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**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JENNA HALL,

No. C 09-1629 JL

Plaintiffs

**SUMMARY JUDGMENT  
(Granting Docket # 44)**

v.

CITY OF FREMONT; JEREMY  
MISKELLA, et al.,

Defendants.

Defendants' motion for summary judgment came on for hearing. Attorney for Plaintiff was Brad C. Brereton, CROWLEY & BRERETON. Attorney for Defendants was Gregory Mellon Fox, BERTRAND, FOX & ELLIOT. The Court carefully considered the moving and opposing pleadings, the supporting declarations, the arguments of counsel and the record in this case and hereby grants Defendants' Motion for summary judgment on all claims. Judgment shall be entered for Defendants.

**I. INTRODUCTION**

All parties consented to this Court's jurisdiction under 28 U.S.C. §636(c). The material facts presented in the instant motion are undisputed. Although Plaintiff repeatedly argues that the facts are in dispute, she has not identified any disputed issues of fact and she ignores that the facts presented are based upon her own testimony. Plaintiff, in

1 actuality, merely disagrees with the interpretation of the undisputed facts and their resulting  
2 legal significance. She improperly seeks to ignore controlling legal standards and to limit  
3 analysis solely to her statement about killing herself in isolation, while ignoring the totality of  
4 the circumstances surrounding her statement.

5         The undisputed evidence establishes that, at the time of the incident, Plaintiff was  
6 upset and irritated that officers were at her home conducting a welfare check in response to  
7 a report that her husband had threatened suicide. In addition, Plaintiff appeared to the  
8 responding police officers to be stressed and depressed by her responsibilities as the sole  
9 caretaker for her housebound, ailing husband and elderly father. Finally, she never denied  
10 saying, “I would rather kill myself than call you,” in response to Officer Miskella’s offer of a  
11 business card and future assistance. It also is undisputed that Plaintiff never said that she  
12 made the statement in jest or anger. Viewing her statement about killing herself in the  
13 context of the totality of the circumstances, as the Court must, the undisputed evidence  
14 establishes that probable cause supported Plaintiff’s detention for a §5150 mental health  
15 evaluation, her civil rights were not violated and Officer Miskella is entitled to qualified  
16 immunity from Plaintiff’s § 1983 claim and immunity under state law.

17         By stipulation of the parties, Plaintiff took the deposition of Sergeant Robert  
18 Alexander, the third officer present at Plaintiff’s house on the day of the incident. Sergeant  
19 Alexander was the acting sergeant with Officer Miskella at the scene of the incident and  
20 has experience with 5150 detentions, and he was able to provide additional information as  
21 to the standards and criteria used by police officers detaining persons under Cal. Wel. &  
22 Inst. Code 5150. Sergeant Alexander explained in his deposition that the foundational  
23 requirement to place someone on hold on the basis of Cal. Wel. & Inst. Code 5150 is  
24 evidence that they are “a danger to themselves, a danger to others, or gravely disabled”  
25 (Alexander Deposition 26: 6-12). When asked whether the statement made by the plaintiff,  
26 Jenna Hall, was sufficient evidence for the department to allow a detention, Sergeant  
27 Alexander responded “... that doesn’t sound like I want to harm, or I want to kill myself or  
28 others. That’s more of a – I’d rather die than fly Jet Blue again...” (Alexander Deposition

1 28:19 – 29:11). Sergeant Alexander further explained that while the standard to detain is,  
2 “is it a possibility or credible threat that this person might in fact carry out the action that  
3 they said. The statement [provided by plaintiff’s counsel], it seems like it’s more a  
4 statement of fact as to something else as opposed to I’m going to do this, or I feel like  
5 doing this.” (Alexander Deposition 30:11-13).

6 However, Plaintiff concedes Sergeant Alexander does not recall anything about the  
7 incident or Plaintiff, other than the unique placement of her home. (Alexander Deposition  
8 24:8-25:17). Sergeant Alexander consequently could not observe Plaintiff’s demeanor at  
9 the time of her exchange with officer Miskella.

10 The Court finds Plaintiff’s proffer of Sergeant Alexander’s testimony to be  
11 unconvincing. Plaintiff’s own testimony established that Sergeant Alexander was not  
12 present during her initial contact with the officers in which she was irritated, upset and  
13 uncooperative with their efforts to check on Mr. Foss. Sergeant Alexander only waited with  
14 Plaintiff in the living room while Officers Miskella and Hanrahan contacted Mr. Foss, and  
15 Sergeant Alexander left the scene and was not present when Plaintiff made the statement  
16 about killing herself. Sergeant Alexander was on the scene only briefly and was not present  
17 during any material time. Plaintiff’s own version of the events is the same as that presented  
18 in Defendants’ moving papers in all material aspects. All of the facts presented were  
19 derived from Plaintiff’s testimony, to avoid any factual disputes. In any event, reasonable  
20 officers may differ in their assessment of a situation and Sergeant Alexander’s testimony  
21 does not alter this Court’s conclusion regarding the reasonableness of Miskella’s conduct.

