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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JANE DOE,  
  
Plaintiff,  
  
v.  
  
SAN JOAQUIN COUNTY, SHERIFF  
STEVE MOORE, AND DANNY  
SWANSON,  
  
Defendants.

No. 2:18-cv-00667-TLN-AC

**MEMORANDUM AND ORDER  
GRANTING IN PART AND DENYING IN  
PART DEFENDANTS COUNTY OF SAN  
JOAQUIN AND SHERIFF STEVE  
MOORE’S MOTION TO DISMISS**

This matter is before the Court pursuant to Defendants County of San Joaquin (“County”) and Sheriff Steve Moore’s (“Moore”) (collectively, “Defendants”) Motion to Dismiss Portions of Plaintiff’s Complaint (“Complaint”). (ECF No. 8.) Plaintiff Jane Doe (“Plaintiff”) filed an opposition (ECF No. 14) and Defendants filed a reply (ECF No. 16). For the reasons set forth below, the Court hereby GRANTS in part and DENIED in part Defendants San Joaquin County and Sheriff Steve Moore’s Motion to Dismiss. (ECF No. 8.)

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1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           Plaintiff is a female inmate at San Joaquin County Jail. (ECF No. 1 ¶ 10–11.) On March  
3 27, 2018, Plaintiff filed a complaint against Danny Swanson (“Swanson”), the County, and  
4 Moore for various causes of action resulting from the alleged sexual battery, sexual harassment,  
5 and sexual discrimination of Plaintiff. (ECF No. 1 ¶ 9.) Specifically, Plaintiff alleges the  
6 following causes of action: (1) Violation of Plaintiff’s Eighth Amendment Rights; (2) Violation  
7 of Plaintiff’s Fourteenth Amendment Due Process Rights; (3) Sexual Battery; (4) Intentional  
8 Infliction of Emotional Distress; (5) Negligence; (6) Bane Act Violation; (7) Sexual Harassment;  
9 (8) Sexual Discrimination; and (9) Negligent Hiring, Retention, and Supervision. (ECF No. 1.)  
10 Defendants now move to dismiss Plaintiff’s First, Second, Fifth, Seventh, Eighth, and Ninth  
11 Causes of Action against them. (ECF No. 8.)

12           Plaintiff’s Complaint alleges Swanson, a sheriff’s deputy for the County, engaged in  
13 sexual battery, sexual harassment, and sexual discrimination against her in five separate incidents  
14 occurring between September 2017 and November 2017. (ECF No. 1 ¶¶ 4, 9.) The Court will  
15 discuss each incident in turn.

16                   A.       The First Incident

17           Swanson was regularly assigned to transport Plaintiff between San Joaquin County Jail  
18 and a local hospital for medical examinations. (ECF No. 1 ¶ 10.) During one of these hospital  
19 visits, Plaintiff was placed in an examination room where a nurse directed her to get undressed  
20 from the waist down and wait for a doctor for her pelvic examination. (ECF No. 1 ¶ 11.)  
21 Plaintiff alleges that while the doctor was performing the pelvic examination, Swanson  
22 intentionally opened a portion of the partition curtain and viewed the partially nude Plaintiff  
23 undergoing her pelvic examination. (ECF No. 1 ¶ 12.) Plaintiff alleges once the examination  
24 was completed, Swanson entered the examination room, “positioned himself directly in front of  
25 the sitting Plaintiff, with his crotch within two inches of [her] face, grabbed her shackled hands  
26 and forced her hands to grope and fondle his penis through his pants for an extended period of  
27 time.” (ECF No. 1 ¶ 13.) Plaintiff claims this conduct ceased when a nurse entered the  
28 examination room. (ECF No. 1 ¶ 13.)

1                   B.     The Second Incident

2                   Next, Plaintiff alleges that on a subsequent trip to a local hospital, Swanson took her to a  
3 private room and removed her handcuffs. (ECF No. 1 ¶ 14.) Plaintiff alleges Swanson then told  
4 her she was free to get water. (ECF No. 1 ¶ 14.) While she was getting water, Plaintiff claims  
5 Swanson “walked up closely behind [her] and started gyrating and rubbing his crotch area” on  
6 Plaintiff’s buttocks for an extended period of time. (ECF No. 1 ¶ 14.)

