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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 CYNTHIA N TURANO,

8 Plaintiff,

9 v.

10 COUNTY OF ALAMEDA, et al.,

11 Defendants.

Case No. 17-cv-06953-KAW

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

Re: Dkt. No. 60

12 Plaintiff Cynthia Turano filed the instant putative class action, bringing constitutional and
13 state claims related to her experience while in the custody of Defendant Alameda County Sheriff's
14 Office ("County"). (Third Amended Compl. ("TAC") ¶ 1, Dkt. No. 59.¹) On December 10, 2018,
15 Defendants filed a motion to dismiss the third and fourth causes of action. (Defs.' Mot. to
16 Dismiss, Dkt. No. 60.)

17 Upon consideration of the parties' filings, as well as the arguments presented at the
18 February 7, 2019 hearing, the Court GRANTS IN PART and DENIES IN PART Defendants'
19 motion to dismiss.

20 **I. BACKGROUND**

21 On December 25, 2016, Plaintiff's husband called the Oakland Police Department
22 ("OPD"), claiming that Plaintiff had violated a temporary restraining order. (TAC ¶ 13.) On
23 December 26, 2016, at around 1:00 a.m., OPD officers responded to the call. (TAC ¶ 14.) The
24 OPD officers arrested Plaintiff for violating the restraining order and took her to Santa Rita Jail,
25 where she was transferred into the custody of the County. (TAC ¶¶ 17, 19.)

26 Plaintiff was first placed in a cell that had fecal matter spread over the walls and benches,

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28 ¹ Plaintiff mislabels the operative complaint as the second amended complaint. Three prior
complaints, however, have been filed. (Compl., Dkt. No. 1; First Amended Compl., Dkt. No. 5;
Second Amended Compl., Dkt. No. 36.)

1 and had walls with bloody hand smears, mucus, and medical pads with human hair stuck to them.
2 (TAC ¶ 19.) Plaintiff was taken out of the cell and searched in the hallway without a privacy
3 screening. (TAC ¶ 20.) She was then placed in another cell and told she would be interviewed by
4 a nurse. The second cell contained piles of rotting food, stains of dried fluids on the walls and
5 benches, and garbage and used tissue or toilet paper piled alongside the toilet. (TAC ¶ 20.) The
6 room was constructed from cinderblocks and was very cold, but Plaintiff was not provided with
7 adequate clothing or a blanket. (TAC ¶ 21.)

8 Plaintiff was eventually interviewed by a male deputy. (TAC ¶ 22.) She told him that she
9 needed feminine hygiene products, and that she was not feeling well. The deputy said she would
10 be seen by a nurse. Plaintiff was not provided feminine hygiene products or seen by a nurse.
11 (TAC ¶ 22.)

12 Plaintiff was then moved to a third holding cell. (TAC ¶ 23.) The cell also strewn with
13 garbage, including food and used medical supplies, and the floors and walls had dried human
14 fluids and discharge on them. (TAC ¶ 23.) Plaintiff, meanwhile, was menstruating and bleeding
15 over her clothes, and the blood seeped through her pants and onto the concrete bench. (TAC ¶
16 23.) Plaintiff began knocking and banging on the door and window to get help, but no deputies
17 passed by or checked the room. (TAC ¶ 23.) Plaintiff saw individuals in civilian clothing with
18 identification badges, who did not respond to Plaintiff's requests for assistance. (TAC ¶ 24.)

19 After hours of banging on the window and door, a female deputy arrived, bringing in
20 another woman. (TAC ¶ 25.) Plaintiff again requested menstrual pads, and the female deputy
21 returned with two pads. Plaintiff put on the pad, getting blood on her hands in the process.
22 Because there was no soap or paper towels in the cell, Plaintiff rinsed the blood off in the drinking
23 fountain and wiped her hands off on her clothing. (TAC ¶ 25.)