22 **II. Factual Background**

23 **A. Why Sally Shi, the caregiver for Plaintiff’s husband, called the police**

24 On January 14, 2008, Plaintiff’s husband, Jerry Foss, was alone in his bedroom with  
25 the door locked when his home healthcare nurse Sally Shi arrived. (Deposition of Jerry  
26 Foss, “Foss Deposition”, 10:12-21, 11:15-19, 14:3-21; Deposition of Plaintiff Jenna Hall,  
27 “Hall Deposition”, 21:13-23, 28:24-29:1.) Mr. Foss was homebound, suffering from  
28 numerous serious health ailments, and he received regular assistance from Sally through a

1 home health care service. (Hall Deposition, 31:2-8, 32:14-18, 34:4-24.) Plaintiff was Mr.  
2 Foss's primary, full-time caregiver, and also the full-time caregiver for her elderly father who  
3 lived in the house next door. (Hall Deposition, 29:9-11, 32:3-7, 62:6-16.)

4 When Sally spoke to Mr. Foss through the closed door, Mr. Foss heard her call his  
5 name, but could not understand what else she said. He responded, "I tried, but I can't do it  
6 myself." (Foss Deposition, 17:21-19:6.) Sally made two other statements and Mr. Foss  
7 replied in the same way because he believed Sally was talking about changing his  
8 colostomy bag. (Foss Deposition, 19:23- 20:6.) Sally apparently misunderstood what Mr.  
9 Foss said and she called 911 to report that she had asked Mr. Foss if he wanted to kill  
10 himself and he responded, "Yes, I want to kill myself but I cannot."

11 City of Fremont Police Officer Jeremy Miskella was on patrol when he received a call  
12 from dispatch reporting a suicide threat at Plaintiff's residence address. (Deposition of Ofc.  
13 Jeremy Miskella, "Miskella Deposition", 21:22-22:1, 22:14-15, 23:1-6.) He immediately  
14 drove there to conduct a welfare check to determine whether anyone there in fact had or  
15 was threatening to hurt themselves or anyone else. (Miskella Deposition, 24:16-20, 25:8-14,  
16 26:10-15, 39:7- 40:6.) Officer Mark Hanrahan was already at the scene and he and Officer  
17 Miskella approached the residence and knocked on the door. (Miskella Deposition,  
18 26:24-27:3, 28:6-12.) The officers received no response to a series of knocks, and they  
19 confirmed with dispatch that the reports were related to Plaintiff's residence address.  
20 Dispatch then attempted to telephone Plaintiff's residence but received no answer. One of  
21 the officers walked around to the back of the residence to see if there was another  
22 entrance and whether they could get a response at the alternate entrance. (Miskella  
23 Deposition, 28:16-29:10.)

24 Plaintiff was startled by a loud pounding on the door. (Hall Deposition 54:16-18). She  
25 jumped up to answer it and as she was approaching the door she heard a second loud  
26 knock. (Hall Deposition 56:12- 57:2). Plaintiff opened the door to find police officers  
27 standing at her front door. (Hall Deposition 63:1- 4) (Miskella Deposition 28:19-21). They  
28 explained they were there to do a check because it had been reported that someone in the

1 house was suicidal. (Hall Deposition 63:12-23) (Miskella Deposition 30:1-2, 31:14-16).  
2 Plaintiff told the officers that everything was fine and she explained Foss’s health situation  
3 to them. (Hall Deposition 65:14-18). The officers continued to insist on coming into the  
4 house to check on Foss and she repeatedly told them that he was fine. (Hall Deposition  
5 66:7-90) (Miskella Deposition 33:3-14). Plaintiff was irritated at the officers because she  
6 believed she was giving them all the information they were asking for but it was not  
7 satisfying them. (Hall Deposition 68:25- 69:3).

8 Finally, when Sergeant Alexander arrived on the scene and explained that the  
9 officers were required by law to check on Jerry Foss, Plaintiff allowed them into her home.  
10 (Hall Deposition 70:20-23 & 71:18-19). Plaintiff stayed in her living room with Sergeant  
11 Alexander while Officers Miskella and Hanrahan went to the bedroom to check on Foss.  
12 (Hall Deposition 71:25 – 72:15) (Miskella Deposition 35:18-19). Plaintiff and Sergeant  
13 Alexander listened to the officers in the bedroom question Foss. Finally, Sergeant  
14 Alexander said that the questioning was taking too long and he was going to “wrap it up.”  
15 (Hall Deposition 73:13-15). After the officers were finished talking to Foss, Sergeant  
16 Alexander and Officer Hanrahan left the house, and Officer Miskella stayed behind with  
17 Plaintiff. (Hall Deposition 76:10-13).

18 **B. Plaintiff alleges that Officer Miskella made a sexual advance which she**  
19 **rejected**

20 Plaintiff was sitting at her computer terminal in the living room when Officer Miskella  
21 entered the room, knelt down next to her chair, held out his business card and whispered in  
22 a soft voice, “If you ever need help, don’t hesitate to call me, I’ll be there.” (Hall Deposition  
23 75:9-19). Plaintiff turned to Officer Miskella and whispered back “I’d rather kill myself then  
24 call you.” (Hall Deposition 75:21-22).

