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

VERONICA A. HARRISON,
Plaintiff,

v.

THE CITY OF OAKLAND, et al.,
Defendants.

No. C 07-0921 CW

ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

Plaintiff Veronica A. Harrison alleges that her Fourth Amendment right to be free from unreasonable seizure was violated when she was arrested by an Alameda County Sheriff's Deputy. Defendants County of Alameda, Alameda County Sheriff's Department, Sierry Wilhelm, Gregory Ahern and Charles Plummer move for summary judgment on the claims against them.¹ Plaintiff opposes the motion except with respect to: 1) her claims against Defendants Plummer and Ahern in their individual capacities; and 2) her claims for violations of her rights under the Fifth, Eighth and Fourteenth Amendments. The matter was heard on October 30, 2008. Having

¹Plaintiff's claims against Defendants City of Oakland, Oakland Police Department, Richard Buckhout and Andrew Brosi have already been dismissed.

1 considered oral argument and all of the papers submitted by the
2 parties, the Court grants Defendants' motion.

3 BACKGROUND

4 At approximately 7:00 p.m. on December 14, 2005, Plaintiff's
5 brother drove her to the MacArthur BART station in Oakland,
6 California. Plaintiff's boyfriend was also in the car. They
7 arrived at the station at approximately 7:15 p.m. and Plaintiff
8 exited the car. As she was walking toward the station, an Alameda
9 County Sheriff's Department patrol car pulled up behind Plaintiff's
10 brother's vehicle, which was parked in a red bus zone, and began
11 flashing its lights. Sheriff's Deputy Richard Buckhout got out and
12 approached the car. He requested identification from both
13 Plaintiff's brother and her boyfriend. After performing a records
14 search based on their driver licenses, Deputy Buckhout learned that
15 both men had outstanding warrants for their arrest. He arrested
16 them and searched their car.

17 While this was happening, Plaintiff approached the car to find
18 out what was going on. She told Deputy Buckhout that she was the
19 driver's sister and asked him why her brother and her boyfriend
20 were being arrested. Deputy Buckhout instructed Plaintiff to stay
21 where she was and told her that he would discuss the matter with
22 her once he was finished.

23 As Plaintiff was waiting, Defendant Wilhelm, also a Sheriff's
24 Deputy, arrived on the scene to provide backup. He approached
25 Plaintiff, who he asserts was being "loud and boisterous and
26 directing questions at Deputy Buckhout," Wilhelm Dec. ¶ 3, and
27 inquired about her presence. Plaintiff explained that she was the
28 sister of one of the men who were being arrested and asked what was

1 going on. In response, Deputy Wilhelm asked to see Plaintiff's
2 identification. Plaintiff characterizes the request as a demand;
3 she testified at her deposition that Deputy Wilhelm stated, "Show
4 me your driver's license." Defs.' Ex. D at 86. According to
5 Plaintiff, she asked Deputy Wilhelm why he needed to see her
6 license, to which Deputy Wilhelm responded by again telling her to
7 hand over her identification. After Plaintiff again questioned the
8 need to provide her identification, Deputy Wilhelm allegedly
9 stated, "If you want to know what's going on with your brother, you
10 have to give me your license." Id. at 87. Plaintiff testified, "I
11 felt like I didn't have a choice. I gave him my driver's license
12 so I [could] find out what was going on with my brother." Id.
13 Deputy Wilhelm concedes that, when he asked Plaintiff for her
14 identification, he did not believe that Plaintiff had committed a
15 crime. See Roubinian Dec. Ex. A (Wilhelm Dep.) at 30. However, he
16 believed that Plaintiff was distracting him from providing security
17 from Deputy Buckhout. Wilhelm Dec. ¶ 4.

18 After Plaintiff gave Deputy Wilhelm her identification, he
19 contacted the Sheriff's Office dispatcher to have a records check
20 performed. At 7:46 p.m., the dispatcher identified an outstanding
21 warrant for Plaintiff's arrest via the Automated Warrant Service
22 and informed Deputy Wilhelm. Deputy Wilhelm then handcuffed
23 Plaintiff, performed a search of her person² and put her in the
24 back of his patrol car. At 7:48 p.m., he requested verification
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26 ²Plaintiff claims that, because her pants were somewhat loose,
27 they dropped down a bit while Deputy Wilhelm was searching the
28 pockets, leaving her feeling "a little exposed." Defs.' Ex. D at
95-96. Plaintiff does not appear, however, to assert that the
manner of the search violated the Fourth Amendment.

