

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 JANE DOE,

No. C 07-05596 SI

9 Plaintiff,

Related case:

No. C 08-02541 SI

10 v.

11 CITY OF SAN MATEO, *et al.*,

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS COMPLAINT
WITH LEAVE TO AMEND**

12 Defendants.
13 _____/

14 Defendants have filed motions to dismiss plaintiff's first amended complaint in Case No. C 07-
15 5596. The motions are scheduled for a hearing on October 31, 2008. Pursuant to Civil Local Rule
16 7-1(b), the Court determines that the matters are appropriate for resolution without oral argument and
17 VACATES the hearing. For the reasons set forth below, the Court GRANTS defendants' motions to
18 dismiss the complaint with leave to amend. If plaintiff chooses to amend her complaint in Case No. C
19 07-5596, she must file and serve the amended complaint by November 18, 2008.

20 Motions to dismiss in related case No. C 08-02541 are calendared for December 12, 2008. This
21 case (No. C 07-5596) is STAYED pending the Court's ruling on the motions to dismiss in Case No. C
22 08-02541. The Court STAYS all discovery pending a further order at the initial case management
23 conference, which the Court now sets for January 16, 2009 at 2:00 p.m.¹ Plaintiff may not file any
24 motions for discovery in Case No. C 07-05596 or Case No. 08-02541 until the January 16, 2009 initial
25 case management conference.
26 _____

27 ¹ Plaintiff has filed a motion to compel discovery of police records in both cases. Plaintiff's
28 motion is STAYED until the initial case management conference. [No. C 07-05596, Docket No. 11]
[No. C 08-02541 SI, Docket No. 75]

BACKGROUND

1
2 *Pro se* plaintiff Jane Doe has filed her first amended complaint on November 5, 2007 against
3 the following defendants: the City of San Mateo, the San Mateo Police Department, San Mateo Chief
4 of Police Susan E. Manheimer, San Mateo police officers Shandon Murphy and Joseph Yanuska, and
5 San Mateo police officers Does 1-100 (collectively, “City of San Mateo defendants”); the County of San
6 Mateo, the San Mateo County Sheriff’s Department, San Mateo County Sheriff Don Horsley, and San
7 Mateo County Sheriff’s Deputies Does 1-100 (collectively, “County of San Mateo defendants”); and
8 the City of San Jose, the San Jose Police Department (collectively, “San Jose Defendants”); and Does
9 1-200.

10 Plaintiff alleges violations of 42 U.S.C. §§ 1983 and 1985, Cal. Civ. Code §§ 52, 52.1, and
11 negligence. *See* First Amended Complaint (“Complaint”). The complaint alleges that on November
12 4, 2005, plaintiff was sexually assaulted by James Mason, a member of the San Jose police force, at his
13 residence in San Mateo. Complaint ¶ 8. According to plaintiff, she did not react during the alleged
14 assault because she was “too intoxicated.” *Id.* ¶24. Plaintiff contends that when Officer Mason called
15 the police, San Mateo police officers violated her due process rights by failing to provide her with
16 medical attention and denied her equal protection of the law by discriminating against her. *Id.* ¶ 10.
17 According to plaintiff, she was “still severely intoxicated, and had difficulty standing and
18 comprehending her surroundings” when the police arrived. *Id.* ¶ 25.

19 The San Mateo police officers then allegedly arrested plaintiff for public drunkenness and took
20 her to the San Mateo County jail. *Id.* ¶¶ 28, 29. At the jail, plaintiff maintains that San Mateo officers
21 performed a strip search on her, ignored her requests for medical attention, and ridiculed her. *Id.* ¶¶ 30,
22 34. Plaintiff also contends that in response to her further requests for medical attention, San Mateo
23 County police officers attempted to intimidate her by “putting on blue plastic gloves in a threatening
24 manner.” *Id.* ¶ 37. The officers also allegedly refused to administer a blood alcohol test. *Id.* ¶ 36.
25 Finally, plaintiff claims that when she was released from jail at approximately 7:30 a.m. the following
26 morning, she did not call an ambulance out of a concern that “she would be arrested again and taken
27 back to jail.” *Id.* ¶¶ 38, 39.

