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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 Stephanie Wainscott,  
11 Plaintiff,  
12 v.  
13 County of San Diego, Las Colinas  
14 Detention Facility, and City of La Mesa  
15 Police Department,  
16 Defendants.

Case No.: 3:20-cv-1359-GPC-WVG

**ORDER DENYING PLAINTIFF'S  
MOTION TO PROCEED IN FORMA  
PAUPERIS; AND SUA SPONTE  
DISMISSING THE COMPLAINT  
WITH LEAVE TO AMEND**

**[ECF No. 2.]**

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18 **I. INTRODUCTION**

19 On July 17, 2020, Plaintiff Stephanie Wainscott ("Plaintiff"), proceeding pro se,  
20 filed an action against the County of San Diego, the Las Colinas Detention Facility, and  
21 the City of La Mesa Police Department ("Defendants"). (ECF No. 1-1.) On July 20,  
22 2020, Plaintiff also filed a motion to proceed *in forma pauperis* ("IFP") pursuant to 28  
23 U.S.C. § 1915 (a). (ECF No. 2.) For the following reasons, this Court **DENIES**  
24 Plaintiff's motion to proceed IFP and **DISMISSES** Plaintiff's action with leave to  
25 amend.

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1 **II. FACTUAL BACKGROUND**

2 Plaintiff claims she was wrongfully detained at Las Colinas Women’s Detention  
3 Center on August 1, 2019, at approximately 12:00 p.m. (ECF No. 1-1 at 4.<sup>1</sup>) Plaintiff  
4 states Officer Rojas, an employee of the La Mesa Police Department, conducted her  
5 initial arrest in La Mesa earlier that day. *Id.* While at Las Colinas Women’s Detention  
6 Center, Plaintiff states she was “tortured and physically and emotionally damaged by the  
7 police.” *Id.* Plaintiff describes the events that transpired after her arrest, alleging that she  
8 was “thrown into a cell full of [human excrement]” and “strapped to a gurney,” while at  
9 Las Colinas Women’s Detention Center. *Id.* Plaintiff also claims her “clothes were cut  
10 off as well as [her] hair and needles were administered into [her] arms, legs, and neck.”  
11 *Id.* Plaintiff alleges the officers at Las Colinas Women’s Detention Center “antagonized”  
12 her and convinced her that she had “slit [her] wrists and [ ] was bleeding to death.” *Id.*

13 In addition, while in the care of the Las Colinas Women’s Detention Center,  
14 Plaintiff alleges the officers initially denied her water and only offered her water that was  
15 laced with Xanax. *Id.* Plaintiff does not recall the number of days she was in custody.  
16 *Id.* Plaintiff contends that she was never in the care of Grossmont Hospital despite the  
17 hospital staff contacting Plaintiff’s grandmother claiming that [she] was in their care. *Id.*  
18 Plaintiff claims this experience has caused her physical and emotional injuries and she  
19 seeks general and compensatory damages for Defendants’ alleged violations of her civil  
20 rights. *Id.*

21 **III. DISCUSSION**

22 **A. Motion for Leave to Proceed IFP Under 28 U.S.C. § 1915 (a)(1).**

23 All parties filing any civil action, suit, or proceeding in federal district court must  
24 pay a \$400 filing fee.<sup>2</sup> *See* 28 U.S.C. § 1914. However, a federal district court may  
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27 <sup>1</sup> Page numbers are based on the CM/ECF pagination.

28 <sup>2</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.  
*See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14