1 that the warrant was valid. The dispatcher advised the Warrants
2 and Records Department of the request at 7:50 p.m. A legal process
3 clerk in this department called the warrants department of the
4 Broadmoor Police Department, the authority that had issued the
5 outstanding warrant. The police department verified that the
6 warrant was valid. The legal process clerk relayed the message to
7 the dispatcher, who informed Deputy Wilhelm of the warrant's
8 validity at 7:54 p.m. Deputy Wilhelm then placed Plaintiff under
9 arrest.

10 At 8:15, Deputy Wilhelm advised the dispatcher that he was
11 taking Plaintiff to Glenn Dyer Jail. At 8:20, the legal process
12 clerk informed the dispatcher that the Broadmoor Police Department
13 had called her back to tell her that the warrant for Plaintiff's
14 arrest had been recalled, and therefore was not valid. The
15 dispatcher immediately relayed this information to Deputy Wilhelm,
16 who then returned to the MacArthur BART station. He was
17 approximately one mile away from the station when he learned that
18 Plaintiff's arrest warrant was not valid.

19 According to Plaintiff, upon the patrol car's arrival at the
20 BART station, Deputy Wilhelm "informed [her] that [she] was not
21 free to go" until she signed a form. Harrison Dec. ¶ 22. Because
22 he was out of forms, Plaintiff maintains, Deputy Wilhelm said she
23 had to wait until another deputy arrived with one. The form in
24 question is a "Certificate of Release," which is required by
25 California law to be provided to persons who are arrested without a
26 warrant and subsequently released because a peace officer
27 determines that there are insufficient grounds for making a
28 criminal complaint against them. See Cal. Penal Code §§ 851.6(a),

1 849(b)(1), (c). The relevant statute also provides that such
2 arrestees shall thereafter be deemed not to have been "arrested,"
3 but merely "detained." Id. § 849(b)(1). This provision appears to
4 be for the benefit of the arrestees, in that they are able to avoid
5 having an arrest on their criminal record. See Armondo v. Dep't of
6 Motor Vehicles, 15 Cal. App. 4th 1174, 1177-78 (1993); 43 Op. Cal.
7 Att'y Gen. 288 (1964) ("[A] person who has been released under the
8 provisions of Penal Code section 849 subdivision (b) subsection (1)
9 may give a "no" answer in reply to questions concerning his arrests
10 when applying for employment.")³ Deputy Wilhelm states that he did
11 not tell Plaintiff she could not leave until the other deputy
12 arrived with the certificate of release; he told Plaintiff "that
13 she was no longer under arrest, but suggested that it was in her
14 best interest to wait for the Certificate of Release." Wilhelm
15 Dec. ¶ 11.

16 At Plaintiff's request, before the other deputy arrived with
17 the certificate of release, Deputy Wilhelm removed Plaintiff's
18 handcuffs and let her out of the patrol car. She then sat on the
19 ground and waited. It is not clear how much time passed between
20 the patrol car's arrival at the BART station and Plaintiff's
21 release from handcuffs and the car. Plaintiff's deposition
22 testimony suggests that any delay was brief. See Defs.' Ex. D at
23 116-17. However, in a declaration submitted in support of the
24 present motion, Plaintiff states that she "remained handcuffed
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26 ³Plaintiff was arrested pursuant to a warrant, albeit an
27 invalid one. Thus, it is not entirely clear that this provision of
28 the California Penal Code applies to her. Nonetheless, it is
undisputed that Deputy Wilhelm believed that he was required to
issue Plaintiff a certificate of release.

