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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TAMARA JOHNSTON,

Plaintiff,

v.

COUNTY OF SONOMA, et al.,

Defendants.

No. C 10-03592 CRB

**ORDER GRANTING MOTION TO  
DISMISS IN PART**

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This is a case against the County of Sonoma, the Sheriff and Sheriff's Department, and three individual officers stemming from an arrest. Plaintiff Tamara Johnston makes claims for excessive force, Monell liability, unlawful seizure and imprisonment, and failure to respect her right to refuse medical treatment. Defendants have moved to dismiss certain Defendants and claims. The Motion is GRANTED in part and DENIED in part as follows.<sup>1</sup>

**I. BACKGROUND<sup>2</sup>**

Just before 10:00 p.m. on August 15, 2008, Johnston fell in her driveway. Compl. (Dkt. 1) ¶ 19. Shortly thereafter, one of Johnston's neighbors called 911 to report that she had fallen and might be injured. Id. ¶ 20. Three officers responded to the call: Juan Valencia, John Gillette, and Jeffrey Toney. Id. ¶¶ 23. Upon their arrival, Officer Valencia

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<sup>1</sup> The Court finds this matter appropriate for disposition without argument.

<sup>2</sup> As this matter comes before the Court on a motion to dismiss, the facts are presented in the light most favorable to Plaintiff and drawn from the Complaint and judicially noticeable sources.

1 interviewed Johnston’s husband, and Officers Gillette and Toney opened a private gate and  
2 entered Johnston’s property while she was lying on the ground. Id. ¶ 22-23. Officer Gillette  
3 ordered Johnston to her feet, but she informed him that she had recently hurt her knee. Id. ¶  
4 26. Officer Gillette responded that medical personnel were going to treat her knee, but she  
5 “clearly and unequivocally informed [Officers Gillette and Toney] that she did not wish to  
6 receive medical treatment.” Id. ¶ 28. Officer Gillette reiterated his order to Johnston that she  
7 stand. Id. ¶ 29. She refused. Id. ¶ 30.

8 At that point, Officer Gillette “initiated harsh and aggressive physical contact with  
9 [Johnston’s] person . . . to force [Johnston] to her feet[,]” and “[Officer Toney] also  
10 aggressively grabbed Plaintiff’s arms and shoulders in an attempt to force Plaintiff to stand  
11 on her injured knee.” Id. ¶¶ 31-32. When the Officers were unable to force her to stand,  
12 “both aggressively and forcefully forced her back onto the ground and handcuffed [her.]” Id.  
13 ¶ 34. Then, notwithstanding “repeated refusals, [Officers Gillette and Toney] forced  
14 [Johnston] to submit to medical treatment by paramedics who arrived on the scene.” Id. ¶ 35.  
15 Following receipt of the unwanted medical treatment, Johnston was placed into a police car  
16 and told she was being arrested for “trying to escape.” Id. ¶ 38.

17 Two days after the incident, all three officers prepared and submitted police reports  
18 that “contained misrepresentations of fact, false statements, exaggerations, and intentional  
19 omissions of material and/or exculpatory facts” and did so for the purpose of covering up  
20 each others’ misdeeds. Id. ¶ 39.

21 Johnston was charged with violating California Penal Code Section 148(a)(1)  
22 (resisting arrest). Id. ¶ 41. In the course of Johnston’s criminal proceeding, the State Court  
23 ruled that the Officers’ entry onto her property and her detention for medical treatment were  
24 lawful. Request for Judicial Notice (Dkt. 9) Ex. B. The criminal action was conditionally  
25 dismissed subject to Johnston “obeying all laws” for one year. Id. Ex. A.

26 Johnston filed suit in this Court on August 13, 2010 and asserts four claims under 42  
27 U.S.C. § 1983: excessive force, Monell, unlawful seizure and imprisonment, and forced  
28 medical treatment. Defendants have moved to dismiss the Monell and medical treatment

1 claims and also assert more generally that (1) the claims against Officer Valencia should be  
2 dismissed; and (2) the Complaint generally fails to state a claim under the First, Fifth, and  
3 Eighth Amendments. Mot. to Dismiss Compl. (Dkt. 18) at 2.

## 4 **II. LEGAL STANDARD**

5 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims  
6 alleged in a complaint. Ileto v. Glock, Inc., 349 F.3d 1191, 1199-1200 (9th Cir. 2003).  
7 Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a “short and plain  
8 statement of the claim showing that the pleader is entitled to relief.” “Detailed factual  
9 allegations” are not required, but the Rule does call for sufficient factual matter, accepted as  
10 true, to “state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 129 S. Ct.  
11 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)).  
12 According to the Supreme Court, “a claim has facial plausibility when the plaintiff pleads  
13 factual content that allows the court to draw the reasonable inference that the defendant is  
14 liable for the misconduct alleged.” Id. at 1949-50. In determining facial plausibility,  
15 whether a complaint states a plausible claim is a “context-specific task that requires the  
16 reviewing court to draw on its judicial experience and common sense.” Id. at 1950.