28 Plaintiff brought an action against Officer Mason in San Mateo County Superior Court on

1 November 3, 2006. *See* San Mateo County Defs. Mot. to Dismiss, at ex. A, p.1. Plaintiff brought
2 claims for sexual battery, and intentional and negligent infliction of emotional distress.² *See* City of San
3 Mateo Defs. Request for Judicial Notice (“Judicial Notice”), at ex. A (Second Amended Complaint,
4 Case No. 458747). The parties dispute the facts concerning the resolution of plaintiff’s case against
5 Officer Mason. Plaintiff alleges that the case was dismissed without prejudice, but that the state court
6 unlawfully changed that judgment. On September 12, 2008, San Mateo County Superior Court
7 dismissed the case with prejudice. *See* City of San Mateo Defs. 2nd Request for Judicial Notice, at ex.

8 A. The Judgment of Dismissal explains the relevant facts in the intervening period:

9 On January 29, 2008, prior to the commencement of trial in this matter,
10 Defendant James Mason orally requested that his entire cross-complaint be dismissed
11 without prejudice. On January 30, 2008, after the commencement of trial in this matter,
12 Plaintiff [Jane Doe] orally requested that her entire complaint be dismissed without
13 prejudice. Defendant objected to dismissing Plaintiff’s complaint without prejudice
14 since trial had commenced.

15 The court heard argument on the matter . . . on March 28, 2008. . . . It is ordered
16 and adjudged as follows:

- 17 1. Defendant’s cross-complaint is dismissed without prejudice.
- 18 2. Plaintiff’s complaint is dismissed with prejudice.

19 *Id.*

20 Plaintiff filed her first amended complaint in Case No. 07-5596 on November 5, 2007. Plaintiff
21 did not effectuate service on the San Mateo defendants until June 19, 2008. [Docket Nos. 44-47]

22 Now before the Court are motions to dismiss brought by the San Mateo City defendants, the San
23 Mateo County defendants, and the San Jose defendants.

24 LEGAL STANDARD

25 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it
26 fails to state a claim upon which relief can be granted. The question presented by a motion to dismiss
27 is not whether the plaintiff will prevail in the action, but whether the plaintiff is entitled to offer
28 evidence in support of the claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other*

² A court may take judicial notice of adjudicative facts. Fed. R. Evid. 201. The San Mateo City
defendants’ requests for the Court to take judicial notice of court filings in San Mateo County Superior
Court Civil Case Nos. 458747 and 458948 are GRANTED.

1 *grounds by Davis v. Scherer*, 468 U.S. 183 (1984).

2 In answering this question, the Court must assume that the plaintiff’s allegations are true and
3 must draw all reasonable inferences in the plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d
4 556, 561 (9th Cir. 1987). Even if the face of the pleadings suggests that the chance of recovery is
5 remote, the Court must allow the plaintiff to develop the case at this stage of the proceedings. *See*
6 *United States v. City of Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981).

7 In order for a federal court to have jurisdiction over a claim arising under 42 U.S.C. § 1983, two
8 essential elements must be alleged: (1) that a right secured by the Constitution or laws of the United
9 States was violated and (2) that the alleged violation was committed by a person acting under the color
10 of state law. *See West v. Atkins*, 487 U.S. 42, 49 (1988).

12 DISCUSSION

13 I. Collateral Estoppel

14
15 Plaintiff’s claims against Mason for sexual battery and infliction of emotional distress were
16 dismissed with prejudice on September 12, 2008. Plaintiff is now collaterally estopped from asserting
17 these claims.

18 “It is now settled that a federal court must give to a state-court judgment the same preclusive
19 effect as would be given that judgment under the law of the State in which the judgment was rendered.”
20 *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). Under California law, the
21 preclusive effect of a prior judgment is governed by the doctrine of res judicata, which has two aspects:
22 “the first is claim preclusion, . . . which prevents relitigation of the same cause of action in a second suit
23 between the same parties or parties in privity with them. The second is issue preclusion, or collateral
24 estoppel, which precludes relitigation of issues argued and decided in prior proceedings.” *Alpha Mech.,*
25 *Heating & Air Conditioning, Inc. v. Travelers Cas. & Sur. Co.*, 133 Cal. App. 4th 1319, 1327 (2005)
26 (citations omitted).

27 To determine whether a second action or proceeding is barred by collateral estoppel, the court
28 considers whether “1) the decision in the initial proceeding was final and on the merits, 2) the issue

1 sought to be precluded from relitigation is identical to that decided in the first action, and 3) was actually
2 and necessarily litigated in that action.” *Id.* at 1327. “In addition, 4) the party against whom preclusion
3 is sought must be the same as, or in privity with, the party to the first action.” *Le Parc Community Ass’n*
4 *v. Workers’ Comp. Appeals Bd.*, 110 Cal. App. 4th 1161, 1171 (2003).