1 waive the filing fee if it is it appropriate to grant leave to proceed IFP. 28 U.S.C. § 1915  
2 (a)(1). In order to proceed IFP, a Plaintiff is required to submit an affidavit that details a  
3 statement of all assets as well as exhibits the Plaintiff’s inability to pay the necessary  
4 filing fee. 28 U.S.C. § 1915(a)(1); *see also* S.D. Local Civ. R. 3.2. Approval to proceed  
5 IFP is proper where the affidavit is “sufficient” in that it “alleges the [Plaintiff] cannot  
6 pay the court costs and still afford the necessities of life.” *Escobedo v. Applebees*, 787  
7 F.3d 1226, 1234 (9th Cir. 2015). While the Plaintiff must show her financial situation  
8 prevents payment, she is not obliged to demonstrate complete financial insolvency.  
9 *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). In evaluating an  
10 affidavit under this motion, courts are to consider whether the Plaintiff’s financial  
11 circumstances have been conveyed “with some particularity, definiteness, and certainty.”  
12 *Escobedo*, 787 F.3d at 1234 (quoting *United States v. McQuade*, 647 F.2d 938, 940 (9th  
13 Cir. 1981)); *see* 28 U.S.C. § 1915(a)(1) (to proceed IFP, a plaintiff must submit an  
14 affidavit that contains a complete statement of her assets and demonstrates her inability to  
15 pay the fee). The court possesses the authority to deny a Plaintiff’s motion to proceed  
16 IFP in the event the Plaintiff is “unable or unwilling to verify their poverty.” *McQuade*,  
17 647 F.2d at 940. A trial court has discretion to approve or deny leave to proceed IFP.  
18 *Skelly v. Dep’t of Educ.*, No. 19-CV-1812-GPC, 2019 WL 6840398, at \*2 (S.D. Cal. Dec.  
19 16, 2019) (quoting *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965)).

20 Plaintiff has filed an unsigned affidavit supporting her IFP application without  
21 providing any factual support in that she claims no expenses or assistance in any form.  
22 (ECF No. 2.) Instead, she marks all fields of the affidavit with a \$0.00 value, “N/A” or  
23 leaves sections blank. (EFF No. 2 at 1-5.) In doing so, Plaintiff has failed to demonstrate  
24 her financial circumstances “with some particularity, definiteness, and certainty” leaving  
25 this Court with no factual basis to rely on in its evaluation of Plaintiff’s motion. *See*

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28 (eff. June 1, 2016). The additional \$50 administrative fee does not apply to persons granted leave to  
proceed IFP. *Id.*

1 *Escobedo*, 787 F.3d at 1234 (“An affidavit in support of an IFP application is sufficient  
2 where it alleges that the affiant cannot pay the court costs and still afford the necessities  
3 of life.”) Accordingly, the Court **DENIES** Plaintiff’s motion to proceed IFP.

4 **B. Sua Sponte Review Under 28 U.S.C. § 1915(e)(2)**

5 When a Plaintiff proceeds IFP, the Court has a sua sponte duty to screen the  
6 complaint. 28 U.S.C. § 1915(e)(2). A motion proceeding IFP “shall” be dismissed if the  
7 action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be  
8 granted; or (iii) seeks monetary relief against a defendant who is immune from such  
9 relief.” 28 U.S.C. § 1915(e)(2)(B). Courts are instructed to interpret pro se pleadings  
10 “liberally” under this initial screening. *Draper v. Rosario*, 836 F.3d 1072, 1080 (9th Cir.  
11 2016). “The language of § 1915(e)(2)(B)(ii) parallels the language of Federal Rule of  
12 Civil Procedure [“Rule”] 12(b)(6).” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.  
13 1998). Rule 12(b)(6) demands the court to “take as true all allegations of material fact . .  
14 . and construe them in the light most favorable to the [Plaintiff].” *Watison v. Carter*, 668  
15 F.3d 1108, 1112 (9th Cir. 2012) (citation omitted). While extensive detail is not required,  
16 the factual allegations in the complaint must “state a claim to relief that is plausible on its  
17 face” in order to withstand dismissal. *Malibu Textiles, Inc. v. Label Lane Int’l, Inc.*, 922  
18 F.3d 946, 951 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (the  
19 plausibility standard is met when pleadings convey factual content that “raise a right to  
20 relief that is above the speculative level”). In other words, a showing of plausible  
21 entitlement to relief requires a Plaintiff to “plead factual content that allows the court to  
22 draw a reasonable inference that the defendant is liable for the misconduct alleged.”  
23 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Conclusory statements or recitals of the  
24 elements of liability, however, will not suffice under the Rule 12(b)(6) standard. *Id.*

25 In addition, dismissal is proper where a Plaintiff’s complaint fails for lack of a  
26 cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th  
27 Cir. 1984). Even if the Plaintiff presents a valid, cognizable legal theory, if the complaint  
28 is devoid of essential facts in furtherance of that theory, Rule 12(b)(6) dictates that

1 dismissal is warranted. *Id.* Despite the court’s duty to liberally construe pro se  
2 pleadings, courts may not “supply essential elements of claims that were not initially  
3 pled.” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)  
4 (“Vague and conclusory allegations of official participation in civil rights violations are  
5 not sufficient to withstand a motion to dismiss.”).

