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

RHIANNIN SKEELS,  
Plaintiff,  
v.  
KENDRICK PILEGAARD, et al.,  
Defendants.

NO. C12-2175 TEH

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE  
PLEADINGS AND ALLOWING  
PLAINTIFF LEAVE TO FILE  
MOTION TO MODIFY CASE  
MANAGEMENT ORDER

12 This matter came before the Court on October 7, 2013, on Defendant County of Marin  
13 ("County")'s motion for judgment on the pleadings. Having carefully considered the parties'  
14 written and oral arguments, the Court GRANTS the County's motion for the reasons  
15 discussed below. In addition, the Court will allow Plaintiff Rhiannin Skeels ("Plaintiff") an  
16 opportunity to demonstrate that good cause exists for modifying the previously ordered  
17 July 1, 2013 deadline for amending the complaint. If Plaintiff fails to show good cause, the  
18 County's motion will be granted with prejudice.

19  
20 **BACKGROUND**

21 On April 1, 2013, the Court held a case management conference with the parties. At  
22 the conference, the Court imposed a deadline of July 1, 2013 as the last day to amend the  
23 complaint to name individual defendants. Apr. 1, 2013 Minute Order (Docket No. 68.) On  
24 April 29, 2013, Plaintiff received discovery from the County that formally disclosed the  
25 names of sheriff's deputies at Marin County Jail ("MCJ"). Anderson Decl. ¶ 8 (Docket No.  
26 86-1.) On May 3, 2013, Plaintiff filed the Third Amended Complaint ("TAC"). (Docket No.  
27 75.) The TAC, however, did not name individual defendants, and the July 1, 2013 case  
28 management deadline lapsed without further amendment.

1 The TAC alleges the following:

2 On June 4, 2011, at approximately 11:00 PM, Plaintiff stepped off a curb in Novato,  
3 California, lost her balance, and fell. Her head struck the curb, and she lost consciousness.  
4 Plaintiff's acquaintance, Brandon Sigmund, was with her when she fell and dialed 911 to  
5 request medical assistance.

6 Paramedics from the Novato Fire Protection District responded to Sigmund's call,  
7 together with several Novato Police Department officers, among them Defendant Kendrick  
8 Pilegaard. Plaintiff told the paramedics that she did not need medical attention and did not  
9 want to be evaluated, and Sigmund asked them whether he could safely transport Plaintiff  
10 home or to the hospital.

11 Pilegaard and the other officers handcuffed Sigmund, led him away from Plaintiff, and  
12 threatened to arrest him if he returned. The officers then forcefully and violently placed  
13 Plaintiff under arrest for public intoxication. In the course of executing the arrest, the  
14 officers forced Plaintiff into a standing position, pushed her into the wall of a building,  
15 forced her onto a gurney, and applied mechanical restraints, causing her injury. At the  
16 direction of the police officers, the paramedics transported Plaintiff to Novato Community  
17 Hospital by ambulance. Pilegaard rode in the back of the ambulance with Plaintiff and  
18 interfered with the paramedics' treatment of her injuries.

19 At Novato Community Hospital, Plaintiff was examined by Defendant Veronique Au  
20 and other medical staff and diagnosed with a closed head injury. Pilegaard stayed in the  
21 exam room and, without Plaintiff's knowledge or consent, recorded her conversations with  
22 Au and other medical staff using an electronic recording device. Au did not obtain Plaintiff's  
23 written authorization to release her medical information to Pilegaard.

24 Au cleared Plaintiff to be taken to MCJ. Pilegaard transported her there and remained  
25 at MCJ, where he interfered with booking and jailing procedures until the following morning.  
26 Pilegaard stood near Plaintiff and eavesdropped on her statements with an electronic  
27 recording device. During Plaintiff's detainment at MCJ, MCJ employees allegedly forced  
28 Plaintiff to remove her clothing through use of intimidation, coercion, harassment, and

1 threats of force causing her breasts, buttocks, and sexual organs to be exposed and viewed by  
2 MCJ employees and other persons in the area, including male observers and Pilegaard.