5
6 **1. The decision in the state court proceeding was final and on the merits**

7
8 Plaintiff’s state-court suit against Mason for sexual battery and intentional and negligent
9 infliction of emotional distress was dismissed with prejudice. *See Burns Decl.*, at ex. A; *see also* City
10 of San Mateo Defendants Request for Judicial Notice, at ex. A (Judgment of Dismissal, Civil Case No.
11 458747). Dismissal with prejudice constitutes a final determination on the merits. *Roybal v. University*
12 *Ford*, 207 Cal. App. 3d 1080, 1085 (1989); *see also Torrey Pines Bank v. Superior Court*, 216 Cal. App.
13 3d 813, 820 (1989) (“Dismissal with prejudice is determinative of the issues in the action and precludes
14 the dismissing party from litigating those issues again.”).

15 Plaintiff alleges that collateral estoppel does not apply because the state-court action was
16 dismissed without prejudice. Plaintiff is incorrect. The San Mateo County Superior Court issued an
17 order on July 14, 2008 dismissing the case with prejudice, *see Burns Decl.*, at ex. A, and on September
18 12, 2008 confirmed that disposition with a judgment of dismissal, *see City of San Mateo Defendants’*
19 *Request for Judicial Notice*, ex. A. Plaintiff contends that the action was originally dismissed without
20 prejudice, but that the state court subsequently changed that judgment in violation of state law. *See Cal.*
21 *Civ. Code* § 663a (motion to set aside judgment must be made within 180 days after the entry of
22 judgment). If the San Mateo County Superior Court’s July 14 and September 12 orders were improper,
23 the proper forum for plaintiff to appeal those judgments is in state court. This Court has no jurisdiction
24 in this matter. *See Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003) (“It is a forbidden de facto appeal
25 . . . when the plaintiff in federal district court complains of a legal wrong allegedly committed by the
26 state court, and seeks relief from the judgment of that court.”).

27
28 **2. The issue sought to be precluded from relitigation is identical**

1 Defendants seek to preclude the issue of whether Mason was liable for sexual assault of plaintiff
2 on November 4, 2005. In plaintiff’s state-court suit against Mason, she alleged that he committed sexual
3 battery. The issues in the two cases are therefore identical.

4
5 **3. The issue defendants seek to preclude was actually and necessarily litigated**

6
7 Dismissal with prejudice is “equivalent to a judgment on the merits and as such bars further
8 litigation on the same subject matter between the parties.” *Le Parc*, 110 Cal. App. 4th at 1169. For
9 collateral estoppel purposes, therefore, the facts alleged in the original complaint are deemed to have
10 been litigated in the earlier action after they are dismissed with prejudice. *See Torrey Pines Bank*, 216
11 Cal. App. 3d at 822. Accordingly, the issue of whether Mason is liable for sexual assault was litigated
12 in the state-court case.

13
14 **4. The party against whom preclusion is sought is the same**

15
16 Defendants seek to assert issue preclusion against plaintiff, who was a party in the earlier case.
17 Accordingly, collateral estoppel applies in this case and plaintiff is precluded from bringing any claims
18 based on allegations that she was sexually assaulted by Mason on November 4, 2005. As discussed
19 below, the Court will grant plaintiff leave to amend her complaint. If plaintiff chooses to do so, she
20 cannot relitigate the issue of whether she was a victim of sexual assault.

21
22 **II. Service of Process**

23
24 Plaintiff filed her first amended complaint in Case No. 07-5596 on November 5, 2007 but did
25 not effectuate service on the City of San Mateo defendants until June 19, 2008. Federal Rule of Civil
26 Procedure 4(m) provides that a defendant must be served with 120 days after the complaint is filed. The
27 120-period expired on March 4, 2008. Plaintiff contends that she did not timely serve defendants
28 because she was attempting to retain counsel. *See Pl. Opp. to San Mateo County Defs. Mot. to Dismiss*,

1 at 3. Defendants have not demonstrated that they were prejudiced by the delay and they have now been
2 served. In light of plaintiff's status as a *pro se* litigant, the Court declines to dismiss plaintiff's
3 complaint.³