6 **a. 42 U.S.C. § 1983 Claim**

7 Section 1983 provides a cause of action for the “deprivation of any rights,  
8 privileges, or immunities secured by the Constitution and laws” of the United States. 42  
9 U.S.C. § 1983. In order to prevail on a § 1983 claim, a complaint need contain “two  
10 essential elements”: “(1) that a right secured by the Constitution or laws of the United  
11 states was violated; and (2) that the alleged violation was committed by a person acting  
12 under color of State law.” *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.  
13 2006). “The term ‘persons’ encompasses state and local officials sued in their individual  
14 capacities, private individuals, and entities which act under the color of state law and  
15 local governmental entities.” *Vance v. Cnty. of Santa Clara*, 928 F. Supp. 993, 995-96  
16 (N.D. Cal. 1996).

17 States and state officials acting within their official capacity granted by the state  
18 are not considered “persons” within the language of § 1983. *Will v. Michigan Dept. of*  
19 *State Police*, 491 U.S. 58, 71 (1989) (holding “a suit against a state official” is “a suit  
20 against that official’s office” which is essentially “no different from a suit against the  
21 State itself,” therefore “arm[s] of the state” enjoy Eleventh Amendment immunity from §  
22 1983 liability). In contrast, “municipalities and other local governmental units . . . [are]  
23 among those persons to whom § 1983 applies.” *Monell v. Dep’t of Social Servs. of City*  
24 *of New York*, 436 U.S. 688, 690 (1978). Therefore, counties qualify as persons within the  
25 scope of § 1983. *Jackson v. Barnes*, 749 F.3d 755, 764 (9th Cir. 2014). However, §  
26 1983 does not employ a theory of respondeat superior liability; a municipal entity cannot  
27 be held liable for the actions of its agents or employees alone. *Board of Cnty. Com’rs of*  
28 *Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 403 (1997). Thus, in order to demonstrate

1 liability, § 1983 compels a Plaintiff to allege some municipal policy or custom affected  
2 the alleged civil rights violation as opposed to the individual actions of those employed  
3 by the entity. *Brown*, 520 U.S. at 403; see *Daniel v. Contra Costa Cnty. Sheriff's Dept.*,  
4 Case No. 16-cv-02037-EMC, 2016 WL 5109992, at \*2 (N.D. Cal. Sept. 21, 2016) (“To  
5 impose municipal liability under § 1983 for a violation of constitutional rights, a plaintiff  
6 must show: (1) that the plaintiff possessed a constitutional right of which he or she was  
7 deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate  
8 indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving  
9 force behind the constitutional violation.”).

10 In addition, a local jail or detention facility is not a “person” subject to suit under §  
11 1983 because “[n]aming a municipal department as a defendant is not an appropriate  
12 means of pleading a § 1983 action against a municipality.” See *Vance*, 928 F. Supp. at  
13 996 (sua sponte dismissing Santa Clara Department of Corrections as not a proper party;  
14 instead County of Santa Clara is the proper party since Department of Corrections is an  
15 agency of the County) (citation omitted); *Spatcher v. San Diego Sheriff Dep’t*, Case No.  
16 19-cv-01919-BAS-BLM, 2019 WL 6877575, at \*4 (S.D. Cal. Dec. 16, 2019)  
17 (“Departments of municipal entities are not ‘persons’ subject to suit under § 1983;  
18 therefore, local law enforcement agencies, like the SDSO and its detention facilities, are  
19 not proper parties”); *Paschelke v. Doe*, Case No. 09-2191-IEG (CAB), 2010 WL  
20 2640501, at \*1 (S.D. Cal. Jun. 30, 2010) (holding the “dismissal of the San Diego County  
21 Central Detention Facility [was] appropriate as this [d]efendant is not a ‘person’ subject  
22 to suit under § 1983.”).

