

1 Defendants Hunt, Luper, Garcia-Peralta and Carter. The Court finds that Plaintiff has failed to
2 state any other claims.

3 The Court will provide Plaintiff with leave to file a first amended complaint, with the
4 assistance of the legal standards set forth below, if she believes that additional facts will establish
5 other claims. Plaintiff may also choose to proceed only on the claims found cognizable in this
6 order, or to stand on this Complaint, subject to the Court issuing findings and recommendations
7 to the assigned district judge consistent with this order.

8 **I. SCREENING REQUIREMENT**

9 As Plaintiff is proceeding *in forma pauperis*, the Court screens the complaint under 28
10 U.S.C. § 1915. “Notwithstanding any filing fee, or any portion thereof, that may have been paid,
11 the court shall dismiss the case at any time if the court determines that the action or appeal fails to
12 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint is required to contain “a short and plain statement of the claim showing that
14 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
18 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
19 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this
20 plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not
21 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681
22 (9th Cir. 2009) (citation and quotation marks omitted). Additionally, a plaintiff’s legal
23 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

24 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
25 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
26 *pro se* complaints should continue to be liberally construed after *Iqbal*).

27 **II. ALLEGATIONS IN THE COMPLAINT**

28 Plaintiff’s complaint alleges as follows:

1 On June 27, 2020, Plaintiff was a passenger in a rental car that was in a collision in
2 Fresno. The driver of the vehicle fled on foot. Plaintiff remained at the scene and contacted the
3 California Highway Patrol. Defendants Sergeant N. Hunt and Officer Luper responded. Plaintiff
4 told them that she was a passenger and the driver fled on foot. Defendants Hunt and Luper
5 arrested Plaintiff. Plaintiff informed them that she had a purse in the car with \$890 and other
6 property therein, but they did not permit her to retrieve her personal property from the car.

7 Plaintiff refused to take a breathalyzer test. Plaintiff believes a warrant was issued to draw
8 her blood. She was taken to a hospital. Defendants Hunt, Luper, Officer Garcia-Peralta and
9 Officer Carter lifted Plaintiff and slammed her facedown on a gurney. Plaintiff saw stars due to
10 the force used. Plaintiff was afraid. One of their knees was placed “in the spam of [her] back
11 applying great pressure,” and she could not breathe.

12 Plaintiff never resisted at any time. She was handcuffed with her hands behind her back
13 during the entire encounter.

14 Plaintiff attached a government claim form to her complaint and various responses.

15 Plaintiff also attaches a civilian’s complaint she filed with the California Highway Patrol.
16 One of the pages includes a summary of a telephone call that appears to be written by Sergeant J.
17 Tyler concerning Plaintiff’s allegations. According to the summary, Plaintiff alleges that
18 Defendants Hunt, Luper and Garcia failed to secure her property after her arrest. She “believes
19 the officers on scene are corrupt and either stole it or purposely misplaced it to inconvenience her.
20 [Plaintiff] also alleged that the tow company may have failed to secure her property[,] stating that
21 they may have stolen it or failed to secure their yard.”

22 Plaintiff states that her causes of action are under the Fourth Amendment for excessive
23 force; “Protection of personal property after being arrested. Fourteenth (14th) Amendment” and
24 “intentional emotional distress.”

25 **III. SECTION 1983**

26 The Court construes Plaintiff’s constitutional causes of action as arising under the Civil
27 Rights Act. It provides:

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2 Every person who, under color of any statute, ordinance, regulation, custom,
3 or usage, of any State or Territory or the District of Columbia, subjects, or
4 causes to be subjected, any citizen of the United States or other person within
5 the jurisdiction thereof to the deprivation of any rights, privileges, or
immunities secured by the Constitution and laws, shall be liable to the party
injured in an action at law, suit in equity, or other proper proceeding for
redress....