7                   C.     The Third Incident

8                   On the same day the second incident occurred, Plaintiff alleges Swanson was transporting  
9 Plaintiff back to San Joaquin County Jail when he pulled over in a desolate secluded area and  
10 parked the transport vehicle. (ECF No. 1 ¶ 15.) Once parked, Plaintiff alleges Swanson exited  
11 the vehicle, walked to the back of the vehicle where Plaintiff was seated, opened the door, and  
12 started fondling Plaintiff while she was shackled. (ECF No. 1 ¶ 16.) Plaintiff alleges she  
13 “screamed out no” when Swanson “grabbed her and kissed her full on the lips.” (ECF No. 1 ¶  
14 16.) Plaintiff alleges while Swanson was forcing himself on her, his supervisors radioed him  
15 inquiring about his whereabouts. (ECF No. 1 ¶ 17.) According to Plaintiff, Swanson then  
16 immediately stopped his conduct and proceeded back to the jail. (ECF No. 1 ¶ 17.) Plaintiff  
17 claims she told her friends about the incident once she returned to the jail and contemplated  
18 telling the authorities, but decided not to say anything out of fear of retaliation from the  
19 Defendant and other deputies. (ECF No. 1 ¶ 18.)

20                   D.     The Fourth Incident

21                   Plaintiff alleges the fourth incident occurred when Plaintiff was picked up from San  
22 Joaquin County Jail by several sheriff deputies to be transported to a local hospital for further  
23 medical examinations. (ECF No. 1 ¶ 19.) After Plaintiff finished one of these examinations,  
24 Defendant allegedly entered the waiting room where Plaintiff was waiting to be driven back to the  
25 jail. (ECF No. 1 ¶ 19.) Plaintiff alleges Defendant told her that he had been monitoring her  
26 examination through the surveillance cameras at the hospital. (ECF No. 1 ¶ 19.) Plaintiff claims  
27 Defendant then ordered her to come with him so he could transport her back to jail. (ECF No. 1 ¶  
28 20.)

1 E. The Fifth Incident

2 The final incident occurred on the drive back from the hospital to the San Joaquin Jail  
3 following the fourth incident. (ECF No. 1 ¶ 20.) Plaintiff claims that while Swanson was  
4 transporting her, he pulled over to a secluded area and parked the vehicle. (ECF No. 1 ¶ 20.)  
5 Plaintiff alleges Swanson pulled out his cell phone and encouraged Plaintiff to look at  
6 photographs of his children on his phone. (ECF No. 1 ¶ 21.) As Plaintiff was shackled and  
7 looking through these pictures, she claims Swanson began showing her photographs of his body  
8 parts, such as his penis and buttocks. (ECF No. 1 ¶ 22.) Swanson allegedly forced Plaintiff to  
9 look at the nude photographs of himself for an extended period of time while he stared at her and  
10 told her “again and again how attractive she was.” (ECF No. 1 ¶ 23.) Plaintiff alleges Swanson  
11 then received a radio call inquiring about Plaintiff’s whereabouts, at which time he started the car  
12 and headed back to the jail. (ECF No. 1 ¶ 24.) Upon returning to the jail, Plaintiff informed her  
13 friends of these events and decided to tell the authorities of the sexual abuse that she had endured  
14 for months. (ECF No. 1 ¶ 25.)

15 **II. STANDARD OF LAW**

16 A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure  
17 (“Rule”) 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732  
18 (9th Cir. 2001). Rule 8(a) requires that a pleading contain “a short and plain statement of the  
19 claim showing that the pleader is entitled to relief.” See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79  
20 (2009). Under notice pleading in federal court, the complaint must “give the defendant fair notice  
21 of what the claim . . . is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S.  
22 544, 555 (2007) (internal quotations omitted). “This simplified notice pleading standard relies on  
23 liberal discovery rules and summary judgment motions to define disputed facts and issues and to  
24 dispose of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

25 On a motion to dismiss, the factual allegations of the complaint must be accepted as true.  
26 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give plaintiff the benefit of every  
27 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*  
28 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege

1 “‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement to  
2 relief.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads  
3 factual content that allows the court to draw the reasonable inference that the defendant is liable  
4 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. 544, 556 (2007)).

5 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of  
6 factual allegations.” *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir.  
7 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than an  
8 unadorned, the defendant–unlawfully–harmed–me accusation.” *Iqbal*, 556 U.S. at 678. A  
9 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the  
10 elements of a cause of action.” *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 678  
11 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
12 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove  
13 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not  
14 been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459  
15 U.S. 519, 526 (1983).

