

1 the CCDC for processing and booking. (*Id.*) Langley was stationed at the CCDC obtaining
2 footage upon Plaintiff's arrival. (*Id.*) Langley obtained video footage of Plaintiff being booked
3 and processed into the CCDC. (*Id.*) Plaintiff was "extremely intoxicated at the time and does
4 not recall signing a release or waiver giving Langley or [the LVMPD] permission to use
5 Plaintiff's image." (*Id.*) Plaintiff believed that Langley obtained footage of Plaintiff without her
6 consent because she was not mentally competent to sign a release or authorization. (*Id.*)

7 According to the complaint, Langley featured footage of Plaintiff on Episode 202 of the
8 television series "Inside American Jail." (*Id.*) The episode contained "footage of . . . Plaintiff
9 interacting with [CCDC] personnel including, *inter alia*, being questioned about her arrest and
10 seeking admissions about the crime she was accused of committing in violation of her Fifth
11 and Sixth Amendment right to remain silent, about the basis of her arrest and why she was
12 in jail." (*Id.* at 4). The complaint alleged that "Plaintiff was in custody and enjoy[ed] the right
13 to be informed of her constitutional rights, including the right to remain silent or to consult with
14 an attorney . . . the feature also contains the name of the Plaintiff to the television
15 audience . . . the identity of [the CCDC personnel], the first name of the individual detained,
16 and a description of the facts surrounding the charge against the detainee." (*Id.*)

17 The complaint alleged that Langley intentionally edited footage of Plaintiff to promote
18 Plaintiff in a negative light and that, as a result, she had been the subject of personal ridicule,
19 scorn, and unwanted recognition. (*Id.* at 4-5). Plaintiff alleged that it was "a policy, practice
20 and custom" for members of the LVMPD to work with Langley "[t]o make its detentions and
21 investigations worthy for television, at the expense of the constitutional rights of Nevada
22 citizens." (*Id.* at 5). In 2009, Langley donated \$10,000 to Sheriff Gillespie's re-election
23 campaign. (*Id.*) That same year, John Langley, owner of Langley, donated an additional
24 \$10,000 to Sheriff Gillespie's campaign. (*Id.*) Sheriff Gillespie personally authorized Langley
25 to film various LVMPD activities. (*Id.* at 6). A Langley representative stated that "[t]he Sheriff
26 ordered this [filming]; we are here to help him with his campaign for re-election." (*Id.*)

27 The complaint alleged nine causes of action including: (1) violation of likeness for
28 commercial purposes against all Defendants; (2) false light-privacy against all Defendants;

1 (3) intentional infliction of emotional distress against all Defendants; (4) defamation against
2 TBS; (5) violation of civil and constitutional rights to life, liberty, and property under 42 U.S.C.
3 § 1983 against Jane Doe I and Jane Doe II; (6) violation of civil and constitutional rights to life,
4 liberty, and property under 42 U.S.C. § 1983 against the LVMPD via municipal liability; (7) civil
5 conspiracy under 42 U.S.C. § 1983 against all Defendants; (8) negligent training, supervision,
6 and control against the LVMPD; and (9) negligence against the LVMPD, Sheriff Gillespie, Jane
7 Doe II, and Jane Doe III. (*Id.* at 6-14). With respect to the sixth cause of action against the
8 LVMPD, the complaint alleged that Plaintiff “possessed constitutional rights under the Fourth,
9 Fifth, and Fourteenth Amendment[s] to the United States Constitution of which she was
10 deprived.” (*Id.* at 12). The complaint alleged that the LVMPD had “several policies that
11 amounted to a deliberate indifference to Plaintiff’s constitutional rights” and “were the moving
12 force . . . of the violations of Plaintiff’s constitutional rights.” (*Id.*). With respect to the seventh
13 cause of action, the complaint alleged that “Defendants deprived Plaintiff of her equal
14 protection rights secured to [her] by [the] Fifth, Sixth, and Fourteenth Amendment[s] to the
15 United States Constitution.” (*Id.* at 13).

16 LEGAL STANDARD

17 When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court
18 must accept as true all factual allegations in the complaint as well as all reasonable inferences
19 that may be drawn from such allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150 n.2 (9th
20 Cir. 2000). Such allegations must be construed in the light most favorable to the nonmoving
21 party. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000). In general, the court
22 should only look to the contents of the complaint during its review of a Rule 12(b)(6) motion
23 to dismiss. However, the court may consider documents attached to the complaint or referred
24 to in the complaint whose authenticity no party questions. *Id.*; see *Durning v. First Boston*
25 *Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987).