25 **D. The arrest, for which Plaintiff alleges a claim for Assault and Battery**

26 Officer Miskella took Plaintiff by the arm and escorted her toward the front door and  
27 down the front steps. (Hall Deposition 82:7- 83:3). As Officer Miskella pulled her out of her  
28 home she repeatedly told him he was hurting her and asked him to let go of her. (Hall

1 Deposition 82:7-83:3).

2 **E. Plaintiff is transported to hospital and ultimately released**

3 Plaintiff was taken by ambulance to John George Hospital where she was  
4 processed, and eventually spoke to a psychiatrist. (Hall Deposition 132:13-133:17). Plaintiff  
5 was released that same day.

6 **III. ANALYSIS**

7 **A. The uncontroverted evidence establishes that Plaintiff’s civil rights were  
8 not violated and her claims under 42 U.S.C. § 1983 are unsupportable**

9 Detention for a mental health evaluation pursuant to Welf. & Inst. Code § 5150 is  
10 analyzed under the Fourth Amendment reasonableness standard and is analogous to a  
11 criminal arrest that must be supported by probable cause. (*Maag v. Wessler*, 960 F.2d 773  
12 , 775 (9th Cir. 1991); *Bias v. Moynihan*, 508 F.3d 1212, 1218 (9th Cir. 2007). ‘Probable  
13 cause’ by definition deals not with certainty, but with probabilities: “. . . the evidence thus  
14 collected must be seen and weighed not in terms of library analysis by scholars, but as  
15 understood by those versed in the field of law enforcement.” (*Illinois v. Gates*, 462 U.S.  
16 213, 231-232 (1983).) Police officers are not required to perform an error free investigation.  
17 (*Baker v. McCollan*, 443 U.S.137, 145 (1979).) All that is required is that – as here—the  
18 facts fall on the side of probability. (*Brinegar v. United States*, 338 U.S. 160, 176 (1949);  
19 *Beier v. City of Lewiston*, 354 F.3d 1058, 1065 (9th Cir. 2004).)

20 Under § 5150, probable cause exists for a mental health detention, “if facts are  
21 known to the officer ‘that would lead a person of ordinary care and prudence to believe, or  
22 to entertain a strong suspicion, that the person detained is mentally disordered and is a  
23 danger to himself or herself.’ ... To justify the detention, the officer must point to ‘specific  
24 and articulable facts which, taken together with rational inferences from those facts,  
25 reasonably warrant his or her belief or suspicion.’ ... ‘Each case must be decided on the  
26 facts and circumstances presented to the officer at the time of the detention ...’” (*Bias*, 508  
27 F.3d at 1220, *People v. Triplett*, 144 Cal.App.3d 283, 287-88 (1983).) “It is sufficient if the  
28

1 officer, as a lay person, can articulate behavioral symptoms of mental disorder, either  
2 temporary or prolonged....[G]enerally mental disorder might be exhibited if a person's  
3 thought processes as evidenced by words or actions or emotional affect, are bizarre or  
4 inappropriate for the circumstances." (*Triplett*, 144 Cal.App.3d at 288.)

5 In this case, the undisputed evidence establishes probable cause for Plaintiff's  
6 detention under § 5150. It is undisputed, and Plaintiff admitted in her deposition, that she  
7 was upset, irritated and uncooperative when the officers initially contacted her. She told  
8 Officer Miskella that her husband suffered from serious medical conditions that required  
9 home health care, and Officer Miskella observed Mr. Foss's condition when he contacted  
10 him in his bedroom. After seeing Mr. Foss's condition and Plaintiff's state, Officer Miskella  
11 offered her his business card and told her she could call him anytime. Plaintiff, by her own  
12 testimony, slowly and deliberately responded, " I'd rather kill myself than call you."

13 Based upon Officer Miskella's observations of Plaintiff's home life situation as the  
14 primary caregiver for her ailing husband, her demeanor and her upset state, he reasonably  
15 interpreted that her slow, deliberate statement that "I'd rather kill myself than call you."  
16 indicated that she might harm herself. A reasonable officer in the same circumstances  
17 would have believed that her statement about killing herself was bizarre or inappropriate  
18 under the circumstances, particularly given that the officers were in full police uniform at the  
19 residence investigating reports of a threatened suicide. Indeed, Plaintiff testified in her  
20 deposition that when the officers explained that they were there in response to reports of a  
21 suicide threat, the officers' manner showed "kind of a sense of urgency" for the potential  
22 seriousness of the situation. (See Plaintiff's deposition, 63:10-64:5, Ex A to Declaration of  
23 Joshua K. Clendenin ). Plaintiff did not appear to Miskella be making a joke when she  
24 stated she would rather kill herself. It is undisputed that she never said she was joking or  
25 did not mean what she said, and her own testimony indicates that the statement was made  
26 in a quiet, slow, serious manner.

27 Plaintiff's argument that Officer Miskella made a "sexual advance" towards her and  
28 that her statement "I'd rather kill myself than call you" was merely a rejection of his advance  
and should have been understood as such, is wholly unsupported by the undisputed

1 evidence. Based upon Plaintiff's own testimony, after Officer Miskella observed her upset,  
2 irritated state, after she detailed Mr. Foss's deteriorated physical condition, and after Officer  
3 Miskella contacted Mr. Foss and observed his compromised physical condition and  
4 Plaintiff's difficult living conditions, Officer Miskella merely offered her a business card and  
5 said in a soft voice, "If you ever need help, don't hesitate to call me, I'll be there."