4
5 **III. Constitutional Claims**

6
7 The City of San Mateo, County of San Mateo, and City of San Jose defendants move to dismiss
8 the plaintiff's first amended complaint. Plaintiff's complaint fails to state cognizable claims under 42
9 U.S.C. §§ 1983 and 1985 or for negligence. Plaintiff contends that in her proposed second amended
10 complaint, she cures the deficiencies in her first amended complaint. She does not. The overarching
11 deficiency of many of plaintiff's claims is that she has not established that she has suffered an equal
12 protection violation. The Court is skeptical that plaintiff will be able to demonstrate that she was treated
13 differently than a similarly situated person and that the discriminatory treatment was on the basis of her
14 gender. Nonetheless, the Court will grant her leave to amend because she is a *pro se* litigant. If plaintiff
15 chooses to amend her complaint, she must: 1) clearly state which allegations are made against which
16 defendants; 2) allege facts sufficient to establish each element of each cause of action, as described
17 below; and 3) state the basis for federal jurisdiction over each claim. In addition plaintiff is estopped
18 from relitigating her claim that she was sexually assaulted by Officer Mason on November 4, 2005. She
19 cannot bring any causes of action that depend on that allegation.

20
21 **A. Equal Protection**

22 **1. Individual defendants**

23
24 To state a claim under the Equal Protection Clause against an individual defendant, a plaintiff
25 must allege that: 1) the plaintiff, compared with others similarly situated, was selectively treated; and
26

27
28

³ Plaintiff's motion for sanctions for the cost of personal service of summons is DENIED.

1 2) such selective treatment was based on an intent or purpose to discriminate against the plaintiff based
2 upon membership in a protected class. *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001).

3 Plaintiff has alleged no facts to support her contention either that she was similarly situated to
4 Mason, or that the police officers acted with an intent to discriminate against her because of her sex.
5 In order to succeed on this or any equal protection claim, plaintiff must allege that she is a member of
6 a protected class and that she was treated differently from people in the same situation as her because
7 of her membership in that class. For example, if plaintiff alleges an equal protection claim on the basis
8 of her status as a woman, she must allege that she was treated differently from men in her situation and
9 that the differential treatment was because she is a woman. Plaintiff cannot allege an equal protection
10 claim based on her status as a rape victim because this is not a protected class and because, as described
11 above, she is estopped from alleging that Officer Mason sexually assaulted her.

12 2. Municipal defendants

13
14 Generally, municipalities may not be held liable under § 1983 for the torts of their employees.
15 *Botello v. Gammick*, 413 F.3d 971, 978-79 (9th Cir. 2005). Local governing bodies can be sued under
16 § 1983, however, where the action that is alleged to be unconstitutional “implements or executes a
17 policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s
18 officers.” *Monell v. Dep’t of Soc. Serv. of City of New York*, 436 U.S. 658, 690 (1978). Local
19 governments may also be sued for “constitutional deprivations visited pursuant to governmental
20 ‘custom’ even though such a custom has not received formal approval through the body’s official
21 decisionmaking channels.” *Id.*

22 In order for the municipality to be liable under § 1983 for a violation of constitutional rights,
23 the plaintiff must establish that: 1) she possessed a constitutional right which was violated, 2) the
24 municipality had a policy, 3) the policy amounted to deliberate indifference to plaintiff’s constitutional
25 rights, and 4) the policy was the moving force behind the constitutional violation. *See Plumeau v.*
26 *School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997) (citation omitted). As to the last
27 requirement, the plaintiff must show “that the municipal action was taken with the requisite degree of
28

1 culpability and must demonstrate a direct causal link between the municipal action and the deprivation
2 of federal rights.” *County Commr’s of Bryan County v. Brown*, 520 U.S. 397, 404 (1997).

3
4 **B. Conspiracy to Discriminate**

5 To bring a cause of action under § 1985(3) against an individual, a plaintiff must allege four
6 elements:

7
8 1) a conspiracy; 2) for the purpose of depriving, either directly or indirectly, any person
9 or class of persons of the equal protection of the laws, or of equal privileges and
10 immunities under the laws; and 3) an act in furtherance of this conspiracy; 4) whereby
11 a person is either injured in his person or property or deprived of any right or privilege
of a citizen of the United States. Further, the second of these four elements requires that
in addition to identifying a legally protected right, a plaintiff must demonstrate a
deprivation of that right motivated by “some racial, or perhaps otherwise class-based,
invidiously discriminatory animus behind the conspirators’ action.”