1 despite informing Deputy Wilhelm, yet again, that the handcuffs
2 were too tight and hurt terribly." Harrison Dec. ¶ 22. While she
3 was waiting for the other deputy to arrive with the certificate of
4 release, Plaintiff asserts, she asked Deputy Wilhelm for her purse,
5 which contained her cellular phone, so that she could call her
6 mother to arrange for a ride from the station. According to
7 Plaintiff, Deputy Wilhelm gave her the purse, but removed the phone
8 first because he thought she might use it to call someone for the
9 purpose of harming him.

10 Once the other deputy arrived with the certificate of release,
11 Deputy Wilhelm filled out the form and offered it to Plaintiff
12 along with her arrest report. He asked her to sign the arrest
13 report, but she refused to do so. Plaintiff maintains that she
14 refused to sign the report because the certificate of release
15 contained a certification by Deputy Wilhelm that "the taking into
16 custody of Veronica Harrison . . . was a detention only, not an
17 arrest." Defs.' Ex. G. Because Plaintiff believed she had been
18 arrested, she interpreted this language as a false statement and
19 thought that signing the arrest form would be against her
20 interest.⁴ Deputy Wilhelm provided Plaintiff with the certificate
21 of release and her cell phone, and departed from the station at
22 8:41 p.m., slightly less than an hour after he requested
23 Plaintiff's identification.

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27 ⁴At her deposition, Plaintiff apparently conflated the
28 certificate of release and the arrest report. Unlike the arrest
report, the certificate of release did not contain a blank for her
signature. See Defs.' Ex. G.

LEGAL STANDARD

Summary judgment is properly granted when no genuine and disputed issues of material fact remain, and when, viewing the evidence most favorably to the non-moving party, the movant is clearly entitled to prevail as a matter of law. Fed. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir. 1987).

The moving party bears the burden of showing that there is no material factual dispute. Therefore, the court must regard as true the opposing party's evidence, if it is supported by affidavits or other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815 F.2d at 1289. The court must draw all reasonable inferences in favor of the party against whom summary judgment is sought. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991).

Material facts which would preclude entry of summary judgment are those which, under applicable substantive law, may affect the outcome of the case. The substantive law will identify which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

DISCUSSION

Plaintiff asserts that Deputy Wilhelm violated her Fourth Amendment right to be free from unreasonable searches and seizures in two ways: 1) by coercing her into providing her driver's license and then conducting a warrant check on her; and 2) by not immediately releasing her once the patrol car arrived back at the

1 MacArthur BART station.⁵ Plaintiff also asserts that the County of
2 Alameda, the Alameda County Sheriff's Department, and Defendants
3 Ahern and Plummer (the current and former Sheriffs of Alameda
4 County, respectively) should be held liable for Fourth Amendment
5 violations because Deputy Wilhelm's conduct was the result of a
6 policy of widespread Fourth Amendment violations.

7 I. Claims Against Deputy Wilhelm

8 Plaintiff charges Deputy Wilhelm with violating the Fourth
9 Amendment by demanding that she provide him with her identification
10 and using the identification to perform a search for outstanding
11 warrants. The Fourth Amendment does not prohibit police officers
12 from asking an individual to present his or her identification,
13 even without having any suspicion that the individual has committed
14 a crime, "as long as the police do not convey a message that
15 compliance with their requests is required." Florida v. Bostick,
16 501 U.S. 429, 434-35 (1991). The Fourth Amendment is not violated
17 by such a request for identification if, under the totality of the
18 circumstances, "a reasonable person would feel free to decline the
19 officers' request[] or otherwise terminate the encounter." Id. at
20 436-437.

21 Plaintiff does not submit that she believed she was not free
22 to terminate her encounter with Deputy Wilhelm and leave the scene.
23 Rather, she argues that she was coerced into turning over her
24 identification because Deputy Wilhelm allegedly told her that doing
25 so was the only way to obtain information about the arrest of her
26

27 ⁵Notably, Plaintiff does not claim that, after being notified
28 that there was an outstanding warrant for her arrest, Deputy
Wilhelm violated the Fourth Amendment by arresting her.