6 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
7 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490
8 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see also*
9 *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*,
10 697 F.3d 1059, 1068 (9th Cir. 2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir. 2012);
11 *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

12 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
13 color of state law, and (2) the defendant deprived her of rights secured by the Constitution or
14 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh*
15 *v. Cnty. of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state
16 law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he
17 does an affirmative act, participates in another’s affirmative act, or omits to perform an act which
18 he is legally required to do that causes the deprivation of which complaint is made.’” *Preschooler*
19 *II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*,
20 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an
21 official sets in motion a ‘series of acts by others which the actor knows or reasonably should
22 know would cause others to inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at 1183
23 (quoting *Johnson*, 588 F.2d at 743). This standard of causation “closely resembles the standard
24 ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d
25 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.
26 2008).

27 Additionally, a plaintiff must demonstrate that each named defendant personally
28 participated in the deprivation of her rights. *Iqbal*, 556 U.S. at 676-77. In other words, there must

1 be an actual connection or link between the actions of the defendants and the deprivation alleged
2 to have been suffered by Plaintiff. *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S.
3 658, 691, 695 (1978).

4 **IV. ANALYSIS OF PLAINTIFF'S CLAIMS**

5 **A. Fourth Amendment Excessive Force**

6 A § 1983 claim for excessive use of force during an arrest is analyzed under the Fourth
7 Amendment's objective reasonableness standard. *Graham v. Connor*, 490 U.S. 386, 395-99
8 (1989). "The question is whether the officers' actions are objectively reasonable in light of the
9 facts and circumstances confronting them, without regard to their underlying intent or
10 motivation." *Byrd v. Phoenix Police Dep't*, 885 F.3d 639, 642 (9th Cir. 2018) (quoting *Graham*,
11 490 U.S. at 397). To determine whether the force used is "objectively reasonable," the Court
12 balances "the nature and quality of the intrusion on the individual's Fourth Amendment interests
13 against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 397. "The
14 essence of the *Graham* objective reasonableness analysis is that the force which was applied must
15 be balanced against the *need* for that force: it is the need for force which is at the heart of
16 the *Graham* factors." *Headwaters Forest Def. v. Cty. of Humboldt*, 276 F.3d 1125, 1130 (9th Cir.
17 2002), *as amended* (Jan. 30, 2002) (quoting *Liston v. County of Riverside*, 120 F.3d 965, 976 (9th
18 Cir. 1997) (internal quotation marks and brackets omitted).

19 Under that test, a court must "first assess the quantum of force used to arrest the plaintiff
20 by considering the type and amount of force inflicted." *Drummond ex rel. Drummond v. City of*
21 *Anaheim*, 343 F.3d 1052, 1056 (9th Cir. 2003) (internal quotation marks and brackets omitted).
22 Second, a court balances the government's countervailing interests. This involves considering
23 "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of
24 the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by
25 flight." *Graham*, 490 U.S. at 396.

26 Using these factors, a court must determine "whether the force employed was greater than
27 is reasonable under the circumstances." *Drummond*, 343 F.3d at 1058.

28 Here, Plaintiff alleges that she was handcuffed while four officers slammed her facedown

1 on a gurney to the point where she saw stars so that her blood could be drawn. She further alleges
2 that she could not breathe and that she was not resisting. For screening purposes, Plaintiff’s
3 complaint states a claim against those four officers—Defendants Hunt, Luper, Garcia-Peralta and
4 Carter—under the Fourth Amendment for excessive force.

5 **B. Fourteenth Amendment: Deprivation of Property**

6 Authorized intentional deprivation of property pursuant to an established state procedure
7 is actionable under the Due Process Clause. *Hudson v. Palmer*, 468 U.S. 517, 532 & n.13 (1984)
8 (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36 (1982)); *Quick v. Jones*, 754 F.2d
9 1521, 1524 (9th Cir. 1985).