12 *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (quoting *Griffith v. Breckenridge*, 403
13 U.S. 88, 102 (1971)). “A mere allegation of conspiracy without factual specificity is insufficient.”
14 *Karim-Panahi v. Los Angeles Police Dept.* 839 F.2d 621, 626 (9th Cir. 1988).

15 If plaintiff chooses to amend her complaint and includes a claim under § 1985(c), she must allege
16 facts to establish that defendants agreed among themselves to violate her equal protection rights by
17 discriminating against her based on her status in a protected class, as well as allege facts sufficient to
18 sustain municipal liability. She must also state against which defendants this claim is made.

19
20 **C. Due Process**

21
22 Plaintiff alleges that she was so severely intoxicated that she could not stand on her own, and
23 that police officers refused her requests for medical care while she was in custody. Complaint ¶¶ 30,
24 34.

25 The Due Process Clause of the Fourteenth Amendment guarantees individuals the right to
26 receive medical attention if they have a serious medical condition. “With regard to medical needs, the
27 due process clause imposes, at a minimum, the same duty the Eighth Amendment imposes: persons in
28

1 custody have the established right to not have officials remain deliberately indifferent to their serious
2 medical needs.” *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002) (citation omitted);
3 *see also City of Canton v. Harris*, 489 U.S. 378, 381 (1989).

4 If plaintiff amends her complaint to allege a due process violation against the individual
5 defendants for their failure to provide her with medical care, she must clarify against which defendants
6 the allegation is made. If plaintiff also alleges that the municipal defendants violated her due process
7 right to medical care while in police custody, she must additionally allege facts sufficient to sustain
8 municipal liability, as explained above.

9
10 **D. Negligent Hiring and Training**

11 As above, the four conditions that must be satisfied in order to establish municipal liability for
12 failing to act to preserve constitutional rights are: “1) that the plaintiff possessed a constitutional right
13 of which he was deprived; 2) that the municipality had a policy; 3) that this policy amounts to deliberate
14 indifference to the plaintiff’s constitutional right; and 4) that the policy is the moving force behind the
15 constitutional violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 834 (9th Cir. 1996) (quoting *City*
16 *of Canton v. Harris*, 489 U.S. 378, 389-91 (1989)).

17 These requirements also apply in the context of negligent training, supervision, and hiring
18 claims. *Id.* For liability to attach in this context, “the identified deficiency in a city’s training program
19 must be closely related to the ultimate injury. . . . Would the injury have been avoided had the employee
20 been trained under a program that was not deficient in the identified respect?” *Canton*, 489 U.S. at 391.

21
22 If plaintiff amends her complaint on this basis against the municipal defendants, she must clarify
23 which municipalities and must allege fact sufficient to sustain municipal liability, as explained above.

24
25 **E. Unreasonable Search and Seizure**

26
27 Plaintiff contends that she was strip searched at the San Mateo County Jail in violation of her
28 Fourth Amendment right to be free from unreasonable search and seizure. “Searches of pretrial

1 detainees in jail must be reasonable within the meaning of the Fourth Amendment.” *Thompson v. City*
2 *of Los Angeles*, 885 F.2d 1439, 1445 (9th Cir. 1989) (citing *Bell v. Wolfish*, 441 U.S. 520, 558 (1979)).
3 If plaintiff amends her complaint to allege a constitutional violation on the basis of the alleged strip
4 search, she must clarify against which individual defendants she is making this allegation. If she
5 amends her complaint on this basis against the municipal defendants, she must clarify which
6 municipalities and must allege facts sufficient to sustain municipal liability, as explained above.
7

8 Plaintiff’s first amended complaint is dismissed with leave to amend. Plaintiff should note that
9 her proposed second amended complaint, attached as an exhibit to her opposition motions, does not cure
10 any of the deficiencies noted above. If plaintiff amends her complaint, she is estopped from alleging
11 that she was sexually assaulted by Officer Mason on November 4, 2005. For each cause of action, she
12 must allege facts establishing each element described above, identify the specific defendants, and
13 explain the basis for federal jurisdiction. If plaintiff chooses to amend her complaint, she must file and
14 serve the amended complaint by November 18, 2008.

15
16 **IT IS SO ORDERED.**

17
18 Dated: October 29, 2008

19 
20 SUSAN ILLSTON
21 United States District Judge
22
23
24
25
26
27
28