.

In the endeavor to establish the existence of a factual dispute, the nonmoving party need not establish a material issue of fact conclusively in its favor but need only show the claimed factual dispute "require[s] a jury or judge to resolve the parties' differing versions of the truth at trial." *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288–89 (1968). Nevertheless, "[t]he mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient." *Anderson*, 477 U.S. at 252. Similarly, the nonmoving party may not merely rely upon the mere allegations or denials of its pleadings or "show that there is some metaphysical doubt as to the material facts," but must instead tender evidence of specific facts in the form of affidavits and/or admissible discovery material, in support of its contention that the dispute exists. *Matsushita*, 475 U.S. at 586; *Estate of Tucker v. Interscope Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting Fed. R. Civ. P. 56(c), (e)). Finally, the nonmoving party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* at 251–52.

In resolving the summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with any applicable affidavits. Fed. R. Civ. P. 56(c); *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1305–06 (9th Cir. 1982). The evidence of the nonmoving party is to be believed, and all reasonable inferences that may be drawn from the facts pleaded before the court must be drawn in favor of the nonmoving party. *Anderson*, 477 U.S. at 255. Nevertheless, mere disagreement as to legal implications of the material facts does not bar summary judgment. *See Beard v. Banks*, 548 U.S. 521, 530 (2006). Rather, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251–52. "If the nonmoving party fails to produce enough evidence to create a genuine issue of

material fact, the moving party wins the motion for summary judgment." *Nissan Fire*, 210 F.3d at 1103; *see also Celotex*, 477 U.S. at 322.

IV. ANALYSIS

A. County's Motion

Plaintiff alleges two causes of action pertaining to the County: (1) that while detained at the San Joaquin County Jail facility on July 27, 2013, Defendant DOE Sheriff's Deputy intentionally denied Plaintiff medical care after she complained of severe pain around her clavicle and this denial of care amounts to deliberate indifference in violation of federal law; and (2) the County has inadequate training and policies regarding medical care for pre-trial detainees which amounts to deliberate indifference to constitutional rights. (ECF No. 20 at ¶¶ 14–16, 23–26.)

The County, construing Plaintiff's allegations as asserting a *Monell* claim, argues Plaintiff fails to set forth any evidence supporting her allegation that Defendants had a custom, policy, or practice to deny medical treatment.[5] (ECF No. 58-1 at 5–6.) The Court agrees.

i. Section 1983 Monell *Liability*

A government entity may be held liable under 42 U.S.C. § 1983, but such liability must be founded upon evidence that the government unit itself supported a violation of constitutional rights and not on the basis of the respondeat superior doctrine or vicarious liability. *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 689–91 (1977). To bring a *Monell* claim, Plaintiff must establish "the local government had a deliberate policy, custom, or practice that was the 'moving force' behind the constitutional violation [she] suffered." *Whitaker v. Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007) (citing *Monell*, 436 U.S. at 694); *see also Bd. of Cnty. Comm'rs*

[5] In its Motion for Summary Judgment, the County additionally argues on behalf of the DOE Deputy that the County is not liable for deliberate indifference or, alternatively, is qualifiedly immune. (ECF No. 58-1 at 4–5.) At this time, however, the Court declines to consider these arguments as they are premature where the DOE deputy defendant (1) has not yet been identified and substituted into this action, (2) has not appeared, and (3) is seemingly not represented by County counsel. *See Lee v. Plummer*, No. C-04-2636-VRW, 2005 WL 91380, at *6 (N.D. Cal. Jan. 17, 2005) ("Because none of the Doe defendants have been identified or served, it would be premature for the court to consider whether plaintiff's complaint states a claim against them upon which relief can be granted."). Further, considering the Court's ruling on the County's motion as discussed herein, the Court need not reach these arguments.

of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 403 (1997). The Ninth Circuit has held that a single incident will typically not suffice to demonstrate existence of a policy. *See Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999). Rather, in order to succeed, Plaintiff must show a longstanding practice or custom which constitutes the standard operating procedure of the local government entity. *See Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) ("Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy."). For a failure to train claim, "[o]nly where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983." *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

Here, the County argues Plaintiff has not and cannot meet the high burden to establish any official policy regarding the denial of medical care for pre-trial arrestees. (ECF No. 58-1 at 6.) In support of its argument, the County submits copies of its policies and procedures pertaining to treatment of pre-trial detainees, specifically with respect to the provision of medical care, with supporting affidavits. (*See* ECF Nos. 58-4, 58-5.) The Court finds the County has met its initial burden. *Celotex*, 477 U.S. at 323; *Nissan Fire*, 210 F.3d at 1102–03.