26 The analysis and purpose of a Rule 12(b)(6) motion to dismiss for failure to state a
27 claim is to test the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th
28 Cir. 2001). The issue is not whether a plaintiff will ultimately prevail but whether the claimant

1 is entitled to offer evidence to support the claims. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246,
2 249 (9th Cir. 1997) (quotations omitted). To avoid a Rule 12(b)(6) dismissal, a complaint does
3 not need detailed factual allegations; rather, it must plead “enough facts to state a claim to
4 relief that is plausible on its face.” *Clemens v. Daimler Chrysler Corp.*, 534 F.3d 1017, 1022
5 (9th Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955,
6 1964, 167 L.Ed.2d 929 (2007)); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949,
7 173 L.Ed.2d 868 (2009) (stating that a “claim has facial plausibility when the plaintiff pleads
8 factual content that allows the court to draw the reasonable inference that the defendant is
9 liable for the misconduct alleged”). Even though a complaint does not need “detailed factual
10 allegations” to pass muster under 12(b)(6) consideration, the factual allegations “must be
11 enough to raise a right to relief above the speculative level . . . on the assumption that all the
12 allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555, 127
13 S.Ct. at 1965. “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the
14 elements of a cause of action will not do.” *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949. “Nor
15 does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual
16 enhancements.’” *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. at 1966).

17 DISCUSSION

18 Defendants file a motion to dismiss the entire complaint for failure to state a claim. (Mot.
19 to Dismiss (#12) at 1). Defendants assert that Plaintiff signed an appearance release
20 informing her that Langley would use her video footage for purposes they deemed appropriate
21 and that Langley could edit and air the footage at its discretion. (*Id.* at 3). With respect to the
22 sixth cause of action, Defendants argue that the claim should be dismissed as a matter of law
23 because Plaintiff has not alleged any facts to establish an actual violation or deprivation of her
24 constitutional rights. (*Id.* at 12-13). Defendants assert that Plaintiff never alleges that she was
25 improperly informed of her *Miranda*¹ rights and instead only states that, while in custody, she

27 ¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
28

1 enjoyed the right to remain silent or to consult with an attorney. (*Id.* at 13). Defendants note
2 that Plaintiff does not allege that she had involuntarily spoken with the police, was coerced into
3 speaking with them against her will, had asked for counsel, or was improperly detained. (*Id.*).
4 With respect to the seventh cause of action, Defendants assert that the claim should be
5 dismissed because Plaintiff fails to allege facts about an actual constitutional deprivation. (*Id.*
6 at 14-15).

7 In response, Plaintiff asserts that her complaint alleges “plausible” claims. (Opp’n to
8 Mot. to Dismiss (#15) at 4-10). With respect to the sixth cause of action, Plaintiff asserts that
9 she states a claim for civil rights violations because she alleged that “she was deprived by
10 Fourth, Fifth, Sixth, and Fourteenth amendment rights by the Defendants.” (*Id.* at 7). Plaintiff
11 also argues that the police assisted Langley and TBS “in committing pendant state tort claims
12 upon [Plaintiff] by conspiring with LVMPD to deprive pre-trial detainees of their constitutional
13 rights by filming them in [the] CCDC.” (*Id.*). With respect to the seventh cause of action,
14 Plaintiff cites the law for § 1983 civil conspiracy and state law tort conspiracy and states that
15 she has pled sufficient facts to state a claim. (*Id.* at 9-10).

16 Defendants file a reply. (Reply to Mot. to Dismiss (#17)).

17 As an initial matter, the Court must decide whether it has subject-matter jurisdiction over
18 this case. If the Court dismisses all of the claims over which it has original jurisdiction, the
19 Court may decline to exercise supplemental jurisdiction over the remaining state law claims.
20 See 28 U.S.C. § 1367(c)(3). In this case, Plaintiff attempts to assert federal question
21 jurisdiction by alleging three 42 U.S.C. § 1983 claims, i.e. Counts 5, 6, and 7. See 28 U.S.C.
22 § 1331 (stating that “[t]he district courts shall have original jurisdiction of all civil actions arising
23 under the Constitution, laws, or treaties of the United States).

24 With respect to the fifth cause of action, the Court dismisses this claim against Doe
25 Defendants because “Doe” pleading is improper in federal court. See *Graziose v. Am. Home*
26 *Prod. Corp.*, 202 F.R.D. 638, 643 (D. Nev. 2001) (finding that there is no provision in the
27 federal rules permitting the use of fictitious defendants).