24 Around 9:30 a.m., Plaintiff was discharged and given a bus ticket and BART ticket. (TAC
25 ¶ 26.) Prior to her discharge, Plaintiff never saw the cells cleaned. Plaintiff took public
26 transportation back in her wet, visibly blood-stained clothing. (TAC ¶ 27.)

27 Plaintiff then filed the instant suit. On November 25, 2018, Plaintiff filed her third
28 amended complaint, asserting claims for: (1) Fourteenth Amendment due process claim based on

1 conditions of confinement; (2) Fourteenth Amendment equal protection claim; (3) negligence; and
2 (4) injunctive relief. On December 10, 2018, Defendants filed the instant motion to dismiss the
3 third and fourth causes of action. On December 24, 2018, Plaintiff filed her opposition. (Plf.'s
4 Opp'n, Dkt. No. 61.) On December 31, 2018, Defendants filed their reply. (Defs.' Reply, Dkt. No.
5 64.)

6 **II. LEGAL STANDARD**

7 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss based
8 on the failure to state a claim upon which relief may be granted. A motion to dismiss under Rule
9 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. *Navarro v. Block*, 250
10 F.3d 729, 732 (9th Cir. 2001).

11 In considering such a motion, a court must "accept as true all of the factual allegations
12 contained in the complaint," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation
13 omitted), and may dismiss the case or a claim "only where there is no cognizable legal theory" or
14 there is an absence of "sufficient factual matter to state a facially plausible claim to relief."
15 *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing
16 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Navarro*, 250 F.3d at 732) (internal quotation
17 marks omitted).

18 A claim is plausible on its face when a plaintiff "pleads factual content that allows the
19 court to draw the reasonable inference that the defendant is liable for the misconduct alleged."
20 *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged must demonstrate
21 "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
22 will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

23 "Threadbare recitals of the elements of a cause of action" and "conclusory statements" are
24 inadequate. *Iqbal*, 556 U.S. at 678; see also *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th
25 Cir. 1996) ("[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat
26 a motion to dismiss for failure to state a claim."). "The plausibility standard is not akin to a
27 probability requirement, but it asks for more than a sheer possibility that a defendant has acted
28 unlawfully . . . When a complaint pleads facts that are merely consistent with a defendant's

1 liability, it stops short of the line between possibility and plausibility of entitlement to relief."
2 Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557) (internal citations omitted).

3 Generally, if the court grants a motion to dismiss, it should grant leave to amend even if no
4 request to amend is made "unless it determines that the pleading could not possibly be cured by
5 the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (citations
6 omitted).

7 III. DISCUSSION

8 A. Negligence Claim

9 As an initial matter, the parties agree that the negligence claim against Defendants County
10 of Alameda and Alameda County Sheriff's Office should be dismissed. (Plf.'s Opp'n at 6; Defs.'
11 Reply at 2-3.) The parties dispute, however, whether the negligence claim against the individual
12 Defendants are barred by statutory immunities, and whether the claim is sufficiently pled.

13 i. Statutory Immunity

14 Defendants argue that the individual Defendants are immune per California Government
15 Code § 820.2 and § 820.8. (Defs.' Mot. to Dismiss at 4-5; Defs.' Reply at 3-5.) The Court
16 disagrees.

17 a. Section 820.2 Immunity

18 Section 820.2 states: "Except as otherwise provided by statute, a public employee is not
19 liable for an injury resulting from his act or omission where the act or omission was the result of
20 the exercise of the discretion vested in him, whether or not such discretion be abused." In
21 determining whether an act is discretionary, "courts do not look at the literal meaning of
22 'discretionary' because almost all acts involve some choice between alternatives." Martinez v. City
23 of L.A., 141 F.3d 1373, 1379 (9th Cir. 1998) (internal quotation omitted). Instead, "immunity
24 protects 'basic policy decisions,' but does not protect 'operational' or 'ministerial' decisions that
25 merely implement a basic policy decision." Id. (internal quotation omitted). Basic policy
26 decisions are those that "have been expressly committed to coordinate branches of government,
27 and as to which judicial interference would thus be unseemly." Caldwell v. Montoya, 10 Cal. 4th
28 972, 981 (1995).