16 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough  
17 facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697 (quoting  
18 *Twombly*, 550 U.S. at 570). Only where a plaintiff has failed to “nudge[] [his or her] claims . . .  
19 across the line from conceivable to plausible,” is the complaint properly dismissed. *Id.* at 680.  
20 While the plausibility requirement is not akin to a probability requirement, it demands more than  
21 “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility inquiry is  
22 “a context–specific task that requires the reviewing court to draw on its judicial experience and  
23 common sense.” *Id.* at 679.

24 If a complaint fails to state a plausible claim, “[a] district court should grant leave to  
25 amend even if no request to amend the pleading was made, unless it determines that the pleading  
26 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130  
27 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 484, 497 (9th Cir. 1995)); see  
28 also *Gardner v. Marino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in

1 denying leave to amend when amendment would be futile). Although a district court should  
2 freely give leave to amend when justice so requires under Rule 15(a)(2), “the court’s discretion to  
3 deny such leave is ‘particularly broad’ where the plaintiff has previously amended its complaint.”  
4 *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir. 2013) (quoting  
5 *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

### 6 **III. ANALYSIS**

7 First, Defendants move to dismiss Plaintiff’s First and Second Causes of Action against  
8 the County for failure to allege an unconstitutional policy or practice. (ECF No. 8 at 15–18.)  
9 Second, Defendants move to dismiss Plaintiff’s First, Second, and Ninth Causes of Action against  
10 Moore in both his individual and official capacities. (ECF No. 8 at 18–20.) Third, Defendants  
11 move to dismiss Plaintiff’s Fifth, Seventh, Eighth, and Ninth Causes of Action for failure to state  
12 a claim under Rule 12(b)(6). (ECF No. 8 at 20–23.)

#### 13 A. First and Second Causes of Action Against Defendant San Joaquin County

14 Defendants move to dismiss Plaintiff’s First and Second Causes of Action against the  
15 County for failure to allege an unconstitutional policy or practice. (ECF No. 8 at 15–18.)  
16 Plaintiff voluntarily dismisses her First and Second Causes of Action against the County with a  
17 request for leave to amend. (ECF No. 14 at 6.) Defendants argue that Plaintiff should not be  
18 given leave to amend her complaint because her opposition does not explain how she would  
19 amend her complaint. (ECF No. 16 at 3.)

20 Leave to amend shall be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2).  
21 “[T]his policy is to be applied with extreme liberality.” *Owens v. Kaiser Found. Health Plan,*  
22 *Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). The Court should only deny a request for leave to amend  
23 if allowing amendment would unduly prejudice the opposing party, cause undue delay, be futile,  
24 or if the moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522,  
25 532 (9th Cir. 2008); see also *Sharkey v. O’Neal*, 778 F.3d 767, 774 (9th Cir. 2015) (holding a  
26 district court should grant leave to amend when additional factual allegations could cure a  
27 complaint’s defects). The Court finds that amendment may not be futile, nor would it unduly  
28 prejudice Defendants or cause undue delay at this early stage in litigation. Therefore, the Court

1 dismisses Plaintiff's First and Second Causes of Action against the County with leave to amend.

2 B. First, Second, and Ninth Causes of Action Against Defendant Moore

3 Plaintiff does not allege whether she is suing Moore in his official or individual capacity.  
4 Therefore, the Court will address Defendants arguments regarding both Moore's official and  
5 individual capacities.

6 i. Official Capacity

7 Defendants move to dismiss Plaintiff's First, Second, and Ninth Causes of Action against  
8 Moore in his official capacity because Plaintiff's claims against him in his official capacity as  
9 Sheriff of San Joaquin County are duplicative of Plaintiff's claims against the County. (ECF No.  
10 8 at 19–20.) As stated above, Plaintiff voluntarily dismisses her First and Second Causes of  
11 Action against Moore with a request for leave to amend, but does not explicitly address the  
12 argument that claims against Moore in his official capacity are duplicative of the same claims  
13 against the County. (ECF No. 14 at 6.)

14 A claim against a municipal officer in his official capacity is duplicative of a claim against  
15 the municipality. *Brandon v. Holt*, 469 U.S. 464, 471–72 (1985). “For this reason, when both an  
16 officer and the local government entity are named in a lawsuit and the officer is named in official  
17 capacity only, the officer is a redundant defendant and may be dismissed.” *Luke v. Abbott*, 954 F.  
18 Supp. 202, 203 (C.D. Cal. 1997). Accordingly, the Court finds the claims duplicative. Since any  
19 amendment would be futile, the Court dismisses Plaintiff's First, Second, and Ninth Causes of  
20 Action against Moore in his official capacity without leave to amend.