23 Here, Plaintiff’s action fails because it does not satisfy both elements of a § 1983  
24 claim. First, Plaintiff has not identified what particular constitutional right was violated  
25 as a result of Defendants’ conduct. See *Kennedy v. H & M Landing, Inc.*, 529 F.2d 987,  
26 989 (9th Cir. 1976) (the plaintiff’s claim was deemed “facially insufficient” under § 1983  
27 because the plaintiff failed to “identify the civil right allegedly invaded” by the  
28 defendant). Rather, Plaintiff merely states Defendants violated her “civil rights” when

1 Defendants detained her at Las Colinas Women’s Detention Center without pointing out  
2 what constitutional right was violated. (ECF No. 1-1.) Such conclusory allegations are  
3 not sufficient to state a claim under § 1983. *See Friedman v. Younger*, 46 F.R.D. 444,  
4 446 (C.D. Cal. 1969) (“Conclusory allegations phrased in terms of ‘deprivation of  
5 constitutional rights’ are insufficient to defeat a [m]otion to [d]ismiss.”); *Handy v.*  
6 *Taylor*, Case No. 20-CV-00305-YGR (PR), 2020 WL 4260737, at \*1 (N.D. Cal. Jul. 24,  
7 2020) (“To state a claim [under § 1983] a plaintiff must show a specific constitutional or  
8 federal guarantee safeguarding the interests that have been invaded.”).

9 Second, Plaintiff names the County of San Diego, Las Colinas Detention Facility  
10 and City of La Mesa Policy Department as Defendants. (ECF No. 1.) While the County  
11 of San Diego may be considered a “person” subject to § 1983, *see Monell*, 436 U.S. at  
12 691, Plaintiff has not alleged any municipal policy or custom that caused her purported  
13 injury. *See id.* at 690. Next, district courts are divided on whether a city police  
14 department is a person under § 1983. *See Valenzuela v. San Diego Police Dep’t*, Case  
15 No. 19-cv-00002-BAS-BLM, 2020 WL 804923, at \*3 n.2 (S.D. Cal. Feb. 18, 2020)  
16 (denying dismissal of San Diego Police Department as an improper defendant but noting  
17 that “many district courts in the Ninth Circuit have concluded that police departments are  
18 not ‘persons’ under § 1983 and thus subject to dismissal”). Nonetheless, even if the  
19 police department was a proper party, Plaintiff’s claim fails because under *Monell*,  
20 Plaintiff fails to allege her injury was caused by a custom, practice, or policy created by  
21 the municipality. *See Monell*, 436 U.S. at 690-91; *Rodriguez v. Cnty. of Contra Costa*,  
22 Case No: C 13–02516 SBA, 2013 WL 5946112, at \*3 (N.D. Cal. Nov. 5, 2013). Finally,  
23 Las Colinas Detention Facility cannot be named as a defendant in this case as a county  
24 jail is not a “person” subject to suit under § 1983. *See Vance*, 928 F. Supp. at 996. Here,  
25 the County of San Diego is already a defendant and the appropriate defendant for claims  
26 alleged against Las Colinas Detention Facility. Therefore, this Court sua sponte  
27 **DISMISSES** Plaintiff’s complaint for failure to state a § 1983 claim against Defendants.

28 **C. Leave to Amend**

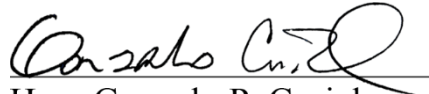
1 “A pro se litigant must be given leave to amend his or her complaint, and some  
2 notice of its deficiencies, unless it is absolutely clear that the deficiencies of the  
3 complaint could be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106  
4 (9th Cir. 1995) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). Because  
5 Plaintiff’s allegations could be cured by an amendment, the Court GRANTS Plaintiff  
6 leave to file an amended complaint.

7 **III. CONCLUSION**

8 For these reasons, this Court **DENIES** Plaintiff’s motion to proceed IFP pursuant  
9 to 28 U.S.C. § 1915(a) and **SUA SPONTE DISMISSES** the action under 28 U.S.C. §  
10 1915(e)(2) with leave to amend. Plaintiff shall file an amended complaint within 30 days  
11 of the filed date of this order.

12 **IT IS SO ORDERED.**

13 Dated: September 25, 2020

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15 Hon. Gonzalo P. Curiel  
16 United States District Judge  
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