1 brother and her boyfriend. It is true that “[c]itizens do not
2 forfeit their constitutional rights when they are coerced to comply
3 with a request that they would prefer to refuse.” Id. at 438.
4 Controlling precedent, however, holds that an individual is
5 “coerced” into complying with a request for identification only if
6 a reasonable person would not feel free to decline the officer’s
7 requests or otherwise terminate the encounter. See, e.g., United
8 States v. Drayton, 536 U.S. 194, 201-02 (2002). While Plaintiff
9 wanted information from Deputy Wilhelm, it is undisputed that she
10 was free to leave without presenting her identification. Because
11 Plaintiff has not shown that she was coerced in the relevant sense
12 of the word, the request for her identification did not violate the
13 Fourth Amendment.

14 Plaintiff argues that, even if the request itself was lawful,
15 a seizure was nonetheless effected once Deputy Wilhelm retained the
16 identification and conducted a background check, because she could
17 not have felt free to leave the scene without her identification.
18 Adopting this approach would eviscerate the rule that a law
19 enforcement officer may ask an individual for identification
20 without having any suspicion that he or she has committed a crime,
21 because as soon as the individual complies with the constitutional
22 request, an unconstitutional seizure will have occurred. The only
23 case Plaintiff cites in support of her position is People v.
24 Castaneda, 35 Cal. App. 4th 1222 (1995), in which the California
25 Court of Appeal noted that, once the plaintiff had complied with a
26 police officer’s request to hand over his identification, “a
27 reasonable person would not have felt free to leave.” Id. at 1227.
28 Castaneda, however, is not binding on this Court, and the Court

1 declines to follow it to the extent it would compel the conclusion
2 that Plaintiff's Fourth Amendment rights were violated once she
3 handed Deputy Wilhelm her identification. Such a conclusion would
4 not be compatible with the rule in Bostick and other Supreme Court
5 precedent.⁶

6 Plaintiff also asserts that Deputy Wilhelm violated her Fourth
7 Amendment rights by continuing to detain her after he learned that
8 the warrant for her arrest was not valid. Plaintiff alleges that,
9 although Deputy Wilhelm removed the handcuffs and let her out of
10 the patrol car after he returned to the MacArthur BART station, he
11 told her that she was not free to leave until the other deputy
12 arrived with the certificate of release. Plaintiff also alleges
13 that Deputy Wilhelm kept her cellular phone in his possession,
14 further preventing her from departing. This version of events is
15 disputed, but a juror could reasonably conclude that Deputy Wilhelm
16 imposed a restraint on Plaintiff's liberty after learning that the
17 warrant was invalid, thereby violating her Fourth Amendment rights.
18 Summary judgment on the basis that no Fourth Amendment violation
19 occurred would therefore not be appropriate.

20 Deputy Wilhelm argues that, even if his conduct infringed

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22 ⁶Even if the Court were to conclude that Deputy Wilhelm's
23 retention of Plaintiff's identification for a brief period of time
24 while he conducted a warrant check constituted a Fourth Amendment
25 violation, as discussed in greater detail below, Deputy Wilhelm
26 would be entitled to qualified immunity unless it would have been
27 clear to a reasonable officer in his position that his conduct was
28 unlawful. In light of the legal authority holding that an officer
does not violate an individual's Fourth Amendment rights by asking
for his or her identification, it would not have been clear to a
reasonable officer in Deputy Wilhelm's position that Plaintiff's
rights would have been violated once she handed over her
identification, notwithstanding Castaneda. Deputy Wilhelm would
therefore be entitled to qualified immunity on this claim in any
event.

1 Plaintiff's Fourth Amendment rights, he is entitled to qualified
2 immunity. The defense of qualified immunity protects government
3 officials "from liability for civil damages insofar as their
4 conduct does not violate clearly established statutory or
5 constitutional rights of which a reasonable person would have
6 known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The rule
7 of qualified immunity protects "all but the plainly incompetent or
8 those who knowingly violate the law." Saucier v. Katz, 533 U.S.
9 194, 202 (2001) (quoting Malley v. Briggs, 475 U.S. 335, 341
10 (1986)).