21 ii. Individual Capacity

22 Defendants move to dismiss Plaintiff's First, Second, and Ninth Causes of Action against  
23 Moore in his individual capacity because Plaintiff fails to allege that Moore “personally  
24 participated in the underlying incidents, or was even present for any of the alleged actions.”  
25 (ECF No. 8 at 18–19.) Plaintiff voluntarily dismisses her First and Second Causes of Action  
26 against Moore with a request for leave to amend and does not respond to Defendants' arguments  
27 regarding dismissal of Plaintiff's Ninth Cause of Action against Moore in his individual capacity.  
28 (ECF No. 14 at 6.) Defendants argue that Plaintiff should not be given leave to amend her

1 complaint because her opposition does not explain how she would amend her complaint. (ECF  
2 No. 16 at 3.)

3 “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that  
4 each Government-official defendant, through the official’s own individual actions, has violated  
5 the Constitution.” *Iqbal*, 556 U.S. at 676. Here, Plaintiff has failed to allege any conduct on  
6 behalf of Moore that violated Plaintiff’s constitutional rights, and has offered no argument in her  
7 opposition that Moore violated Plaintiff’s constitutional rights. However, the Court finds that  
8 amendment would not be futile, nor would it unduly prejudice Defendants or cause undue delay  
9 at this early stage in litigation. Therefore, the Court dismisses Plaintiff’s First and Second Causes  
10 of Action against Moore in his individual capacity with leave to amend.

11 With regard to Plaintiff’s Ninth Cause of Action, however, the Court finds Plaintiff has  
12 adequately plead facts supporting this cause of action against Moore in his individual capacity.  
13 Indeed, Plaintiff has alleged Moore personally hired Defendant Swanson, that he personally  
14 supervised him, and that he knew or should have known Swanson was unfit for the position for  
15 which he was hired. (ECF No. 1 at 24-25.)

16 Moreover, to the extent Defendants argue that Plaintiff’s claim fails because she has failed  
17 to allege facts supporting a special relationship between Plaintiff and Moore, Defendants’  
18 argument also fails. Plaintiff argues that such a special relationship does in fact exist here, and  
19 claims this special relationship required Defendants to protect Plaintiff. (ECF No. 14 at 4.) “A  
20 defendant may owe an affirmative duty to protect another from the conduct of third parties if he  
21 or she has a ‘special relationship’ with the other person.” *Giraldo v. Dep’t of Corr. & Rehab.*,  
22 168 Cal. App. 4th 231, 245 (2008). The California Supreme Court has found that such a special  
23 relationship exists “in cases involving the relationship between business proprietors such as  
24 shopping centers, restaurants, and bars, and their tenants, patrons, or invitees.” *Delgado v. Trax*  
25 *Bar & Grill*, 36 Cal. 4th 224, 235 (2005). Moreover, California courts have recognized that “the  
26 relationship of jailer and prisoner imposes a duty of care, [and] recognition of such a duty finds  
27 support in numerous, if not all, pertinent authorities.” *Giraldo*, 168 Cal. App. 4th at 246, 252–53  
28 (holding that “there is a special relationship between jailer and prisoner which imposes a duty of



1 care on the jailer to the prisoner”). Courts within the district have determined that “there is a  
2 well-established special relationship between jailers and prisoners.” Lum v. Cty. of San Joaquin,  
3 756 F. Supp. 2d 1243, 1254 (E.D. Cal. 2010).

4 Defendants cite to Fuentes v. City of San Diego, No. 316CV02871BENJMA, 2017 WL  
5 2670976, at \*3 (S.D. Cal. June 20, 2017), to argue that the special relationship doctrine does not  
6 apply in this case. (ECF No. 16 at 5.) However, in Fuentes, the court examined the doctrine as it  
7 applies to law enforcement and the general public. Fuentes, 2017 WL 2670976, at \*3 (finding the  
8 special relationship doctrine inapplicable after officers shot and killed the plaintiffs’ family pet).  
9 Here, Plaintiff is anything but the general public. She is a custodian of the state who is vulnerable  
10 and dependent on Defendants for protection. See Lum, 756 F. Supp. 2d at 1255 ([P]risoners and  
11 arrestees are equally vulnerable and dependent on officers and jailers for safety and security . . .  
12 .”); Giraldo, 168 Cal. App. 4th at 250. Fuentes is therefore inapplicable here.