3 The TAC sets out fourteen claims for relief against various Defendants. The only one  
4 at issue in this motion is the Thirteenth Claim for Relief for negligence, which is the only  
5 claim asserted directly against the County. On August 30, 2013, the County moved for  
6 judgment on the pleadings on the negligence claim. (Docket No. 83.) On September 13,  
7 2013, Plaintiff opposed the motion and preemptively requested in her opposition briefing  
8 relief from an anticipated judgment that would be entered on behalf of the County pursuant  
9 to Federal Rule of Civil Procedure 60.<sup>1</sup> Plaintiff specifically sought leave to file a proposed  
10 fourth amended complaint to add the names of individual county defendants on the basis of  
11 inadvertence and excusable neglect due to a calendaring mistake which caused Plaintiff's  
12 counsel to miss the July 1, 2013 deadline to add individual defendants. The proposed fourth  
13 amended complaint would add the names of five sheriff's deputies or medical personnel  
14 employed by the MCJ for violations of 42 U.S.C. § 1983, and California claims including  
15 violations of the Ralph Act, the Bane Act, and for negligence claims relating to Plaintiff's  
16 alleged placement in a safety cell and disrobement at the jail. Ex. 1 to Anderson Decl. The  
17 proposed fourth amended complaint would also add citations to California regulations that  
18 purport to impose a mandatory duty on the County in support of Plaintiff's direct negligence  
19 claim against it.

## 20 21 **LEGAL STANDARD**

22 "After the pleadings are closed – but early enough not to delay trial – a party may  
23 move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Motions filed pursuant to Rule  
24 12(b) and Rule 12(c) differ in the time of filing but are "functionally identical." *Dworkin v.*  
25 *Hustler Magazine, Inc.*, 867 F. 2d 1188, 1192 (9th Cir. 1989). In ruling on either motion, a  
26 court must "accept all material allegations of fact as true and construe the complaint in a light  
27 most favorable to the non-moving party." *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246,

28 <sup>1</sup>All references to "Rule" hereinafter refer to the Federal Rules of Civil Procedure.

1 1249 (9th Cir. 2007). A dismissal under either rule “can be based on the lack of a cognizable  
2 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”  
3 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

4 To survive a motion for judgment on the pleadings, a plaintiff must plead “enough  
5 facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*,  
6 550 U.S. 544, 570 (2007). This “requires more than labels and conclusions, and a formulaic  
7 recitation of the elements of a cause of action will not do.” *Id.* at 555. Plausibility does not  
8 equate to probability, but it requires “more than a sheer possibility that a defendant has acted  
9 unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Dismissal of claims that fail to  
10 meet this standard should be with leave to amend unless it is clear that amendment could not  
11 possibly cure the deficiencies in the complaint. *Steckman v. Hart Brewing, Inc.*, 143 F.3d  
12 1293, 1296 (9th Cir. 1998). “While Rule 12(c) of the Federal Rules of Civil Procedure does  
13 not expressly provide for partial judgment on the pleadings, neither does it bar them; it is  
14 common to apply Rule 12(c) to individual causes of action. Courts have discretion to grant  
15 leave to amend in conjunction with 12(c) motions, and may dismiss causes of action rather  
16 than grant judgment.” *Pixion, Inc. v. Citrix Sys., Inc.*, No. C 09-03496 SI, 2012 WL 762005,  
17 at \*4 (N.D. Cal. Mar. 8, 2012) (internal citation and quotations omitted).

## 18 19 **DISCUSSION**

20 The issues before the Court are: (1) whether the County is entitled to judgment on the  
21 pleadings because the TAC fails to state a legally cognizable negligence claim against it; and  
22 (2) whether Plaintiff should be granted leave to amend the complaint, notwithstanding that  
23 the case management deadline to add additional defendants has closed.

### 24 25 **I. Judgment on the Pleadings**

26 Plaintiff’s negligence claim alleges that the County owed a duty to Plaintiff and those  
27 similarly situated to:  
28

- 1 (a) properly screen and/or psychologically test/profile applicants  
2 for Marin County Jail officer and/or Sheriff's Deputy;
- 3 (b) provide proper training after hiring said applicants to  
4 properly perform their duties;
- 5 (c) supervise such individuals;
- 6 (d) provide guidelines and procedures for its County Jail officers  
7 and Sheriff's Deputies concerning the proper way to effectuate  
8 the removal of clothing and search of a female detainee;
- 9 (e) ensure all policies and procedures of the Marin County  
10 Sheriff's Office were followed by County Jail officers and  
11 Sheriff's Deputies; and
- 12 (f) to take adequate steps to discipline County Jail officers and  
13 Sheriff's Deputies for violations of departmental policies, or state  
14 or federal laws.