Plaintiff, on the other hand, submits no evidence in support of her allegations against the County and admits every one of the County's undisputed material facts. (*See* ECF No. 62.) Indeed, in opposition, Plaintiff concedes the futility of such a claim against the County stating, "[a]t this time, Plaintiff dismisses her [*Monell*] claim against this defendant." (ECF No. 61 at 7.) While Plaintiff is precluded from voluntarily dismissing her claim at this time, it is nevertheless clear that Plaintiff has failed to meet her burden to establish there is a genuine dispute of material fact as to this claim. *Matsushita*, 475 U.S. at 585–87; *see also* Fed. R. Civ. P. 41(a) (a plaintiff may only voluntarily dismiss an action or claim without a court order by either filing the notice of dismissal before the opposing party serves either an answer or a motion for summary judgment,

or pursuant to a joint stipulation). Summary judgment is therefore appropriate.[6]

The Court concludes that no reasonable jury could find for Plaintiff on her "denial of medical care" claim because Plaintiff does not provide any evidence that the County had a deliberate policy, custom, or practice, or failed to train its employees with respect to providing appropriate medical care to pre-trial arrestees. Nor does Plaintiff establish that such a policy or failure to train would amount to deliberate indifference as required for an actionable claim under § 1983. *Whitaker*, 486 F.3d at 581; *Trevino*, 99 F.3d at 918; *City of Canton*, 489 U.S. at 380. The Court therefore GRANTS the County's Motion for Summary Judgment as to Plaintiff's third cause of action ("denial of medical care"). Further, as no remaining claims are asserted against the County, it is hereby DISMISSED from this action.

B. Defendants' Motion

Defendants bring three arguments: (1) that the challenged use of force by the officers in connection with the arrest was reasonable and not in violation of the Fourth Amendment; (2) that regardless, Defendants' conduct is protected from liability by qualified immunity; and (3) there is no evidence of a connection between Plaintiff's injury and the arrest. (ECF No. 59-1 at 5–12.)

i. Excessive Force Claim

An excessive force claim is analyzed under the Fourth Amendment's "objective reasonableness" standard. *Graham v. Connor*, 490 U.S. 386, 388 (1989). To assess whether a use of force was objectively reasonable, one must "balanc[e] the 'nature and quality of the intrusion' on [the] person's liberty with the 'countervailing governmental interests at stake.'" *Smith v. City of Hemet*, 394 F.3d 689, 700 (9th Cir. 2005) (quoting *Graham*, 490 U.S. at 396).

Relevant factors to assessing whether the use of force was objectively reasonable include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. "These factors, however, are not exclusive." *Bryan v.*

[6] To the extent Plaintiff seeks to establish a § 1983 claim for deliberate indifference against the County based on the purported actions of the DOE deputy, Plaintiff's claim also fails as a matter of law. *Monell*, 436 U.S. at 694 ("[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents.").

McPherson, 630 F.3d 805, 826 (9th Cir. 2010).

The question of whether the force used to effect an arrest is reasonable "is ordinarily a question of fact for the jury." *Liston v. Cnty. of Riverside*, 120 F.3d 965, 976 n.10 (9th Cir. 1997); *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011). A determination on the reasonableness of the use of force "nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom." *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002). As a result, "summary judgment or judgment as a matter of law in excessive force cases should be granted sparingly." *See id.* at 853; *Liston v. County of Riverside*, 120 F.3d 965, 976 n.10 (9th Cir. 1997) ("We have held repeatedly that the reasonableness of force used is ordinarily a question of fact for the jury," citing cases); *Chew v Gates*, 27 F.3d 1432, 1440–41 (9th Cir. 1994) ("Because questions of reasonableness are not well-suited to precise legal determination, the propriety of a particular use of force is generally an issue for the jury."). Summary judgment may be appropriate, however, when the facts concerning an incident are largely undisputed. *See Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994) ("[D]efendants can still win on summary judgment if the district court concludes, after resolving all factual disputes in favor of the plaintiff, that the officer's use of force was objectively reasonable under the circumstances.").

A genuine dispute of material fact exists as to whether Officer McClure's conduct was objectively reasonable. Plaintiff asserts Officer McClure threw her down on the ground.[7] While tackling is typically considered a low quantum of force, *see Jackson v. City of Bremerton*, 268 F.3d 646, 650–52 (9th Cir. 2001) (pushing plaintiff to the ground, placing a knee on her back to handcuff her, then "roughly" lifting her to her feet and putting her in police car was considered a

[7] Plaintiff also alleges Officer McClure placed her knee on Plaintiff's back and that all Defendants used excessive force to "yank" Plaintiff up by her handcuffs and feet and "violently throw" her into the back of the police car. (ECF No. 66 at 4; Beech Decl., ECF No. 66-1 at ¶ 2.) These behaviors typically do not amount to anything more than minimal intrusions. Placing a knee in the back of a suspect to handcuff them after a takedown is considered a minimal use of force. *See Jackson*, 268 F.3d at 650, 652. Moreover, lifting a subdued suspect off the ground to be placed in a police vehicle generally indicates only a minimal quantum of force. *Id.* at 652. However, the Court declines to make a finding as to whether these actions were minimal intrusions or not. They occurred after a potential use of excessive force and the Court finds these questions are better suited for a jury.