6 It is undisputed that Officer Miskella never touched her in any way while offering his  
7 business card and future assistance, or at any time other than to escort her outside to  
8 detain her for a mental health evaluation. The entire basis for her claim that Officer Miskella  
9 "came on" to her is that he purportedly kneeled down next to her and "whispered in a soft  
10 voice" his offer of future assistance as he tried to hand her his business card. The  
11 undisputed, objective facts, based on Plaintiff's own testimony, do not in any way support a  
12 reasonable inference that Officer Miskella's offer of assistance and a business card was a  
13 "sexual advance" towards Plaintiff.

14 Plaintiff presents no disputed issues of material fact at all, merely her subjective  
15 interpretation of the undisputed facts analyzed using improper legal standards. While  
16 Plaintiff claims that she "understood" Officer Miskella's conduct to be "a sexual advance",  
17 nothing in the undisputed evidence reasonably supports her "understanding". Further,  
18 Plaintiff improperly seeks to limit the entire probable cause analysis to her statement, "I'd  
19 rather kill myself than call you." The law is clear, however, that probable cause must be  
20 determined based upon the totality of the circumstances known to the officer at the time;  
21 not with the 20/20 vision of hindsight, and not based upon a single statement viewed in  
22 isolation. Officer Miskella's determination to detain Plaintiff was not made based solely on  
23 her statement she would rather kill herself, irrespective of her demeanor, affect and difficult  
24 and stressful living situation, as any probable cause determination necessarily requires  
25 evaluation of the totality of the circumstances. Her claim that Officer Miskella did not testify  
26 that she sounded "sad or depressed" is immaterial, as §5150 does not require that  
27 someone exhibit feelings of being sad or depressed before they may be detained as a  
28 potential danger to themselves or others, nor is there any authority limiting harmful or  
suicidal conduct to persons deemed sad or depressed.



1 Plaintiff's argument about general reference to "death" as rhetorical speech or for  
2 purposes of emphasis in common speech is irrelevant. It is undisputed that she never  
3 informed the officers that she did not in fact intend to kill herself or that her statement about  
4 killing herself was made in jest, for emphasis, or in a rhetorical manner. Plaintiff again  
5 ignores the totality of the particular circumstances of this case. Plaintiff's statement that she  
6 would rather kill herself in response to a simple offer of assistance and a business card was  
7 unreasonable, and in light of the circumstances, reasonably indicated that Plaintiff was  
8 stressed over her home life and was a possible danger to herself.

9 Plaintiff's argument that Officer Miskella should have understood that she did not  
10 mean she really intended to kill herself when she said, "I'd rather kill myself than call you",  
11 but rather that she had made the statement because she was upset with the officers for  
12 intruding into her home, is likewise unsupported by the evidence. Officer Miskella did not,  
13 as Plaintiff misrepresents in her opposition, "force his way into" her home. Indeed, Plaintiff  
14 testified in her deposition that the officers spoke with her for a protracted period of time at  
15 her doorway trying to explain why they needed to check on Mr. Foss in light of the reported  
16 suicide threat, and that she only relented and allowed the officers into the house after  
17 Sergeant Alexander again explained to her that the police needed to investigate the suicide  
18 report themselves. Further, Plaintiff testified in her deposition that her statement, "I'd rather  
19 kill myself than call you," was made in a quiet, whispered manner, not in an angry, upset  
20 tone. Nor was her statement, purportedly made out of anger towards Officer Miskella and  
21 the police intrusion, directed towards the police. Rather, her statement specifically related  
22 to killing herself. Plaintiff's own testimony belies her argument that Officer Miskella should  
23 have known her statement was made in anger.

24 Plaintiff's attempt to isolate the Court's analysis to her statement as the sole basis  
25 for the §5150 detention and to have the Court ignore the undisputed evidence regarding  
26 her demeanor, behavior, statements about her difficult home life, Mr. Foss's condition, her  
27 stressful living conditions and the totality of the circumstances is directly contrary to  
28 controlling authority and unreasonable. The Court is required to consider the statement  
about killing herself in the context of the totality of circumstances surrounding the incident.

1 The undisputed circumstances establishes that probable cause existed for Plaintiff's 5150  
2 detention.

3 **B. Plaintiff's claim for excessive force under §1983 also is wholly**  
4 **unsupported by the undisputed evidence.**

5 To determine whether an officer's use of force was reasonable under the Fourth  
6 Amendment, the court should consider the totality of the circumstances. (*Graham v.*  
7 *Connor*, 490 U.S. 386, 396 (1989).) "The reasonableness of a particular use of force must  
8 be judged from the perspective of a reasonable officer on the scene, rather than with the  
9 20/20 vision of hindsight. . . .