11 To determine whether a defendant is entitled to qualified
12 immunity, the court must apply a two-part analysis. The first
13 question is whether the facts, when taken in the light most
14 favorable to the plaintiff, show that the defendant's conduct
15 violated a constitutional right. Torres v. City of Los Angeles,
16 540 F.3d 1031, 1044 (9th Cir. 2008). If so, the second question is
17 whether the constitutional right at issue was "clearly established"
18 at the time of the conduct at issue. Id. As discussed above, a
19 reasonable juror could find that Deputy Wilhelm violated
20 Plaintiff's Fourth Amendment rights by preventing her from leaving
21 immediately after the two of them returned to the BART station.
22 Accordingly, the Court must determine whether those rights were
23 clearly established. In determining whether a constitutional right
24 was clearly established, the court should not consider the right as
25 a "general proposition." Id. at 1045. "Rather, '[t]he relevant,
26 dispositive inquiry . . . is whether it would be clear to a
27 reasonable officer that his conduct was unlawful in the situation
28 he confronted.'" Id. (quoting Saucier, 533 U.S. at 202)

1 (alteration and omission in Torres).

2 As noted above, California law requires that a person who is
3 arrested and then released because the arresting officer concludes
4 that there are insufficient grounds for making a criminal complaint
5 "shall be issued a certificate, signed by the releasing officer or
6 his superior officer, describing the action as a detention." Cal.
7 Penal Code § 851.6(a). Given the mandates of California law, a
8 reasonable officer in Deputy Wilhelm's position could have
9 concluded that it would not be unlawful to tell Plaintiff to wait,
10 unrestrained, for a brief amount of time until another deputy
11 arrived with the certificate of release that Plaintiff was required
12 to be given. Accordingly, Deputy Wilhelm is entitled to qualified
13 immunity on Plaintiff's Fourth Amendment claim.

14 II. Claims Against the County Defendants

15 Plaintiff's claims against Defendants Plummer and Ahern in
16 their official capacities, as well as her claims against the
17 Alameda County Sheriff's Department, are claims against the County
18 of Alameda itself. See Kentucky v. Graham, 473 U.S. 159, 165-66
19 (1985) ("[A]n official-capacity suit is, in all respects other than
20 name, to be treated as a suit against the entity."); Vance v.
21 County of Santa Clara, 928 F. Supp. 993, 996 (N.D. Cal. 1996)
22 ("Naming a municipal department as a defendant is not an
23 appropriate means of pleading a § 1983 action against a
24 municipality."). Counties and municipalities cannot be held
25 vicariously liable under § 1983 for the actions of their employees.
26 Monell v. N.Y. City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978).
27 "Instead, it is when execution of a government's policy or custom,
28 whether made by its lawmakers or by those whose edicts or acts may

1 fairly be said to represent official policy, inflicts the injury
2 that the government as an entity is responsible under § 1983." Id.
3 at 694. More specifically, local governments may be held liable
4 for inadequate training of law enforcement officers -- as Plaintiff
5 alleges is the case here -- "only where failure to train amounts to
6 deliberate indifference to the rights of persons with whom the [law
7 enforcement officers] come into contact," and "the identified
8 deficiency in a [local government's] training program [is] closely
9 related to the ultimate injury." City of Canton v. Harris, 489
10 U.S. 378, 388, 391 (1989).

11 Plaintiff has come forward with no evidence that the alleged
12 violation of her Fourth Amendment rights was caused by a policy or
13 practice of the County. She points only to an excerpt from the
14 deposition testimony of Commander Casey Nice of the Alameda County
15 Sheriff's Department. Commander Nice was designated by the County
16 pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure
17 as a witness with knowledge of the County's training procedures for
18 members of the Sheriff's Department. During the relevant portion
19 of the deposition, Commander Nice stated that it was his
20 understanding that, if an officer is performing a warrant check
21 after an individual has voluntarily relinquished his or her
22 identification and the officer did not previously have a reason to
23 detain the individual, he or she is free to leave, without his or
24 her identification, before the warrant check is completed. See
25 Roubinian Dec. Ex. C at 45-46. Plaintiff claims this policy is
26 contrary to law because, as noted above, the California Court of
27 Appeal held in Castaneda that, once the plaintiff had handed over
28 his identification to the police officer, a reasonable person in

1 his position would not have felt free to leave, and thus the police
2 officer's retention of the identification could be considered a
3 "detention" subject to the Fourth Amendment's protections. 35 Cal.
4 App. 4th at 1227. There is no conflict between the County's policy
5 and Castaneda, and Plaintiff fails to explain how allowing
6 individuals to depart while an identification search is proceeding,
7 as opposed to requiring them to remain in the area, violates their
8 Fourth Amendment rights.