## 17 **III. DISCUSSION**

### 18 **A. The Claims Against the Sheriff and County Are Dismissed**

#### 19 **1. The Sheriff is Immune and, in any Case, Plaintiff Has Not Stated a 20 Claim Against Him**

21 Whether sheriffs are state or local officials for purposes of section 1983 suits  
22 challenging police practices is a somewhat open question. The answer to that question is  
23 important, because state actors acting in their official capacities are entitled to Eleventh  
24 Amendment immunity whereas actors for political subdivisions (like counties) are not. See  
25 Pittman v. Oregon, Employment Dept., 509 F.3d 1065, 1071 (9th Cir. 2007). In one view,  
26 adopted by Judge Seeborg and others and based on Venegas v. County of Los Angeles, 32  
27 Cal. 4th 820 (2004), sheriffs are state actors entitled to Eleventh Amendment immunity at  
28 least where, as here, their activities relate to law enforcement duties within their jurisdictions.  
Committee for Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma, No. C 08-4220-RS,

1 2010 WL 2465030 at \*3 (N.D. Cal. June 11, 2010). Other district courts continue to adhere  
2 to the Ninth Circuit’s ruling in Brewster v. Shasta County, 275 F.3d 803, 812 (9th Cir. 2001),  
3 which held that sheriffs are not immune from section 1983 suits when engaged in law  
4 enforcement duties because even in that context they act as the final policymaker for a  
5 county. See, e.g., Fontana v. Alpine Cty., – F. Supp. 2d ----, 2010 WL 3834823 (E.D. Cal.  
6 2010) (“To the extent the conduct at issue in this case constitutes ‘law enforcement’ duties,  
7 the court is bound by Ninth Circuit precedent, specifically, Brewster . . .”).

8 In this Court’s view, Judge Seeborg has the more sensible position not because the  
9 Venegas case is binding but because “it represents the correct statement of the function of  
10 California sheriffs.” Committee for Immigrant Rights of Sonoma Cty., 2010 WL 2465030 at  
11 \*3 (citing Walker v. Cty. of Santa Clara, No. C 04-02211 RMW, 2005 WL 2437037 at \*4  
12 (N.D. Cal. Sept. 30, 2005) (“[T]he Ninth Circuit’s decision in Brewster is directly at odds  
13 with the California Supreme Court’s subsequent holding in Venegas that California sheriffs  
14 are state officers while performing law enforcement duties, and although this court need not  
15 ‘blindly accept’ the Venegas court’s decision, . . . the California Supreme Court’s decision  
16 comports with this court’s understanding of the function of California sheriffs.”) (citation  
17 omitted).

18 Even if this Court were to conclude that the claims against the Sheriff are not barred  
19 by immunity, Johnston has failed to state a plausible claim against the Sheriff. The  
20 allegations concerning the Sheriff’s official actions as county policymaker are entirely  
21 conclusory.

22 Accordingly, the claim against the Sheriff is DISMISSED with prejudice.

23 **2. The Monell Claim is Not Plausibly Pleaded**

24 For substantially the same reasons that Johnston has failed to state a plausible claim  
25 against the Sheriff (assuming he is not immune), she has also failed to state a Monell claim  
26 against Sonoma County and/or the Sonoma County Sheriff’s Department. See Monell v.  
27 Dept. of Social Servs., 436 U.S. 658, 691-94 (1978). Accordingly, the Monell claim is  
28 dismissed. The dismissal of the Monell claim is without prejudice.

1           **B.       The Claims Against Officer Valencia Are Dismissed**

2           The only allegations in the Complaint concerning Officer Valencia are that (1) he  
3 interviewed Johnston’s husband; (2) he filed a police report containing “misrepresentations  
4 of fact, false statements, exaggerations, and intentional omissions of material and/or  
5 exculpatory facts” and (3) he filed the false police report in the course of “conspir[ing] and  
6 act[ing] in concert in order to cover up the misdeeds of [his] fellow defendants . . . .”  
7 Compl. (Dkt. 1) ¶¶ 39-40.