10 Not every push or shove, even if it may later seem unnecessary in the peace of a  
11 judge's chambers . . . violates the Fourth Amendment."(*Id.* at 396-397.) Plaintiff testified  
12 that Officer Miskella only grabbed her forearm as he escorted her out of the house after  
13 deciding to detain her. She claims that he pressed on her arm, causing her to feel pain.  
14 She complained that he was hurting her and demanded he let go, and that he then let go of  
15 her arm once they were outside. She did not suffer any resulting injury. Based upon the  
16 totality of the circumstances, this Court finds that Officer Miskella's minimal use of force to  
17 escort Plaintiff out of her residence for a mental health evaluation was reasonable and did  
18 not violate the Fourth Amendment.

19 Plaintiff's argument that a triable issue of fact exists because there is a "factual  
20 dispute as to the officer's true motivations" is meritless, and misconstrues the Fourth  
21 Amendment reasonableness standard in this context. (Opposition 12:12-14.) The Supreme  
22 Court has plainly stated that:

23 As in other Fourth Amendment contexts . . . the "reasonableness" inquiry in an  
24 excessive force case is an objective one; the question is whether the officers'  
25 actions are "objectively reasonable" in light of the facts and circumstances  
26 confronting them, without regard to their underlying intent or motivation. . . . An  
27 officer's evil intentions will not make a Fourth Amendment violation out of an  
28 objectively reasonable use of force; nor will an officer's good intentions make an  
objectively unreasonable use of force constitutional. [Internal citations omitted.]

(*Graham*, 490 U.S. at 397; see also *Whren v. U.S.*, 517 U.S. 806, 813-815 (1996).) As  
detailed above, Plaintiff's detention was supported by probable cause and the minimal

1 force used was reasonable under the totality of the circumstances. Plaintiffs' speculation as  
2 to Officer Miskella's true motives is insufficient to raise a triable issue under the facts or  
3 law.

4       Based upon the undisputed evidence, the totality of the circumstances known to  
5 Officer Miskella at the time he detained Plaintiff were sufficient to support probable cause  
6 for a 5150 mental health evaluation as to whether Plaintiff was a danger to herself. Whether  
7 she in fact intended to kill herself is immaterial. The law does not require that police officers  
8 make an accurate medical diagnosis of mental disorder, but requires only that the officer,  
9 as a lay person, articulate behavioral symptoms of mental disorder based upon words,  
10 actions or emotional affect that are bizarre or inappropriate for the circumstances. Under  
11 the circumstances, Officer Miskella could not be expected to know that Plaintiff would  
12 entirely misconstrue his simple offer of a business card and future assistance, or that she  
13 did not intend to act on her statement that she would rather kill herself than to call him.  
14 Officer Miskella's decision to detain Plaintiff for a mental health evaluation under §5150  
15 was supported by probable cause and did not violate Plaintiff's Fourth Amendment rights.  
16 His minimal use of force during her escort out of the residence also was reasonable under  
17 the circumstances. Plaintiff's §1983 claim against Officer Miskella is unsupported by the  
18 undisputed evidence.

19       **C. Officer Miskella is entitled to qualified immunity from Plaintiff's § 1983**  
20       **Claim**

21       Plaintiff argues that her speculation about Officer Miskella's "true motivation"  
22 precludes a finding of qualified immunity, and she asserts that disputed issues of fact exist  
23 although she fails to identify any disputed facts or evidence. Whether Officer Miskella is  
24 entitled to qualified immunity based upon the undisputed facts is a question of law for the  
25 Court. Plaintiff's interpretation of the undisputed facts is not evidence and is insufficient to  
26 raise a triable issue.

27       Qualified immunity protects government officials from liability "insofar as their  
28 conduct does not violate clearly established statutory or constitutional rights of which a  
reasonable person would have known. ... qualified immunity applies regardless of whether

1 the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on  
2 mixed questions of law and fact.'" (*Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 815  
3 (2009).) Qualified immunity applies where a reasonable officer could have believed the  
4 conduct was justified, notwithstanding that reasonable officers could disagree on that issue.  
5 (*Reynolds v. County of San Diego*, 84 F.3d 1162, 1170 (9th Cir. 1996). (Overruled in part  
6 on other unrelated grounds, *Acri v. Varian Associates, Inc.*, 114 F.3d 999 (9th Cir. 1997). )  
7 A court discerns whether "the [officer] acted reasonably under settled law in the  
8 circumstances, not whether another reasonable, or more reasonable interpretation of the  
9 events can be constructed...after the fact." (*Hunter v. Bryant*, 502 U.S. 224, 228 (1991).)

10 The relevant, dispositive inquiry in determining whether a right is clearly established  
11 is whether it would be clear to a reasonable officer that his conduct was unlawful in the  
12 situation he confronted." (*Saucier v. Katz*, 533 U.S. 194, 202 (2001); *Brousseau v. Haugen*,  
13 543 U.S. 194, 205 (2004).) It is Plaintiff's burden to prove that the law governing the  
14 officers' conduct was "clearly established." (*Maraziti v. First Interstate Bank of Cal.*, 953  
15 F.2d 520, 523 (9th Cir. 1992).)