15 TAC ¶ 122. The County argues that this negligence claim must be dismissed because the  
16 California Government Code allows for public entity liability only where a mandatory duty is  
17 imposed by statute. Because the TAC fails to identify any statutory basis for imposing a  
18 mandatory duty on the County, the County contends that Plaintiff's negligence claim against  
19 it fails as a matter of law. The Court agrees.

20 "Tort liability of public entities in California is governed by the Tort Claims Act  
21 (Gov. Code, § 810 et seq.)." *Forbes v. Cnty. of San Bernardino*, 101 Cal. App. 4th 48, 53  
22 (2002). Section 815 of the Government Code provides that a public entity is generally not  
23 liable for an injury unless otherwise provided by statute. Cal. Gov. Code § 815(a). "Section  
24 815 'abolishes all common law or judicially declared forms of liability for public entities,  
25 except for such liability as may be required by the state or federal constitution . . . [such that]  
26 public entities may be held liable only if a statute . . . is found declaring them to be liable.'" *Forbes*,  
27 101 Cal. App. 4th at 53 (citing Sen. Com. com., 32 West's Ann. Gov. Code, (1995  
28 ed.) foll. § 815, p. 167).

29 In addition, Government Code section 815.6 provides that:

30 [w]here a public entity is under a mandatory duty imposed by an  
31 enactment that is designed to protect against the risk of a  
32 particular kind of injury, the public entity is liable for an injury of  
33 that kind proximately caused by its failure to discharge the duty

1 unless the public entity establishes that it exercised reasonable  
2 diligence to discharge the duty.

3 To plead the breach of a mandatory duty, a litigant must “specifically allege the applicable  
4 statute or regulation. Only by so doing may the public entity be advised of the factual and  
5 legal basis of the claim against it.” *Lehto v. City of Oxnard*, 171 Cal. App. 3d 285, 292-93  
6 (1985). “Before the public agency will be required to confront a rebuttable presumption of  
7 negligence, plaintiff must demonstrate that: (1) the statute which was violated imposes a  
8 mandatory duty, (2) the statute was intended to protect against the type of harm suffered, and  
9 (3) breach of the statute’s mandatory duty was a proximate cause of the injury suffered.”  
10 *Wilson v. Cnty. of San Diego*, 91 Cal. App. 4th 974, 979-80 (2001) (citing *Braman v. State of*  
11 *California*, 28 Cal. App. 4th 344, 349 (1994)) (internal quotation marks and brackets  
12 omitted).

13 In the TAC, Plaintiff fails to identify any statute or regulation imposing a mandatory  
14 duty on the County in relation to the purported duties identified by subsections (a)-(f) in  
15 Paragraph 122 of the TAC. *See supra* (listing purported duties). Counsel conceded this  
16 point during oral argument. Plaintiff does identify that California Civil Code section 1714  
17 supplies a duty for MCJ employees, but “section 1714, standing alone, fails to provide the  
18 requisite statutory basis for public entity liability required by Government Code sections 815  
19 and 815.6.” *Eastburn v. Reg’l Fire Prot. Auth.*, 31 Cal. 4th 1175, 1182 (2003). Thus, section  
20 1714 does not impose a mandatory duty upon the County. Plaintiff’s failure to identify a  
21 specific statute imposing a mandatory duty in Paragraph 122 is fatal to the negligence claim  
22 because it deprives the County of notice as to the statutory basis for the purported duties  
23 alleged in Plaintiff’s claim. *See Sullivan v. City of Sacramento*, 190 Cal. App. 3d 1070, 1080  
24 (1987) (holding that “no duty can be predicated on an alleged violation of the department’s  
25 ‘training, practices and procedures’” where plaintiff did not allege violations of a specific  
26 statutory or regulatory provision); *Lehto*, 171 Cal. App. 3d at 292-93.<sup>2</sup> Thus, Plaintiff has

27 <sup>2</sup>Plaintiff argues for the first time in her opposition that certain provisions of the  
28 California Code of Regulations supply this mandatory duty as it pertains to supervision and  
training related to placement of individuals in safety cells. *See Opp’n* at 5-8 (citing 15

1 failed to plead duty, a requisite element of her negligence claim against the County, and thus  
2 fails to state a cognizable legal claim for which relief can be granted. The County’s motion  
3 for judgment on the pleadings as to the thirteenth claim for relief for negligence is  
4 GRANTED.