28 With respect to the sixth cause of action, the Court grants Defendants’ motion to

1 dismiss this municipal liability claim. “A government entity may not be held liable under 42
2 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving
3 force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892,
4 900 (9th Cir. 2011) (citing *Monell v. Dep’t of Soc. Servs. of the City of New York*, 436 U.S. 658,
5 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). To establish government entity liability under
6 *Monell*, a plaintiff must prove that: (1) the plaintiff possessed a constitutional right of which she
7 was deprived; (2) the municipality had a policy; (3) the policy amounted to deliberate
8 indifference to the plaintiff’s constitutional right; and (4) the policy was the moving force behind
9 the constitutional violation. *Id.*

10 Here, Plaintiff fails to provide any facts that allege a constitutional violation. Instead,
11 Plaintiff makes conclusory statements that her constitutional rights were violated but never
12 identifies a violation. (See Compl. (#1) at 12). Plaintiff does allege that CCDC personnel
13 questioned her about her arrest and sought admissions about the crime she was accused of
14 committing “in violation of her Fifth and Sixth Amendment right to remain silent.” (See *id.* at
15 4). However, these facts fail to state a constitutional violation.

16 The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal
17 case to be a witness against himself.” U.S. Const. amend. V. This right to remain silent
18 carries an implicit assurance that silence will carry no penalty. *United States v. Verlarde-*
19 *Gomez*, 269 F.3d 1023, 1028 (9th Cir. 2001) (citing *Doyle v. Ohio*, 426 U.S. 610, 618, 96 S.
20 Ct. 2240, 2245, 49 L. Ed. 2d 91 (1976)). The U.S. Supreme Court has held that *Miranda*
21 warnings are a prophylactic means of safeguarding Fifth Amendment rights and that an
22 individual has a right to remain silent in the face of government questioning, regardless of
23 whether *Miranda* warnings are given. *Id.* A constitutional violation of the right to remain silent
24 occurs when the government attempts to use the defendant’s silence against him in a criminal
25 proceeding. See *Greer v. Miller*, 483 U.S. 756, 763, 107 S. Ct. 3102, 3107, 97 L. Ed. 2d 618
26 (1987). In this case, Plaintiff fails to allege that she invoked her right to remain silent and that
27 the government attempted to use her silence against her in a criminal proceeding. As such,
28 Plaintiff has failed to state a constitutional violation of her right to remain silent and the Court

1 dismisses her sixth cause of action for failure to state a claim.

2 With respect to her seventh cause of action, the Court grants Defendants' motion to
3 dismiss this claim. To state a claim for civil conspiracy under § 1983, Plaintiff must show an
4 agreement or meeting of the minds between Defendants to violate constitutional rights. See
5 *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989).
6 Because Plaintiff has failed to identify any constitutional violations she fails to state a claim for
7 § 1983 civil conspiracy.

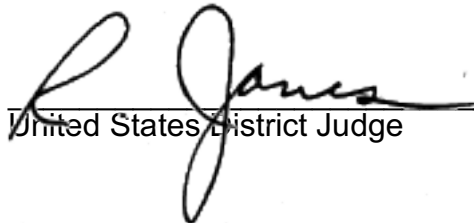
8 Accordingly, the Court grants Defendants' motion to dismiss (#12) the federal
9 claims—Counts 5, 6, and 7—for failure to state a claim. Based on the dismissal of these claims,
10 the Court finds that it lacks subject-matter jurisdiction over the case. The Court declines to
11 exercise jurisdiction over the state law claims and dismisses them without prejudice. See
12 *Wade v. Reg. Credit Ass'n*, 87 F.3d 1098, 1101 (9th Cir. 1996) (holding that “[w]here a district
13 court dismisses a federal claim, leaving only state claims for resolution, it should decline
14 jurisdiction over the state claims and dismiss them without prejudice”).

15 **CONCLUSION**

16 For the foregoing reasons, IT IS ORDERED that Defendants' Motion to Dismiss (#12)
17 is GRANTED. Specifically, the Court dismisses the federal causes of action—Counts 5, 6, and
18 7—for failure to state a claim and dismisses the remaining state law claims—Counts 1, 2, 3, 4,
19 8, and 9—for lack of jurisdiction.

20 The Clerk of the Court shall enter judgment accordingly.

21
22 DATED: This 19th day of December, 2012.

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24 
25 United States District Judge
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