16 Accordingly, in determining whether the law is clearly established for a particular  
17 mental health detention, it is not enough to "determine the broad question of whether the  
18 seizure of [the detainee] violated the fourth amendment's proscription against unreasonable  
19 seizures...To do so would merely state [the detainee's] right in the abstract, rather than his  
20 rights under the particular circumstances of [the] case as the Supreme Court has  
21 mandated." (*Maag*, 960 F.2d at 775.) Moreover, "The Supreme Court has 'recognized that  
22 it is inevitable that law enforcement officials will in some cases reasonably but mistakenly  
23 conclude that probable cause is present.' . . . In such cases those officials should not be  
24 held personally liable." (*Rodis v. City and County of San Francisco*, 558 F.3d 964, 970- 71  
25 (9th Cir. 2009), citing *Hunter*, *supra*, and *Anderson v. Creighton*, 483 U.S. 635, 641  
26 (1987).)

27 In the instant case, the totality of the undisputed facts show that a reasonable officer  
28 would have believed there was probable cause to detain Plaintiff after she said she would  
rather kill herself than call Officer Miskella. Even if reasonable officers might disagree as to

1 whether Plaintiff's detention was warranted, and even if Officer Miskella was mistaken as to  
2 whether Plaintiff in fact was a danger to herself, his belief was reasonable under the  
3 circumstances and he is entitled to qualified immunity from Plaintiff's §1983 claim.

4 Plaintiff fails to meet her burden to establish that the law governing Officer Miskella's  
5 conduct in this particular case was clearly established. Her attempt to summarily dispense  
6 with this element by relying on the broad, general proposition that, "There is no question  
7 that a person has a constitutional right to be free from detention without probable cause,  
8 therefore, only the second prong of the qualified immunity test is at issue here" is improper  
9 and unavailing.

10 The Supreme Court repeatedly has made clear that inquiry as to whether the law  
11 was clearly established "must be undertaken in light of the specific context of the case, not  
12 as a broad general proposition." (*Saucier*, 533 U.S. at 205.) As the Supreme Court  
13 explained in *Brousseau*, supra:

14 Because the focus is on whether the officer had fair notice that her conduct was  
15 unlawful, ... If the law at that time did not clearly establish that the officer's conduct  
16 would violate the Constitution, the officer should not be subject to liability ...  
17 It is important to emphasize that this inquiry "must be undertaken in light of the  
18 specific context of the case, not as a broad general proposition."  
19 [*Saucier*, supra], at 201 ... As we previously said in this very context:  
20 "[T]here is no doubt that *Graham v. Connor*, supra clearly establishes the general  
21 proposition that use of force is contrary to the Fourth Amendment if it is excessive  
22 under objective standards of reasonableness. Yet that is not enough. Rather ... 'the  
23 right the official is alleged to have violated must have been "clearly established" in a  
24 more particularized, and hence more relevant, sense: The contours of the right must  
25 be sufficiently clear that a reasonable official would understand that what he is doing  
26 violates that right.'

21 [*Anderson*, 483 U.S. at 640.] The relevant, dispositive inquiry in determining whether a right  
22 is clearly established is whether it would be clear to a reasonable officer that his conduct  
23 was unlawful in the situation he confronted." *Id.* at 201-202... (*Brousseau*, 543 U.S. at  
24 198-199.) The general test of reasonableness set out in *Graham* is "cast at a high level of  
25 generality" and only provides "clearly established" law in obvious cases. (*Id.* at 199.)

26 The undisputed facts here do not present an "obvious" case in which Officer Miskella  
27 should have known that he was required to disregard Plaintiff's admittedly aggravated  
28 demeanor and her extremely difficult living situation, to understand that Plaintiff

1 misconstrued his simple offer of assistance and a business card as a sexual advance, and  
2 understand that her statement “I’d rather kill myself than call you” was not sincere. Officer  
3 Miskella determined that probable cause existed for Plaintiff’s mental health detention  
4 based upon the totality of the circumstances known to him at the time, and the law was not  
5 clearly established that his determination under those circumstances was wrongful. Plaintiff  
6 has not presented any authority at all suggesting that his determination of probable cause  
7 under even somewhat similar circumstances was wrongful. Indeed, although Plaintiff  
8 attempts to justify her statement by characterizing Officer Miskella’s conduct as a sexual  
9 advance, she presents no authority at all that Officer Miskella should have known that  
10 offering a police business card and future assistance to an apparently distraught individual  
11 living in a stressful situation, even stated in a “whisper” or “soft voice,” somehow could be  
12 construed as a sexual advance which might justify her statement about killing herself.  
13 Plaintiff failed to meet her burden to show the law governing Officer Miskella’s conduct was  
14 clearly established in any relevant sense.

15           Moreover, Plaintiff’s attempt to ignore the totality of the circumstances and focus  
16 entirely on her statement “I’d rather kill myself than call you,” “calmly delivered” in a  
17 “whisper,” again is improper under well-settled authority. Her argument that probable cause  
18 did not exist because there is no evidence Plaintiff in fact “was depressed, had a history of  
19 depression, was acting irrationally, or was overly excited,” did not show “incoherent or  
20 irrational conduct or speech” and had “no physical evidence of injury or threat to anyone” is  
21 unsupported in law and fact. Detention under §5150 does not require such manifestations  
22 for a determination that an individual is a danger to themselves or others because of a  
23 mental disorder. Further, the undisputed evidence in fact shows that Plaintiff was acting  
24 irrationally by “calmly” and quietly making a statement to a uniformed police officer  
25 investigating reports of a threatened suicide in which she specifically stated she would  
26 rather kill herself. Her claim that qualified immunity should be denied because a triable  
27 issue of fact exists as to whether Officer Miskella was “coming on” to her is meritless. The  
28 facts in the instant motion are undisputed and based on Plaintiff’s own testimony. Her  
testimony that Officer Miskella knelt down, offered her a business card and quietly

1 “whispered” “If you ever need help, don’t hesitate to call me, I’ll be there,” with absolutely  
2 nothing more, does not even support an inference of a sexual advance. Her unreasonable  
3 characterization of his offer of assistance in her stressful living situation does not raise a  
4 triable issue.