1 Defendants cite no authority that applied § 820.2 immunity to facts similar to the instant
2 case. Courts in this circuit, however, have declined to find supervisory acts immune. In
3 Alexander v. California Department of Corrections and Rehabilitation, the plaintiffs filed suit
4 over the death of their father, who was strangled by his cellmate at Deuel Vocational Institution
5 ("DVI"). No. 2:11-cv-640 TLN CKD, 2014 WL 7336668, at *1 (E.D. Cal. Dec. 24, 2014). The
6 defendants were the former secretary of the Department of Corrections and the former warden of
7 DVI. Id. The plaintiffs alleged that the defendants, as supervisors, failed to follow or enforce
8 policies concerning inmate classification and provision of immediate life support, and were
9 deliberately indifferent to prison overcrowding. Id. at *4-5. The district court found that these
10 alleged acts and omissions "fall into the operational, rather than the policy-making category," and
11 thus § 820.2 immunity did not apply. Likewise, in Randolph v. City of E. Palo Alto, the plaintiffs
12 alleged that the defendants were negligent in hiring, training, and supervising their officers. Case
13 No. 06-cv-7476-SI, 2008 WL 618908, at *10 (N.D. Cal. Mar. 1, 2008). The district court
14 disagreed "that the hiring, training, and supervision of particular employees are policy decisions
15 that implicate the planning functions of government. Rather, defendants' decision to hire [the
16 officer] and provide him with certain levels of training and supervision are ministerial decisions in
17 which defendants were simply carrying out the day-to-day operations of their government." Id. at
18 *11.

19 Like the Alexander and Randolph courts, the Court finds that § 820.2 immunity does not
20 apply in this case because Plaintiff challenges the implementation of existing policies, not the
21 policies themselves. Specifically, Plaintiff asserts that policies have been adopted "for the
22 appropriate care and confinement of women incarcerated in Santa Rita Jail," but that Defendants
23 have failed to ensure that "said policies were in fact being carried out and carried out
24 appropriately." (TAC ¶ 73.) Defendants also failed to discipline employees "for failures to
25 comply with or execute [the] adopted policies." (Id.) The failure to implement includes the
26 alleged failures to properly train staff, develop appropriate and necessary processes, supervise
27 staff, and discipline staff." (TAC ¶ 74.) This implementation is an operational decision, not a
28 basic policy decision, and therefore not a discretionary act entitled to § 820.2 immunity.

b. Section 820.8 Immunity

Section 820.8 states: "Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission." Thus, § 820.8 immunizes an individual from vicarious liability. See *Weaver By and Through Weaver v. State of California*, 63 Cal. App. 4th 188, 203 (1998).

In *Johnson v. Baca*, the district court found that § 820.8 immunity did not apply where the plaintiff sought to hold a sheriff liable based on his failure to implement adequate policies and sufficiently train staff to avoid violation of inmates' rights. Case No. CV 13-4496 MMM (AJWx), 2014 WL 12588641, at *17 (C.D. Cal. Mar. 3, 2014). In other words, the plaintiff sought to hold the defendant "personally liable for his conduct as a supervisor." *Id.*; see also *Doe v. Regents of Univ. of Cal.*, No. CIV. S-06-1043 LKK/DAD, 2006 WL 2506670, at *5 (E.D. Cal. Aug. 29, 2006) (denying motion to dismiss on § 820.8 immunity grounds where the plaintiffs' theory of liability was based on the defendant's direct actions as a supervisor); *Phillips v. Cty. of Fresno*, No. 1:13-cv-538 AWI BAM, 2013 WL 6243278, at *13 (E.D. Cal. Dec. 3, 2013) ("Plaintiffs' complaint . . . allege[s] the direct participation of the supervisory Defendants in Plaintiffs' harms based on the failure to carry out various managerial functions to prevent the harm, including adequate discipline, training, supervision and the failure to promulgate appropriate policies. Thus there is no apparent applicability of section 820.8."); *Staten v. Calderon*, No. F052046, 2008 WL 4446526, at *8 (Cal. Ct. App. Oct. 3, 2008) ("the immunity provided by section 820.8 does not extend to claims of negligent training and supervision").²

