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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Lorraine Patterson,

10 Plaintiff,

11 v.

12 Carla Miller; Patty Nelson-McCall; Lindsey
13 Romero; JoAnne Mathlin; Karen
Youngman; John and Jane Does 1-50,

14 Defendants.

No. CV-15-00321-PHX-NW

ORDER

15 Before the court is the State Defendants' Motion to Dismiss Plaintiff's Complaint
16 (Doc. 88) jointly filed by Defendants Carla Miller, Patty Nelson-McCall, Lindsey
17 Romero, JoAnne Mathlin, and Karen Youngman (collectively, "Defendants"). For the
18 following reasons, the Motion will be granted.

19 **I. BACKGROUND**

20 Plaintiff Lorraine Patterson ("Patterson") alleges that Defendants violated her
21 constitutional rights in an Arizona state dependency proceeding by "suppressing
22 exculpatory evidence, submitting lies in reports to the courts[,] . . . and/or [] fabricating
23 evidence." (Doc. 89 at ¶ 4.) She seeks damages under 42 U.S.C. § 1983. Defendants
24 move to dismiss for failure to state a claim upon which relief can be granted.

25 Despite numerous court orders, Patterson's fourth Amended Complaint still
26 frequently meanders and confuses. *Cf.* Fed. R. Civ. P. 8(a); *McHenry v. Renne*, 84 F.3d
27 1172, 1177-78 (9th Cir. 1996) (explaining that the Federal Rules of Civil Procedure
28 require pleadings be "simple, concise, and direct"). (The Court also notes that Patterson,

1 in redacting the complaint that Defendants moved to dismiss, added information without
2 leave of court.) Although dismissal on Rule 8 grounds alone would be appropriate, the
3 Court attempts to discern what claims Patterson makes.

4 **A. Carla Miller**

5 Patterson's fourth Amended Complaint alleges that Miller:

- 6 1. Failed to offer "corrections" or investigate certain recordings. (Doc. 89 at ¶ 54.)
- 7 2. "[S]ubmitted and/or supported untruths in reports to the court used to detain
8 children from parents." (*Id.* at ¶ 125.)

9 **B. Patty Nelson-McCall**

10 Patterson alleges that Nelson-McCall:

- 11 1. Submitted to the state court a report with false claims that Patterson was
12 neglecting her child due to substance abuse and/or mental illness and that
13 Patterson had an eating disorder. (*Id.* at ¶ 32.)
- 14 2. Filed a second false dependency report with the state court that failed to include
15 exculpatory evidence and included several lies, such as "Mother keeps changing
16 her mind." (*Id.* at ¶ 44-45, 47-48.)
- 17 3. "[S]ubmitted and/or supported untruths in reports to the court used to detain
18 children from parents." (*Id.* at ¶ 125.)

19 **C. Lindsey Romero**

20 Patterson alleges that Romero:

- 21 1. Submitted to the state court a report with false claims that Patterson was
22 neglecting her child due to substance abuse and/or mental illness and that
23 Patterson had an eating disorder. (*Id.* at ¶ 32.)
- 24 2. Claimed falsely that Patterson's home was unsuitable and that she refused to allow
25 her daughter to return home. (*Id.* at ¶ 33.)
- 26 3. Failed to disclose a doctor's report refuting the false substance abuse and eating
27 disorder claims. (*Id.* at ¶ 39-40.)
- 28 4. Filed a second false dependency report with the state court that failed to include

1 exculpatory evidence and included several lies, such as “Mother keeps changing
2 her mind.” (*Id.* at ¶ 44-45, 47-48.)

- 3 5. Left a reference to PTSD in a report after stating that she had removed it. (*Id.* at
4 ¶ 49.)
- 5 6. “Propose[d] to substantiate untrue charges.” (*Id.* at ¶ 59.)
- 6 7. Perjured herself by claiming that Patterson’s daughter would not return home
7 because she felt unsafe. (*Id.* at ¶ 66.)
- 8 8. “[S]ubmitted and/or supported untruths in reports to the court used to detain
9 children from parents.” (*Id.* at ¶ 125.)

10 **D. JoAnne Mathlin**

11 Patterson alleges that Mathlin:

- 12 1. Described a meeting with Dr. John BiCaccio as a “psychological consult” of
13 Patterson, when no such meeting took place. (*Id.* at ¶ 69.)
- 14 2. Disseminated to the Foster Care Review Board, appellate court, schools, and
15 police false claims that Patterson was mentally ill. (*Id.* at ¶ 72-73.)
- 16 3. Stated incorrectly that Patterson did not disclose her mental health history. (*Id.* at
17 ¶ 85.)
- 18 4. Submitted a “fabricated case plan.” (*Id.* at ¶ 103).
- 19 5. Reiterated in a report to the court the false claims that Patterson was neglecting her
20 child due to substance abuse and/or mental illness and that Patterson had an eating
21 disorder. (*Id.* at ¶ 105).
- 22 6. “[S]ubmitted and/or supported untruths in reports to the court used to detain
23 children from parents.” (*Id.* at ¶ 125.)

24 **E. Karen Youngman**

25 Patterson alleges that Youngman:

- 26 1. Disseminated to the Foster Care Review Board, appellate court, schools, and
27 police false claims that Patterson was mentally ill. (*Id.* at ¶ 72-73.)
- 28 2. Reiterated in a report to the court the false claims that Patterson was neglecting her

1 child due to substance abuse and/or mental illness and that Patterson had an eating
2 disorder. (*Id.* at ¶ 105).

- 3 3. “[S]ubmitted and/or supported untruths in reports to the court used to detain
4 children from parents.” (*Id.* at ¶ 125.)

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6 **II. LEGAL STANDARD**

7 **A. Rule 12(b)(6)**

8 When considering a motion to dismiss, a court evaluates the legal sufficiency of
9 the plaintiff’s pleadings. Dismissal under Rule 12(b)(6) of the Federal Rules of Civil
10 Procedure can be based on “the lack of a cognizable legal theory” or “the absence of
11 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*
12 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To avoid dismissal, a complaint need include
13 “only enough facts to state a claim for relief that is plausible on its face.” *Bell Atlantic*
14 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

15 On a motion to dismiss under Rule 12(b)(6), all allegations of material fact are
16 assumed to be true and construed in the light most favorable to the non-moving party.
17 *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). However, the principle that a
18 court accepts as true all of the allegations in a complaint does not apply to legal
19 conclusions or conclusory factual allegations. *Ashcroft v. Iqbal*, 566 U.S. 662, 678
20 (2009). Further, “[t]hreadbare recitals of the elements of a cause of action, supported by
21 mere conclusory statements, do not suffice.” *Id.* “A claim has facial plausibility when
22 the plaintiff pleads factual content that allows the court to draw the reasonable inference
23 that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is
24 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a
25 defendant has acted unlawfully.” *Id.* To show that the plaintiff is entitled to relief, the
26 complaint must permit the court to infer more than the mere possibility of misconduct.
27 *Id.* If the plaintiff’s pleadings fall short of this standard, dismissal is appropriate.

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1 **B. Deliberate Fabrication**

2 For the most part, the fourth Amended Complaint alleges false statements but not
3 that they were each knowingly false. The fourth Amended Complaint generally charges
4 Defendants with “submitting lies in reports to the courts . . . and/or by fabricating
5 evidence” (Doc. 79 at ¶ 4.) But that does not suffice to allege that all the individual
6 statements were knowingly false. Something must be alleged that makes it plausible that
7 the statements were knowingly false.