10 On the other hand, “an unauthorized intentional deprivation of property by a state
11 employee does not constitute a violation of the procedural requirements of the Due Process
12 Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is
13 available.” *Hudson*, 468 U.S. at 533. “California law provides an adequate post-deprivation
14 remedy for any property deprivations.” *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994)
15 (citing Cal. Gov’t Code §§ 810-95).

16 Here, reading Plaintiff’s complaint liberally, Plaintiff alleges that after Defendants
17 arrested her, they either stole her property or were negligent in failing to prevent a towing
18 company from losing or stealing her property. These deprivations are unauthorized. Plaintiff has
19 adequate California remedies. *See Barnett*, 31 F.3d at 816-17. Therefore, Plaintiff has failed to
20 state a due process claim under the Fourteenth Amendment.

21 **C. State Law Claims**

22 “Except as otherwise provided by statute (including Section 820.2), a public employee is
23 liable for injury caused by his act or omission to the same extent as a private person.” Cal. Gov’t
24 Code § 820(a).

25 “Section 950.2 [of the California Government Code provides that ‘a cause of action
26 against a public employee for injury resulting from an act or omission in the scope of his
27 employment as a public employee is barred’ unless a timely claim has been filed against the
28 employing public entity.” *Fowler v. Howell*, 42 Cal.App.4th 1746, 1750 (1996) (alteration

1 omitted). California courts construing the section explain that: “included in the [Government]
2 Claims Act [is] what amounts to a requirement that one who sues a public employee on the basis
3 of acts or omissions in the scope of the defendant’s employment [must] have filed a claim against
4 the public entity employer pursuant to the procedure for claims against public entities.” *Briggs v.*
5 *Lawrence*, 230 Cal.App.3d 605, 612–13 (1991).

6 Plaintiff has attached a Government Claims Act form to her complaint. For screening
7 purposes only, the Court finds that Plaintiff has sufficiently alleged compliance with the
8 Government Claims Act.

9 1. Intentional Infliction of Emotional Distress

10 Plaintiff brings a state-law claim for intentional infliction of emotional distress. The
11 California Supreme Court has held the following concerning such claims:

12 A cause of action for intentional infliction of emotional distress exists when
13 there is (1) extreme and outrageous conduct by the defendant with the
14 intention of causing, or reckless disregard of the probability of causing,
15 emotional distress; (2) the plaintiff’s suffering severe or extreme emotional
16 distress; and (3) actual and proximate causation of the emotional distress by
17 the defendant’s outrageous conduct. A defendant’s conduct is “outrageous”
when it is so extreme as to exceed all bounds of that usually tolerated in a
civilized community. And the defendant’s conduct must be intended to inflict
injury or engaged in with the realization that injury will result. . . .

18 With respect to the requirement that the plaintiff show severe emotional
19 distress, this court has set a high bar. Severe emotional distress means
20 emotional distress of such substantial quality or enduring quality that no
reasonable person in civilized society should be expected to endure it.

21 *Hughes v. Pair*, 46 Cal. 4th 1035, 1050–51 (2009) (cleaned up).

22 Here, Plaintiff has not alleged the elements for intentional infliction of emotional distress.
23 Plaintiff alleges Defendants used excessive force on her in connection with drawing her blood.
24 However, she has not alleged that their conduct had the intent to cause, or was with reckless
25 disregard of the probability of causing, emotional distress. She has not alleged that she suffered
26 severe or extreme emotional distress. And she has not alleged that Defendants’ conduct caused
27 any resulting emotional distress. Therefore, Plaintiff fails to state a claim for intentional infliction
28 of emotional distress.

1 2. Unasserted State Law Standards

2 Plaintiff has not alleged any other state-law claims. However, given the dismissal of
3 Plaintiff’s Fourteenth Amendment claim and the inclusion of a Government Claims Act form, the
4 Court provides the following legal standards, which may be relevant to her claims. If Plaintiff
5 wishes to bring any additional claims and believes she can truthfully allege facts stating such
6 claims under these legal standards, Plaintiff may file an amended complaint including such
7 claims, which the Court will screen in due course.