Such is the case here, where Plaintiff does not assert a negligence claim based on vicarious liability. Instead, Plaintiff brings her claims against the individual defendants based on their own actions as supervisors, including their alleged negligence in training, developing processes, supervising staff, and disciplining staff for failures to comply with the adopted policies. (TAC ¶ 18.) Thus, the Court concludes that § 820.8 immunity does not apply in this case.

² Although unpublished state appellate decisions have no precedential value, they may be cited as persuasive authority. See *Emp'r's Ins. Of Wausau v. Granite State Ins. Co.*, 330 F.3d 1214, 1220 n.8 (9th Cir. 2003).

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ii. Specific Injuries

Defendants also argue that Plaintiff did not allege a specific injury because she only alleges "personal injuries," but does not specify what those injuries are. (Defs.' Mot. to Dismiss at 6; Defs.' Reply at 2.) Defendants are incorrect. Plaintiff does not simply allege "personal injuries," but describes those injuries, including that she suffered having to be incarcerated in filthy cells, being forced to bleed all over her clothing, being left shivering in wet bloody clothing in a cold cell, and having to travel in public in bloody and wet clothing. (TAC ¶¶ 77-80.) Defendants fail to explain why these allegations are insufficiently specific. The Court finds these allegations are sufficiently specific to put Defendants on notice of the injury suffered, and DENIES Defendants' motion to dismiss the negligence claim as to the individual Defendants.

B. Injunctive Relief

Defendants also move for dismissal of the injunctive relief claim. As an initial matter, Defendants argue that the claim should be dismissed because Plaintiff was not given permission to assert a new cause of action. (Defs.' Mot. to Dismiss at 6.) While Plaintiff did not previously assert an injunctive relief claim, Plaintiff has consistently sought injunctive relief in her past complaints. (Compl. at 16; FAC at 18; SAC at 19.) Thus, the Court finds it appropriate to consider the injunctive relief claim on the merits.

Defendants argue that Plaintiff lacks standing to bring the injunctive relief claim. (Defs.' Mot. to Dismiss at 6.) To seek injunctive relief, Plaintiff must plead that she "has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983) (internal quotations omitted).

First, Defendants contend that Plaintiff lacks standing because Plaintiff would only be incarcerated if she is lawfully arrested again. (Defs.' Mot. to Dismiss at 7; Defs.' Reply at 4.) In general, "standing is inappropriate where the future injury could be inflicted only in the event of future illegal conduct by the plaintiff." *Armstrong v. Davis*, 275 F.3d 849, 865 (9th Cir. 2001), abrogated on other grounds by *Johnson v. California*, 543 U.S. 499, 504-05 (2005). A lawful arrest, however, does not necessarily mean Plaintiff has acted illegally. Indeed, Plaintiff

1 challenges whether she committed any illegal conduct. (Plf.'s Opp'n at 2; see also TAC ¶¶ 16-17,
2 85.) The Court rejects Defendants' argument.

3 Second, Defendants argue that any future arrest is speculative, such that Plaintiff has no
4 reasonable expectation of suffering a future incarceration. (Defs.' Mot. to Dismiss at 7; Defs.'
5 Reply at 7-8.) Generally, "the threat of future harm may confer standing," although the plaintiff
6 has the burden of making "[a] reasonable showing of a 'sufficient likelihood' that the plaintiff will
7 be injured again." *Nelsen v. King Cty.*, 895 F.2d 1248, 1250 (9th Cir. 1990) (internal quotation
8 omitted). Moreover, "past exposure to harm is largely irrelevant when analyzing claims of
9 standing for injunctive relief that are predicated upon threats of future harm." *Id.* at 1251. Thus,
10 an "alleged past exposure to harm is not sufficient to confer standing." *Id.* Rather, where courts
11 "have found standing to exist for a threat of future harm, it has consistently been determined that
12 some systematic pattern, repetition or relationship exists." *Id.* at 1254.