13 C. State Law Claims

14 Defendants move to dismiss Plaintiff’s Fifth, Seventh, Eighth, and Ninth Causes of Action  
15 for failure to state a claim under Rule 12(b)(6). (ECF No. 8 at 20–23.)

16 i. Fifth Cause of Action

17 Defendants argue Plaintiff fails to state a claim for negligence since all conduct alleged  
18 was intentional. (ECF No. 8 at 20.) Plaintiff voluntarily dismisses her Fifth Cause of Action and  
19 has not requested leave to amend. (ECF No. 14 at 6.) Plaintiff’s Fifth Cause of Action is  
20 therefore dismissed without leave to amend.

21 ii. Seventh Cause of Action

22 California Civil Code § 51.9(a) provides that a person is liable in a cause of action for  
23 sexual harassment when a plaintiff proves all of the following elements: (1) there is a business,  
24 service, or professional relationship between the plaintiff and defendant; (2) the defendant has  
25 made sexual advances, solicitations, requests, or demands, or engaged in other conduct of a  
26 sexual nature or hostile nature based on gender, that were unwelcome and pervasive or severe;  
27 and (3) the plaintiff has suffered or will suffer economic loss or disadvantage or personal injury,  
28 including, but not limited to, emotional distress or the violation of a statutory or constitutional

1 right. Cal. Civ. Code § 51.9(a). Defendants argue that Plaintiff fails to state a claim under § 51.9  
2 because she has not established a qualifying relationship. (ECF No. 8 at 20–21.) Plaintiff  
3 responds that § 51.9 should apply to jailor-inmate relationships because “by their nature, county  
4 jails are charged with providing inmates services while the inmates are in their custody.” (ECF  
5 No. 14 at 5.) Specifically, Plaintiff contends that the San Joaquin County Jail provides housing,  
6 recreation, religious, education, and healthcare services. (ECF No. 14 at 5.) Plaintiff further  
7 maintains that Swanson was providing the service of transporting Plaintiff to the hospital when  
8 the alleged incidents occurred. (ECF No. 14 at 6.)

9 “[T]he Legislature enacted Civil Code section 51.9 to address ‘relationships between  
10 providers of professional services and their clients.’” *Hughes v. Pair*, 46 Cal. 4th 1035, 1044  
11 (2009). Section 51.9 enumerates numerous qualifying relationships, including but not limited to  
12 physicians, psychotherapists, dentists, attorneys, accountants, real estate agents, executors,  
13 trustees, landlords, teachers, elected officials, lobbyists, directors, and producers. Cal. Civ. Code  
14 § 51.9. Section 51.9 also includes a catchall provision stating that it applies to any “relationship  
15 that is substantially similar to any of the above.” *Id.*

16 Plaintiff provides no authority supporting her proposition that a jailor-inmate relationship  
17 is substantially similar to any of the professional relationships enumerated in § 51.9. Jailor-  
18 inmate relationships are inherently distinct from the professional, business, or service  
19 relationships contemplated by § 51.9 because such relationships occur outside of the professional  
20 business setting. Jailor-inmate relationships are not professional relationships involving a client  
21 voluntarily seeking a paid professional’s health, legal, or other business services, but rather are  
22 custodial relationships in which an inmate is subjected to the relationship as a result of the  
23 inmate’s involuntary incarceration. See *Solesbee v. Cty. of Inyo*, No. 1:13-CV-1548 AWI JLT,  
24 2014 WL 3890680, at \*9 (E.D. Cal. Aug. 7, 2014) (holding § 51.9 did not apply to a relationship  
25 between a participant in a county jail work release program and the county). Thus, even if  
26 Defendant technically provided Plaintiff housing, recreation, religious, education, healthcare, or  
27 transportation services, the services do not arise out of the kind of professional relationship  
28 contemplated by § 51.9. Accordingly, Plaintiff is not in a business, service, or professional

1 relationship with Defendants, and the Court dismisses Plaintiff's Seventh Cause of Action for  
2 sexual harassment. Because amendment of the claim would be futile, that dismissal is without  
3 leave to amend.

4 iii. Eighth Cause of Action

5 Defendants argue Plaintiff fails to state a claim under California Civil Code § 52.4(e)  
6 because the statute is inapplicable to employers. (ECF No. 8 at 21–22.) Plaintiff voluntarily  
7 dismisses her Eighth Cause of Action and has not requested leave to amend. (ECF No. 14 at 6.)  
8 Plaintiff's Eighth Cause of Action is therefore dismissed without leave to amend.