8 a. Conversion

9 “Conversion is the wrongful exercise of dominion over the property of another. The
10 elements of a conversion are the plaintiff’s ownership or right to possession of the property at the
11 time of the conversion; the defendant’s conversion by a wrongful act or disposition of property
12 rights; and damages.” *Oakdale Vill. Grp. v. Fong*, 43 Cal. App. 4th 539, 543–44 (1996), *as*
13 *modified on denial of reh’g* (Apr. 10, 1996). Other plaintiffs have asserted claims against
14 California police officers for conversion for illegally taking property while on duty. *See, e.g.,*
15 *Gutierrez v. Cnty. of Los Angeles*, No. CV 10-7589-CAS PLAX, 2013 WL 3821602, at *16 (C.D.
16 Cal. July 22, 2013) (denying defendants’ motion for summary judgment on such claim).

17 b. Common-Law Negligence

18 “[I]n order to prove facts sufficient to support a finding of negligence, a plaintiff must
19 show that defendant had a duty to use due care, that he breached that duty, and that the breach
20 was the proximate or legal cause of the resulting injury.” *Nally v. Grace Cmty. Church*, 47 Cal.
21 3d 278, 292 (1988); *accord Lugtu v. California Highway Patrol*, 26 Cal. 4th 703, 716 (2001)
22 (“Under general negligence principles, of course, a person ordinarily is obligated to exercise due
23 care in his or her own actions so as to not to create an unreasonable risk of injury to others, and
24 this legal duty generally is owed to the class of persons who it is reasonably foreseeable may be
25 injured as the result of the actor’s conduct.”).

26 In *Lugtu*, the California Supreme Court discussed what duties law enforcement officers
27 have to individuals they pull over:

1 Consistent with the basic tort principle recognizing that the general duty of
2 due care includes a duty not to expose others to an unreasonable risk of injury
3 at the hands of third parties, past California cases uniformly hold that a police
4 officer who exercises his or her authority to direct another person to proceed
5 to—or to stop at—a particular location, owes such a person a duty to use
6 reasonable care in giving that direction, so as not to place the person in danger
7 or to expose the person to an unreasonable risk of harm. Thus, for example, in
8 *Williams v. State of California* (1983) 34 Cal.3d 18, 192 Cal.Rptr. 233, 664
9 P.2d 137, this court recognized that although law enforcement officers, like
10 other members of the public, generally do not have a legal duty to come to the
11 aid of a person, in carrying out routine traffic enforcement duties or
12 investigations, a duty of care does arise when an officer engages in “*an*
13 *affirmative act which places the person in peril or increases the risk of harm*
14 as in *McCorkle v. Los Angeles* (1969) 70 Cal.2d 252, 74 Cal.Rptr. 389, 449
15 P.2d 453, where an officer investigating an accident directed the plaintiff to
16 follow him into the middle of the intersection where the plaintiff was hit by
17 another car.” (34 Cal.3d at p. 24, 192 Cal.Rptr. 233, 664 P.2d 137, italics
18 added.)

12 The Court of Appeal recognized this same principle in *Whitton v. State of*
13 *California* (1979) 98 Cal.App.3d 235, 159 Cal.Rptr. 405. In that case, CHP
14 officers had made a traffic stop of the plaintiff’s automobile on the right
15 shoulder of a highway, parking their patrol car 10 to 15 feet behind the
16 plaintiff’s vehicle, and a drunk driver subsequently struck the patrol car,
17 propelling it into the plaintiff while she was standing between the patrol car
18 and her own vehicle. Although the Court of Appeal in *Whitton* found that
19 sufficient evidence supported the jury’s determination that, under the
20 circumstances of the case, the officers had acted with reasonable care and thus
21 should not be held liable, that court explicitly recognized that the CHP
22 officers, in making the traffic stop, had a duty “to perform their official duties
23 in a reasonable manner.” (*Id.* at p. 241, 159 Cal.Rptr. 405; see also *Reed v.*
24 *City of San Diego* (1947) 77 Cal.App.2d 860, 866–867, 177 P.2d 21
25 [upholding jury verdict imposing liability upon police department where
26 officers’ negligence in positioning their patrol car during a traffic stop resulted
27 in an injury to the stopped motorist when a third car collided with the police
28 vehicle].) Other states also have recognized that law enforcement officers, in
making a traffic stop, have a legal duty to exercise due care for the safety of
those whom they stop and may incur liability when their failure to exercise
such care exposes a person to injury at the hands of another motorist. (See,
e.g., *Kaisner v. Kolb* (Fla.1989) 543 So.2d 732, 734–736; *Kinsey v. Town of*
Kenly (1965) 263 N.C. 376, 139 S.E.2d 686, 688–690.)