8           On the basis of these allegations, Officer Valencia is named as a Defendant in causes  
9 of action for (1) unlawful seizure and imprisonment; and (2) failure to respect Johnston’s  
10 right to refuse medical treatment. The theory is essentially that Valencia was an after-the-  
11 fact conspirator in the violation of Johnston’s rights and participated in a cover-up.<sup>3</sup>

12           A “cover up” theory of section 1983 liability is only viable where the cover-up itself  
13 deprives a plaintiff of constitutional rights. See Harmon v. City of St. Louis County, 2009  
14 WL 880024 at \*3 (E.D. Mo. Mar. 30, 2009) (“There is no constitutional right to an accurate  
15 police report,” and an officer’s falsification of a report “only constitutes a due process  
16 violation when the alleged falsified report leads to an unconstitutional deprivation of life,  
17 liberty, or property.”) (collecting cases). Here, taking the Complaint as true, Johnston’s  
18 liberty interests were already impaired when Valencia filed the police report. Officers  
19 Gillette and Toney had already forced her to submit to medical treatment for her knee and  
20 arrested her for violating California Penal Code section 148. Thus, even if Officer Valencia  
21 filed a false police report to help cover-up Officer Gillette’s and Officer Toney’s misdeeds,  
22 such action is not alleged to have caused the deprivation of Johnston’s constitutional rights at  
23 issue in this case.<sup>4</sup>

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25           <sup>3</sup> The Complaint does not include a specific cause of action for conspiracy, but reading the  
26 allegations liberally in Johnston’s favor, the Court assumes that her allegations regarding Valencia  
sound, if at all, in a conspiracy framework.

27           <sup>4</sup> Even assuming Johnston has pleaded that Officer Valencia’s filing of a false police report  
28 contributed to the deprivation of her liberty interest, her conspiracy claim fails for lack of plausibility.  
A plausible conspiracy claim requires more than pleading disagreement with the contents of multiple  
police reports that appear to tell the same story. See Haggins v. City of St. Paul, Civ. No. 09-537

1 Therefore, the claims against Officer Valencia are DISMISSED without prejudice.

2 **C. The Claim for “Failure to Respect Plaintiff’s Right to Refusal Medical  
3 Treatment” Is Viable**

4 Defendants argue that Johnston’s claim based on her alleged forced medical treatment  
5 is not viable because “[t]here is simply no constitutionally protected interest protecting a  
6 person from having a knee looked at by medically trained personnel in response to a 911 call  
7 for assistance.” Defs.’ Mot. to Dismiss (Dkt. 18) at 8. Defendants cite no authority for the  
8 proposition that a person lacks a liberty interest in refusing medical treatment of the sort  
9 administered here and admit that, as a general matter, claims of forced medical treatment  
10 usually require “evidentiary considerations” balancing the liberty interest against the relevant  
11 state interests. *Id.* at 7-8. Although it is true that the liberty interest in not having paramedics  
12 examine a knee is less significant than the liberty interest in not being forced to receive life  
13 sustaining treatment, *see Cruzan v. Missouri Dept. of Health*, 497 U.S. 261, 278 (1990), such  
14 does not mean that there is no liberty interest implicated when the police force someone to  
15 submit to treatment by paramedics.

16 Accordingly, Defendants’ Motion to Dismiss the forced medical treatment claim  
17 against Officers Gillette and Toney is DENIED.

18 **D. Claims Under the First, Fifth, and Eighth Amendments**

19 Defendants also move to dismiss Johnston’s claims to the extent brought under the  
20 First, Fifth, and Eighth Amendments on the basis that such Amendments are not relevant to  
21 the causes of action alleged.

22 Johnston has pleaded four specific causes of action in her Complaint. Although she  
23 may have pleaded certain legal bases for those claims that are not applicable, each cause of  
24 action (other than, at this point, the Monell claim) has a legal basis. Accordingly, at this time

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27 (DWF/RLE), 2010 WL 1380134 at \*12 n.6 (D. Minn. Mar. 1, 2010) (“If the Plaintiff’s claim can be read  
28 to allege a conspiracy to violate civil rights, by the filing of false police reports, then we would also find  
that he has failed to adequately plead such a claim, because he has not pled any facts which could  
support ‘a meeting of the minds’ to support such a claim, but instead, has relied upon his disagreement  
with the version of facts that is contained in the Defendants’ police reports . . .”).

1 there is no reason to “dismiss” claims to the extent brought pursuant to allegedly irrelevant  
2 Constitutional provisions.

3 **IV. CONCLUSION**

4 Defendants’ Motion is granted in part and denied in part. Specifically:

- 5 • The claims against the Sheriff are dismissed with prejudice;
- 6 • The Monell claim is dismissed without prejudice;
- 7 • The claims against Officer Valencia are dismissed without prejudice; and
- 8 • The Motion is DENIED in all other respects.

9 Any amended complaint with respect to the claims dismissed without prejudice must  
10 be filed by April 1, 2011.

11 **IT IS SO ORDERED.**

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14 Dated: March 9, 2011



CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

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