13 In *Nelsen*, the plaintiffs were residents at an alcoholic treatment center, following the
14 commission of alcohol-related offenses. 895 F.2d at 1249. The plaintiffs sought injunctive relief
15 regarding the unsanitary conditions at the treatment center. *Id.* The Ninth Circuit found that the
16 plaintiffs lacked standing for injunctive relief. In so finding, the Ninth Circuit rejected the
17 plaintiffs' argument that they could return to the treatment center because 35% of inpatients
18 repeated the program, instead explaining that a trial court would have to make an individualized
19 inquiry as to whether the plaintiffs themselves may return to the center. *Id.* at 1251-52. Looking
20 at the record, the Ninth Circuit found that a claim of future injury was "conjectural" because in
21 order to return to the treatment center, the plaintiffs "would have to remain within [the c]ounty,
22 remain indigent, begin drinking uncontrollably several years after their discharge from the
23 [treatment c]enter . . . [,] commit an alcohol-related offense, be prosecuted for that offense, be
24 convicted, be offered the choice to reenter the [treatment c]enter, make that choice, and find that
25 the conditions at the [treatment c]enter were the same as they allegedly were when" previously
26 there. *Id.* at 1252. Thus, because the threat of future harm was "based upon an extended chain of
27 highly speculative contingencies, all of which would have to be fulfilled in order to have the threat
28 of returning to the [treatment c]enter become manifest," the plaintiffs lacked standing. *Id.*

1 Here, Plaintiff argues that she is likely to be falsely arrested again because she lives,
2 works, shops, and socializes in Alameda County, is engaged in divorce proceedings in Alameda
3 County, and whose estranged spouse resides in Alameda County. (Plf.'s Opp'n at 3.) Plaintiff
4 further alleges in her complaint that the divorce is ongoing and that a restraining order is still in
5 place. (TAC ¶ 85.) Plaintiff, however, does not assert that she has any contact with her husband,
6 or that they continue to live with each other. There are also no allegations that Plaintiff has been
7 falsely accused by her husband, or arrested based on false accusations, since the filing of the
8 complaint in December 2017 or the original arrest in December 2016. While a closer case than
9 Nelsen, the Court finds that the likelihood that Plaintiff will be falsely arrested again is still
10 speculative, as it will require that Plaintiff's husband make another allegedly false accusation that
11 Plaintiff violated the terms of a restraining order, which Plaintiff has not established is likely to
12 occur again. Contrast with *Kolender v. Lawson*, 461 U.S. 352, 355 n.3 (1983) ("credible threat"
13 where the plaintiff "ha[d] been stopped on approximately 15 occasions pursuant to [the challenged
14 statute] . . . in a period of less than two years").³

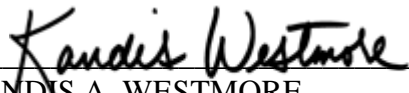
15 Accordingly, the Court DISMISSES the injunctive relief claim based on lack of standing.

16 **IV. CONCLUSION**

17 For the reasons stated above, the Court GRANTS IN PART and DENIES IN PART
18 Defendants' motion to dismiss. The negligence claim is dismissed as to Defendants County of
19 Alameda and Alameda County Sheriff's Office, and the injunctive relief claim is dismissed.

20 IT IS SO ORDERED.

21 Dated: February 8, 2019

22 
23 KANDIS A. WESTMORE
24 United States Magistrate Judge

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26 _____
27 ³ At the hearing, Plaintiff argued that *Weills v. Ahren*, Case No. 14-cv-4773-VC, had comparable
28 allegations regarding standing. *Weills*, however, involved plaintiffs who had been arrested
multiple times, including one plaintiff who was arrested three times in less than three years. More
importantly, no substantive court rulings were made in *Weills*, including on whether these
allegations were sufficient to confer standing for injunctive relief.