5  
6 **II. Leave to Amend**

7 Assuming that the Court would enter judgment if it granted the County’s motion,  
8 Plaintiff’s opposition preemptively requests relief from the anticipated judgment under Rule  
9 60(b)(1) so as to file an amended complaint. Plaintiff seeks leave to file a fourth amended  
10 complaint to allege that she was placed in a safety cell, in violation of certain provisions  
11 of the California Code of Regulations that govern the use of safety cells and training and  
12 procedures for identifying suicide risks, and to add the true identities of individual MCJ  
13 employees as County defendants (previously identified as DOE Jailors). *See* Opp’n at 5-7  
14 (citing 15 C.C.R. §§ 1055, 1083 & 3365). Plaintiff’s counsel cites a calendaring mistake in  
15 the office as the reason for missing the July 1, 2013 amendment deadline. Anderson Decl. ¶¶  
16 1-7.

17 At oral argument, Plaintiff’s counsel acknowledged that Plaintiff essentially seeks  
18 relief from the case management deadline itself. Thus, Rule 16, and not Rule 60(b), governs  
19 Plaintiff’s request. Rule 16 provides that a case management schedule “may be modified  
20 only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). To show good  
21 cause, Plaintiff must demonstrate that she acted with diligence in complying with the case  
22 management order’s deadlines and in seeking leave to amend. *Johnson v. Mammoth*  
23 *Recreations, Inc.*, 975 F. 2d 604, 609 (9th Cir. 1992) (citation omitted). “[C]arelessness is  
24 not compatible with a finding of diligence and offers no reason for a grant of relief . . . .  
25 [T]he focus of the inquiry is upon the moving party’s reasons for seeking modification. If

26 \_\_\_\_\_  
27 C.C.R. §§ 1055, 1083 & 3365). The TAC, however, does not allege facts related to  
28 placement in a safety cell or identify these regulatory provisions. Therefore, the Court does  
not analyze whether these provisions impose a mandatory duty at this time because these  
regulations were not cited in the TAC and are thus not properly before the Court.

1 that party was not diligent, the inquiry should end.” *Id.* at 608. “The district court is given  
2 broad discretion in supervising the pretrial phase of litigation, and its decisions regarding the  
3 preclusive effect of a pretrial order . . . will not be disturbed unless they evidence a clear  
4 abuse of discretion.” *Morgal v. Maricopa Cnty. Bd. of Sup’rs*, 284 F. R. D. 452, 459 (D.  
5 Ariz. 2012) *reconsideration denied*, No. CIV 07-0670-PHX-RCB, 2012 WL 2368478 (D.  
6 Ariz. June 21, 2012).

7 If Plaintiff seeks modification of the case management deadlines to amend the  
8 complaint to name individual defendants and regulations that supply a mandatory duty as to  
9 the County, Plaintiff shall file a noticed motion pursuant Rule 16(b)(4) and N.D. Cal. Local  
10 Rule 7-2. Any such motion must be filed by **November 6, 2013**.

11  
12 **CONCLUSION**

13 For the reasons discussed above, the County’s motion for judgment on the pleadings  
14 on Plaintiff’s thirteenth claim for relief for negligence is GRANTED. The Court defers  
15 ruling on whether to grant leave to amend pending Plaintiff’s filing of a motion for relief  
16 under Rule 16(b)(4). If Plaintiff fails to file a motion by **November 6, 2013**, the Court will  
17 enter an order granting the County’s motion for judgment on the pleadings as to the  
18 negligence claim against it with prejudice.

19  
20 **IT IS SO ORDERED.**

21  
22 Dated: 10/16/13

  
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THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT