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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tanya Busse,

10 Plaintiff,

11 v.

12 City of Mesa, et al.,

13 Defendants.

No. CV-13-01158-PHX-DGC

ORDER

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15 Defendant City of Mesa has filed a motion to dismiss. Doc. 37. Defendants Rick
16 Romero, Superior Process Service, Inc. and Kevin Jensen have joined the motion.
17 Docs. 38, 39. Plaintiff has not responded despite prompts by the court to do so, but has
18 filed a motion for summary judgment. Doc. 41. The Court will grant Defendants'
19 motion to dismiss.

20 **I. Background.**

21 Plaintiff seeks damages under 42 U.S.C. § 1983 for an allegedly improper arrest
22 and detention. Doc. 1. Plaintiff was arrested at her place of work on April 19, 2013 for
23 violating an order of protection. The order prohibited her from any contact with her
24 husband, but Plaintiff had texted her husband up to six times in March and April 2013.
25 Doc. 37-2 at 3. Upon arrest, Plaintiff claimed that she had never been served with the
26 order of protection. Doc. 1 at 3-4. Plaintiff was held overnight, during which time she
27 claims to have had small seizures, to have been hit in the head by another woman, and to
28 have suffered extreme cold temperatures, which caused her extreme pain. *Id.* at 4.

1 In June of 2013, Plaintiff was charged with four counts of interfering with judicial
2 proceedings – domestic violence, for violating the order of protection. Doc. 37-3. On
3 January 13, 2014, Plaintiff was convicted in Mesa Municipal Court on three of the four
4 counts. Doc. 37-4.

5 **II. Analysis.**

6 Under *Heck v. Humphrey*, 512 U.S. 477 (1994), “in order to recover damages for
7 allegedly unconstitutional conviction or imprisonment, or for other harm caused by
8 actions whose unlawfulness would render a conviction or sentence invalid, a § 1983
9 plaintiff must prove that the conviction or sentence has been reversed on direct appeal,
10 expunged by executive order, declared invalid by a state tribunal authorized to make such
11 determination, or called into question by a federal court’s issuance of a writ of habeas
12 corpus, 28 U.S.C. § 2254.” *Id.* at 486-87. “A claim for damages bearing that relationship
13 to a conviction or sentence that has *not* been so invalidated is not cognizable under
14 § 1983.” *Id.*

15 Plaintiff claims that her arrest was invalid and unconstitutional because (1) she
16 “was arrested without committing a crime and without a warrant,” (2) the arresting
17 officers “did not follow proper procedure to secure plaintiffs rights and they knew or
18 should have known that the arrest was not lawful,” (3) she was embarrassed in front of
19 coworkers; (4) her husband and an individual named Chelsea Holgate alleged false,
20 defamatory information that led to her arrest; and (5) the City of Mesa failed to properly
21 train its employees. Doc.1 at 5.

22 The Court “must consider whether a judgment in favor of the plaintiff would
23 necessarily imply the invalidity of his conviction or sentence; if it would, the complaint
24 must be dismissed.” *Heck*, 512 U.S. at 487. Most of Plaintiff’s allegations concern the
25 charges brought by the City of Mesa and her arrest on those charges. Because these
26 allegations imply the invalidity of the charges and her conviction, they must be dismissed
27 under *Heck*. Plaintiff has not shown that her conviction on the charges has been reversed,
28 overturned, or otherwise called into question by court action.

1 Further, a § 1983 claim cannot be used to assert claims against her husband and
2 Chelsea Holgate for making false and defamatory statements. These individuals were not
3 acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988) (defendant must
4 be acting under color of state authority to be subject to a § 1983 claim).

5 Finally, Plaintiff's claim that the City of Mesa failed to train its employees
6 properly may or may not be subject to a *Heck* defense. To the extent Plaintiff suggests
7 that her arrest and conviction were the result of inadequate training, the claims clearly are
8 barred by *Heck*. To the extent Plaintiff bases her claim of inadequate training on other
9 facts, she has failed to identify those facts or clearly describe the claim she is asserting.

10 As noted above, Plaintiff did not respond to the motions to dismiss despite the
11 Court's direct warning that a failure to respond would result in the motions being granted.
12 Doc. 40. Plaintiff did file a motion for summary judgment, but it does not provide
13 reasons for denying the motions to dismiss. Plaintiff's motion for summary judgment
14 argues that the City of Mesa violated her constitutional rights in connection with her
15 conviction, including denying her right to indictment and a jury trial. Plaintiff also
16 describes new constitutional violations resulting from the conviction, and argues various
17 facts relating to actions by her husband and the circumstances of her arrest. The Court
18 cannot find in the motion any basis for concluding that Plaintiff has stated a valid claim.
19 Because this case has been pending for more than nine months, with Plaintiff having
20 failed to respond to eight motions by Defendants, the Court concludes that the motions to
21 dismiss should be granted and this case should be terminated. Although Plaintiff
22 mentions in her motion for summary judgment that she will seek leave to amend, the new
23 claims she describes (to the extent they can be understood by the Court) would also be
24 barred by *Heck*. Plaintiff has had two opportunities to plead her claims, and the Court
25 concludes that further amendments will only unnecessarily prolong this litigation.