5 Plaintiff likewise fails to identify any authority or facts that preclude qualified  
6 immunity as to her excessive force claim. Officer Miskella used minimal force to escort  
7 Plaintiff out of the house, which did not result in any injury to her. Officers are permitted to  
8 use reasonable force to effectuate an arrest, and not every push or shove violates the  
9 Fourth Amendment. Based upon the law and undisputed evidence, Officer Miskella is  
10 entitled to qualified immunity from Plaintiff’s §1983 claim for unreasonable detention and  
11 excessive force.

12 **D. The undisputed evidence fails to support Plaintiff’s Assault and Battery**  
13 **Claim**

14 Plaintiff’s claim for assault and battery under state law is barred by Welf. & Inst.  
15 Code § 5278 and is unsupported by the undisputed evidence. “Section 5278 provides that  
16 an individual authorized to detain a person pursuant to section 5150 ‘shall not be held  
17 either criminally or civilly liable for exercising this authority in accordance with the law.’”  
18 (*Bias*, 508 F.3d at 1221; Welf. & Inst. Code § 5278.) A detention for mental health  
19 evaluation under § 5150 that is supported by probable cause is a detention “in accordance  
20 with the law”, and state law torts based upon the detention are barred by §5278. (*Id.* at  
21 1221-1222; *Heater v. Southwood Psychiatric Ctr.*, 42 Cal.App.4th 1068, 1083 (1996).)  
22 Plaintiff’s detention in the instant case was supported by probable cause, so her detention  
23 was “in accordance with the law”. Plaintiff’s assault and battery claim based upon Officer  
24 Miskella’s grabbing her arm to escort her out of the residence to detain her for evaluation,  
25 therefore, is barred by §5278. She was not handcuffed.

26 Moreover, irrespective of §5278, the undisputed evidence does not support Plaintiff’s  
27 assault and battery claim. Officer Miskella’s took Plaintiff’s arm to escort her outside. The  
28 detention was brief, minimal and did not cause any injury. His minimal contact with Plaintiff  
was reasonable and privileged pursuant to her detention, and there is no evidence that he

1 intended to harm or offend Plaintiff by grabbing her arm. Plaintiff’s assault and battery claim  
2 is meritless.

3 **E. The undisputed evidence fails to support a claim for Intentional**  
4 **Infliction of Emotional Distress**

5 Plaintiff’s detention was supported by probable cause and in “accordance with the  
6 law,” her claim for intentional infliction of emotional distress is barred by Welf. & Inst. Code  
7 5278. Her emotional distress claim also is barred by Govt. Code § 856, which “affords  
8 public entities and their employees absolute protection from liability for ‘any injury resulting  
9 from determining in accordance with any applicable enactment...whether to confine a  
10 person for mental illness...” (*Johnson v. County of Los Angeles*, 143 Cal.App.3d 298, 314  
11 (1983).) §856 “provides immunity only for injuries resulting from the determination whether  
12 to confine, but provides for liability when a public employee negligently carries out that  
13 determination.” (*Id.*; Cal. Gov. Code 856.) The California “Supreme Court has expressly  
14 held that the scope of the immunity granted in section 856, subdivision (a)(1) ‘extends not  
15 only to the final determination to confine or not to confine the person for mental illness, but  
16 to all determinations involved in the process of commitment.” [Italics in original.] (*Johnson*,  
17 143 Cal.App.3d at 315, citing *Tarasoff v. Regents of University of California*, 17 Cal.3d.  
18 425, 448 (1976).) Officer Miskella’s determination that Plaintiff should be detained for  
19 evaluation pursuant to § 5150 also falls within the immunity granted by § 856. His only  
20 conduct occurred during “the process of commitment” and there is no evidence of any  
21 negligent or wrongful conduct during the course of Plaintiff’s confinement. Officer Miskella  
22 is entitled to immunity from Plaintiff’s intentional infliction of emotional distress claim under  
23 §856.

24 Plaintiff’s argument that §856 immunity does not apply because her detention was  
25 not supported by probable cause is meritless. The totality of the undisputed circumstances  
26 establishes probable cause supporting her detention. Plaintiff also misapprehends the  
27 exceptions to §856, which are limited to “careless or wrongful behavior *subsequent* to a  
28 decision respecting confinement”. (*Johnson*, 143 Cal.App.3d at 315-16. The exceptions do  
not apply to the determination whether to confine an individual, as such an exception would



1 render the immunity a nullity. (*Id.*) Plaintiff also is incorrect in asserting that Welf. & Inst.  
2 Code § 5278 is the only immunity that could apply in this case because §856 is a “more  
3 general immunity.” She ignores that §856 specifically protects public entities and their  
4 employees from liability for determining whether to confine a person for mental illness.  
5 Given that Officer Miskella is a public employee of the City, §856 is applicable in this case.