25 Accordingly, we conclude that, under California law, a law enforcement
26 officer has a duty to exercise reasonable care for the safety of those persons
27 whom the officer stops, and that this duty includes the obligation not to
28 expose such persons to an unreasonable risk of injury by third parties.

Lugtu, 26 Cal. 4th at 717–18.

1 **V. CONCLUSION AND ORDER**

2 The Court has screened Plaintiff's complaint and finds that it states a claim against
3 Defendants Hunt, Luper, Garcia-Peralta and Carter for excessive force in violation of the Fourth
4 Amendment. The Court finds Plaintiff's complaint fails to state any other claims.

5 Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, "the court should freely give
6 leave [to amend] when justice so requires." Accordingly, the Court will provide Plaintiff with
7 time to file an amended complaint, so that Plaintiff can provide additional factual allegations.
8 *Lopez v. Smith*, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file an
9 amended complaint within thirty days.

10 If Plaintiff chooses to amend her complaint, in her amended complaint she must state what
11 each named defendant did that led to the deprivation of his constitutional or other federal rights.
12 Fed. R. Civ. P. 8(a); *Iqbal*, 556 U.S. at 678; *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

13 Plaintiff should note that although she has been given the opportunity to amend, it is not
14 for the purpose of changing the nature of this suit or adding unrelated claims. *George v. Smith*,
15 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

16 Plaintiff is advised that an amended complaint supersedes the original complaint, *Lacey v.*
17 *Maricopa County*, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in
18 itself without reference to the prior or superseded pleading, Local Rule 220. Therefore, in an
19 amended complaint, as in an original complaint, each claim and the involvement of each
20 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
21 titled "First Amended Complaint," refer to the appropriate case number, and be an original signed
22 under penalty of perjury.

23 Plaintiff has a choice on how to proceed. Plaintiff may file an amended complaint if she
24 believes that additional true factual allegations would state cognizable claim(s) or that her
25 allegations state additional causes of action. If Plaintiff files an amended complaint, the Court
26 will screen that complaint in due course. Plaintiff may file a notice with the Court that she wants
27 to proceed only on the claim found cognizable in this order, in which case the Court will
28 authorize service of the complaint on defendants. Alternatively, Plaintiff may choose to stand on

1 her complaint subject to the Court issuing findings and recommendations to a district judge
2 consistent with this order.

3 Based on the foregoing, it is **HEREBY ORDERED** that:

- 4 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall either:
5 a. File a First Amended Complaint;
6 b. Notify the Court in writing that she wants to proceed only on the claim against
7 Defendants Hunt, Luper, Garcia-Peralta and Carter for violations of the Fourth
8 Amendment; or
9 c. Notify the Court in writing that she wants to stand on this complaint;
10 2. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the
11 amended complaint "First Amended Complaint" and refer to case number 1:20-cv-
12 01759-NONE-EPG; and
13 3. Failure to comply with this order may result in the dismissal of this action.

14 IT IS SO ORDERED.

15 Dated: January 11, 2021

16 /s/ Eric P. Gray
17 UNITED STATES MAGISTRATE JUDGE
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