"normal handcuffing procedure" and deemed a "minimal" amount of force); *see also Bennett v. Gow*, 345 F. App'x 286, 287 (9th Cir. 2009) (pushing plaintiff to ground after he refused to give license, tried to walk away, and twisted away when the officer tried to handcuff him was a "relatively minor" amount of force), the presence of significant injuries from a takedown may suggest the magnitude of the force used, *see Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (noting the extent of injury may provide some indication of the amount of force applied, but it is not dispositive to the inquiry of whether or not the force used was excessive); *see also Santos v. Gates*, 287 F.3d 846, 853–54 (9th Cir. 2002) (finding the nature of the intrusion "quite severe" where the plaintiff sustained a broken vertebra as a result of being taken to the ground); *Buller v. Woodrow*, 2020 WL 999614, *6 (N.D. Cal. Mar. 2, 2020) (citing *Young v. Cty. of Los Angeles*, 655 F.3d 1156, 1161 (9th Cir. 2011) (stating the amount of force was "intermediate" because it was capable of inflicting significant pain and causing serious injury).

Here, in addition to sustaining minor cuts and scrapes on her knees and lip (ECF No. 66-2 at 9; ECF No. 60 at 67–69), Plaintiff's testimony presents a factual predicate in support of her claim that the force of the takedown was sufficient to cause her collarbone to break in four places. (ECF No. 66 at 4; *see also* ECF No. 59-2 at 18.) The parties dispute how Plaintiff's collarbone was injured. If Officer McClure did in fact cause Plaintiff's collarbone to break when bringing her to the ground, that could support a finding that Officer McClure used a significant amount of force. *Wilson v. Tran*, No. 14-CV-00940-JSC, 2015 WL 3826844, at *3 (N.D. Cal. June 19, 2015) ("A fact-finder could reasonably conclude that a broken bone in his hand is a serious injury, which in turn could support a finding that Tran used a significant amount of force."); *see also Solomon v. City of So. Lake Tahoe*, 2014 WL 6389735, at *6 (E.D. Cal. Nov. 14, 2014) (finding summary judgment on excessive force claim improper where "genuine issues of disputed material fact exist as to the amount of force" used). In the instant case, there is a genuine dispute of material fact regarding how much force was used, and subsequently, whether that force was therefore reasonable. Accordingly, this is not appropriate for resolution on summary judgment, and Defendants' Motion on these grounds is DENIED.

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ii. Qualified Immunity

Qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Mueller v. Auker*, 700 F.3d 1180, 1185 (9th Cir. 2012) (*quoting Messerschmidt v. Millender*, 565 U.S. 535 (2012)) (internal quotation marks omitted); *see also Behrens v. Pelletier*, 516 U.S. 299, 311–12 (1996) (qualified immunity may provide immunity from certain claims and not reach all claims). The doctrine "gives government officials breathing room to make reasonable but mistaken judgments" and "protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Qualified immunity is an affirmative defense; the burden of pleading it rests with the defendant. *Crawford-El v. Britton*, 523 U.S. 574, 586–87 (1998).

A qualified-immunity analysis requires determining: (1) whether facts alleged, taken in the light most favorable to the injured party, show the defendants' conduct violated a constitutional right; and (2) whether the right was clearly established. *Lacey v. Maricopa County*, 693 F.3d 896, 915 (9th Cir. 2012) (*en banc*) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). Courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

Defendants argue even if their conduct violated Plaintiff's Fourth Amendment rights, qualified immunity protects them from liability. (ECF No. 59-1 at 13.) The Court has determined the record contains sufficient evidence to raise a triable issue as to whether Defendants' conduct constituted excessive force in violation of the Fourth Amendment. As such, "[s]ummary judgment in favor of the Defendants is improper because where there are factual disputes as to the parties' conduct or motives, qualified immunity cannot be resolved at summary judgment and the case must proceed to trial." *Beaver v. City of Fed. Way*, No. CV05-1938MJP, 2006 WL 3203729, at *3 (W.D. Wash. Nov. 3, 2006); *Liston v. County of Riverside*, 120 F.3d 965, 975 (9th Cir.1997) (finding summary judgment for defendants improper where a genuine

issue of material fact prevents a determination of qualified immunity). Accordingly, summary judgment on the basis of qualified immunity is not appropriate, and Defendants' Motion on this basis is DENIED.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Defendant San Joaquin County's Motion for Summary Judgment (ECF No. 58) is GRANTED as to Plaintiff's third cause of action ("denial of medical care") and the County is DISMISSED from this action.

2. Defendants' Motion for Summary Judgment (ECF No. 59) is DENIED.

3. The parties are hereby ordered to file a Joint Status Report within thirty (30) days of this Order indicating their readiness to proceed to trial and proposing trial dates.

IT IS SO ORDERED.

Dated: September 23, 2021

Troy L. Nunley
United States District Judge