6 Moreover, Plaintiff’s intentional infliction of emotional distress claim fails because the  
7 undisputed evidence fails to show egregious, intentional conduct by Officer Miskella.  
8 (*Aquino v. Superior Court*, 21 Cal. App. 4th 847, 856 (1993), see also, *Wong v. Tai Jing*,  
9 189 Cal.App.4th 1354 (2010).) The undisputed evidence fails to show outrageous conduct  
10 by Officer Miskella, or that he intended to cause Plaintiff emotional distress or recklessly  
11 disregarded the probability that emotional that distress would result, particularly since  
12 probable cause supported Plaintiff’s detention. Her belief that the 5150 detention was  
13 initiated in retaliation for her rejection of Officer Miskella’s purported “come on” is wholly  
14 unsupported by her own testimony, or any other evidence, and is pure speculation. The  
15 intentional infliction of emotional distress claim is wholly unupportable.

16 **F. The undisputed facts do not support a Claim for False Arrest or False**  
17 **Imprisonment**

18 Officer Miskella cannot be liable for false arrest or false imprisonment because  
19 probable cause existed for Plaintiff’s detention. (*O’Toole v. Superior Court*, 140 Cal.App.4th  
20 488, 511-512 (2006); Penal Code § 847.) Moreover, Plaintiff’s false arrest and false  
21 imprisonment claims arise out of Officer Miskella’s decision to detain her for evaluation  
22 under §5150. His conduct also falls within the protections of Welf. & Inst. Code § 5278 and  
23 the immunity provisions of Govt. Code § 856. Based upon the undisputed facts, Plaintiff’s  
24 false arrest and imprisonment claims are unupportable.

25 **G. Officer Miskella is also entitled to immunity under Government Code §**  
26 **820.2**

27 “The discretionary immunity rule is restated here in [Section 820.2 in] statutory form  
28 to ensure that, unless otherwise provided by statute, public employees will continue to  
remain immune from liability for their discretionary acts within the scope of their

1 employment.” (*Caldwell v. Montoya*, 10 Cal.4th 972, 986 (1995); Legislative Committee  
2 Comment to Govt. Code § 820.2.) “[P]ublic employees are immune for their discretionary  
3 acts, even those which constitute breaches of actionable duty, unless a statute otherwise  
4 provides.” (*Caldwell*, 10 Cal.4th at 984.) §820.2 “immunizes discretionary decisions  
5 ‘whether or not such discretion be abused.’” (*Ortega v. Sacramento County Dept. of Health*  
6 *and Human Servs.*, 161 Cal.App.4th 713, 728 (2008.) “[T]he exercise of discretion  
7 invariably details the collection and evaluation of information. Thus, the collection and  
8 evaluation of information is an integral part of ‘the exercise of the discretion’ immunized by  
9 section 820.2.” (*Id.* at 733.)

10 Based upon the undisputed evidence in this case, Officer Miskella’s decision to  
11 detain Plaintiff for a 5150 mental health evaluation was supported by probable cause. His  
12 decision necessarily involved personal deliberation, decision and judgment. Officer  
13 Miskella’s exercise of discretion as to whether to detain Plaintiff, and whether to hold onto  
14 her arm while escorting her outside, even if exercised badly, is subject to immunity under §  
15 820.2.

16 **H. Plaintiff’s claim against the City for vicarious liability is unsupported**

17 Plaintiff’s state law vicarious liability claim against the City is barred by Govt. Code §  
18 815.2(b), which provides that a public entity is immune from liability to the same extent the  
19 public employee is immune. The undisputed evidence fails to support Plaintiff’s claims  
20 against Officer Miskella, and he is immune from liability under Welf. & Inst. Code § 5278  
21 and Govt. Code §§ 820.2 and 856. Plaintiff’s vicarious liability claim against the City also  
22 fails under §815.2.

23 **I. Objections To Plaintiff’s Evidence**

24 Defendants object to the following hearsay in Plaintiff’s factual statement: “While  
25 Plaintiff and Officer Hanrahan were waiting, Plaintiff asked Officer Hanrahan what was  
26 wrong with Officer Miskella and he told her that Officer Miskella was being a ‘hardnose’ and  
27 that ‘this shouldn’t be happening.” (Opposition, 4:24-27.) This statement is offered for the  
28 truth of the matter asserted and does not come within any exception to the hearsay rule.  
The Court excludes this statement as hearsay but also finds that it would not have had any

1 effect on the Court's analysis. Again, reasonable officers may differ, and this does not tip  
2 the balance away from qualified immunity for Officer Miskella in this case.

3 **IV. CONCLUSION**

4 Summary judgment is hereby be granted in favor of the City and Officer Miskella.  
5 Judgment shall be entered for Defendants. The clerk shall close the file.

6 IT IS SO ORDERED.

7 DATED: May 23, 2011



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James Larson  
U.S. Magistrate Judge

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