9 iv. Ninth Cause of Action against the County

10 Defendants argue that negligent hiring, supervision, and retention claims are not  
11 cognizable against public entities. (ECF No. 8 at 22–23.) Indeed, “California’s Government  
12 Claims Act immunizes public entities from tort liability in all cases except those where liability is  
13 explicitly created by a particular statute.” *Lindsay v. Fryson*, No. 2:10-CV-02842 LKK, 2012  
14 WL 2683019, at \*3 (E.D. Cal. July 6, 2012) (citing Cal. Gov’t Code § 815(a)(7)). Defendants  
15 argue that Plaintiff has failed to point to any statutory basis for liability. (ECF No. 8 at 22–23.)

16 For her part, Plaintiff cites to *C.A. v. William S. Hart Union High School District* to argue  
17 that a plaintiff can in fact sue a public entity for negligent hiring, retention, and supervision.  
18 (ECF No. 14 at 3, citing *C.A. v. William S. Hart Union High School District*, 53 Cal. 4th 861  
19 (2012).) In *C.A.*, the California Supreme Court, relying on Gov’t Code § 815.2, determined that a  
20 student could bring suit against a public entity for negligently hiring, retaining, and supervising a  
21 school counselor who sexually harassed a student. *C.A.*, 53 Cal. 4th at 701–02. Cal. Gov’t Code  
22 § 815.2 states that “[a] public entity is liable for injury proximately caused by an act or omission  
23 of an employee of the public entity within the scope of his employment if the act or omission  
24 would, apart from this section, have given rise to a cause of action against that employee or his  
25 personal representative.” And Plaintiff in fact cites to § 815.2 in her Complaint to support the  
26 theory that the County may be held vicariously liable for Moore’s negligent hiring, training,  
27 and/or supervision of Defendant Swanson if any such negligence is present here.

28 As Defendant points out (see ECF No. 8 at 22), the *C.A.* court limited its holding to

1 situations where there was a special relationship between the plaintiff and the supervisory or  
2 administrative personnel of the public entity. See Fuentes, 2017 WL 2670976, at \*3 (discussing  
3 the limitation of C.A.). But Defendants’ argument that the “special relationship” doctrine does  
4 not apply in this context is similarly misguided. (See ECF No. 16 at 5.) Plaintiff argues that  
5 Defendants have a “special relationship” with Plaintiff which required Defendants to “protect . . .  
6 Plaintiff who was detained in their jail facility from harm and to exercise care in selection,  
7 retention, training, and supervision of their employees.” (ECF No. 14 at 3–4.) Essentially,  
8 Plaintiff argues the County is vicariously liable because a “special relationship” existed between  
9 Defendant Moore and Plaintiff (ECF No. 14 at 3), and the Court agrees. As explained above, the  
10 Court finds such a special relationship exists under the facts plead. Consequently, the County  
11 may be held vicariously liable.

12 Accordingly, Plaintiff has made a showing that the necessary statutory basis and special  
13 relationship exists sufficient to survive a motion to dismiss. Therefore, Defendants’ motion to  
14 dismiss Plaintiff’s Ninth Cause of Action against the County is denied.

#### 15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court hereby GRANTS in part and DENIES in part  
17 Defendants’ Motion to Dismiss. (ECF No. 8.)

18 Specifically, the Court hereby:

- 19 1. DISMISSES Sheriff Moore in his official capacity with prejudice.
- 20 2. DISMISSES Plaintiff’s First Cause of Action against the County and Moore in his  
21 individual capacity with leave to amend.
- 22 3. DISMISSES Plaintiff’s Second Cause of Action against the County and Moore in  
23 his individual capacity with leave to amend.
- 24 4. DISMISSES Plaintiff’s Fifth Cause of Action without leave to amend.
- 25 5. DISMISSES Plaintiff’s Seventh Cause of Action without leave to amend.
- 26 6. DISMISSES Plaintiff’s Eighth Cause of Action without leave to amend.

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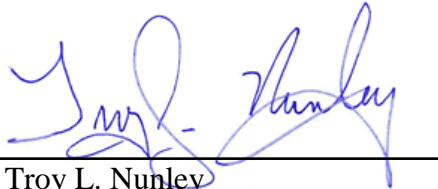
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7. DENIES Defendants' Motion to Dismiss Plaintiff's Ninth Cause of Action against both Defendant Moore and the County.

IT IS SO ORDERED.

Dated: May 10, 2019



Troy L. Nunley  
United States District Judge