9 Plaintiff claims that she needs additional discovery in order
10 to demonstrate that summary judgment should not be granted on her
11 claim against the County. Rule 56(f) of the Federal Rules of Civil
12 Procedure provides that the court may deny a motion for summary
13 judgment "[i]f a party opposing the motion shows by affidavit that,
14 for specified reasons, it cannot present facts essential to justify
15 its opposition." "The burden is on the party seeking additional
16 discovery to proffer sufficient facts to show that the evidence
17 sought exists, and that it would prevent summary judgment." Nidds
18 v. Schindler Elevator Corp., 113 F.3d 912, 922 (9th Cir. 1996).

19 Plaintiff has submitted a declaration from her counsel stating
20 that the County has not produced certain training materials that
21 Commander Nice referred to in his deposition. However, Defendants
22 produced other training material in response to Plaintiff's earlier
23 document requests, and Plaintiff has not moved to compel the
24 production of additional material, despite the fact that Defendants
25 objected to the relevant document request as, among other things,
26 vague, overbroad and unduly burdensome. See Supp. Sazama Dec. Ex.

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1 H at 12 (Resp. to Pl.'s Req. No. 24).⁷ Plaintiff also deposed
2 Commander Nice about the County's training and policies, and
3 apparently did not uncover any evidence in support of her claim
4 other than the excerpt referenced above. She has not demonstrated
5 any likelihood that the training materials she seeks will show that
6 a specific deficiency in the County's training program resulted in
7 deliberate indifference on the part of Sheriff's deputies to the
8 rights of persons with whom they came into contact. Nor would
9 complaints by members of the public against Deputy Wilhelm, which
10 Plaintiff now seeks to compel Defendants to produce, show that his
11 alleged violation of Plaintiff's Fourth Amendment rights
12 represented a policy of the County.

13 Moreover, Plaintiff's contention that she does not have enough
14 discovery to prove her case against the County is not well taken in
15 light of her failure to pursue such discovery until now. On a Rule
16 56(f) motion, the district court acts within its discretion "by
17 denying further discovery if the movant has failed diligently to
18 pursue discovery in the past." Nidds, 113 F.3d at 921. Plaintiff
19 did not notice her Rule 30(b)(6) deposition until September 22,
20 2008. It took place on October 6, just over three weeks before the
21 discovery cutoff of October 30, and only three days before
22 Plaintiff's opposition to the present motion was due. In addition,
23 Defendants served their objections to the relevant document
24 requests on July 3, 2008. Although Plaintiff has now filed a
25 motion to compel, the motion is not relevant to her claim against

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27 ⁷On October 24, 2008, Plaintiff filed a motion to compel
28 certain material related to complaints against Deputy Wilhelm. The
motion, however, does not seek to compel the production of
additional training material.

1 the County and, in any event, she has not explained her nearly
2 four-month delay in bringing it. Plaintiff cannot rely on Rule
3 56(f) to seek further discovery at this late stage of the
4 proceedings.

5 Because Plaintiff has produced no evidence to create a triable
6 issue of fact on her claim against the County of Alameda, and
7 because she has not shown that the additional discovery she seeks
8 will enable her to do so, Defendants' motion for summary judgment
9 on this claim will be granted.

10 CONCLUSION

11 For the foregoing reasons, Defendants' motion for summary
12 judgment is GRANTED. Plaintiff's motion to compel is DENIED as
13 moot. The clerk shall enter judgment and close the file. The
14 parties shall bear their own costs.

15 IT IS SO ORDERED.

16
17 Dated: 11/14/08



18 CLAUDIA WILKEN
United States District Judge