8 “To sustain a deliberate fabrication of evidence claim, . . . a plaintiff must, *at a*
9 *minimum*, point to evidence that supports at least one of the following two propositions:
10 (1) Defendants continued their investigation of [plaintiff] despite the fact that they knew
11 or should have known that [s]he was innocent; or (2) Defendants used investigative
12 techniques that were so coercive and abusive that they knew or should have known that
13 those techniques would yield false information.” *Costanich v. Dep’t of Soc. and Health*
14 *Servs.*, 627 F.3d 1101, 1111 (9th Cir. 2010) (quoting *Devereaux v. Abbey*, 262 F.3d 1070,
15 1076 (9th Cir. 2001) (en banc)). “Failing to follow guidelines or to carry out an
16 investigation in a manner that will ensure an error-free result is one thing; intentionally
17 fabricating false evidence is quite another.” *Devereaux*, 262 F.3d at 1076-77.
18 Purposefully mischaracterizing witness statements is one example of deliberate
19 fabrication. *Costanich*, 627 F.3d at 1111.

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21 **III. ANALYSIS**

22 Not enough is alleged to state a claim of deliberate fabrication as the basis for
23 Patterson’s § 1983 claim under *Twombly* and *Iqbal*.

24 Patterson begins and concludes her complaint by accusing Defendants, as a group,
25 of lying or approving lies to the state court. (*Id.* at ¶ 125.) Even when read with the rest
26 of her complaint, this serious allegation is unmoored from any evidence of *intentional*
27 wrongdoing. Absent something more, such conclusory statements do not “nudge[] [her]
28 claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570.

1 Patterson suggests more specifically that some Defendants deliberately lied to the
2 state court about her mental health. Yet these supposed fabrications/misrepresentations
3 came from the private dependency petition that Patterson’s family filed against her. The
4 concerns about Plaintiff’s mental health were well supported by the accounts of
5 Plaintiff’s own family. (Doc. 89, Ex. 5 at 48 of 94.) The State reported to the state court
6 the reasons that CPS became involved, which necessitated providing details on the claims
7 Patterson’s family had made against her. (*Id.*) The relevant portion of the report is even
8 labeled “Reason for CPS Involvement.” (*Id.*) These were accounts of CPS’s
9 information, not assertions of ultimate metaphysical truth. Further, the state court record
10 reveals that the State did not base its claim on any false information. Instead, the State
11 alleged that Patterson was “unable to parent due to the child’s behavior.” *Lorraine P. v.*
12 *Ariz. Dep’t of Econ. Sec., M.P.*, No. 1 CA-JV 13-0227, 2014 WL 641856, at *1 (Ariz. Ct.
13 App. Feb. 18, 2014). It is unsurprising, then, that Defendants declined to provide
14 exculpatory information related to matters not before the state court.

15 Defendants concede that “based solely on the Amended Complaint, we do not
16 know fully what the [] Defendants told the [state] court about information Patterson
17 provided them.” (Doc. 96 at 3.) They also point out that the reports did briefly describe
18 Patterson’s responses to the alleged falsehoods and that Patterson was represented by
19 counsel, who raised these arguments in the state court. (*Id.*)

20 But that is beside the point: Patterson must plead sufficient facts in *this* case that
21 make it plausible to infer that Defendants deliberately lied to the state court. *Iqbal*, 566
22 U.S. at 678; *Devereaux*, 262 F.3d at 1076-77. She has not done so. At no point does
23 Patterson demonstrate that Defendants continued investigating her despite the fact that
24 they knew or should have known better. *Costanich*, 627 F.3d at 1111. Nor did
25 Defendants use techniques so coercive or abusive that they should have expected them to
26 yield false information. *Id.* Patterson’s claims that Defendants acted otherwise are
27 conclusory and unavailing. Therefore, there is no way for this Court to “draw the
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1 reasonable inference,” *Iqbal*, 566 U.S. at 678, that any Defendant intentionally falsified
2 anything.

3 A few scattered, specific issues remain. The Court disregards any generalized
4 allegations about Defendants besmirching Patterson’s character to anyone other than the
5 state court, as those allegations are not relevant to her § 1983 claim. The Court also notes
6 that the significance of Mathlin mischaracterizing Dr. BiCaccio’s meeting with Patterson
7 is unclear, and in any event Patterson’s own exhibit shows that Dr. BiCaccio describes it
8 as a “consultation.” (Doc. 89, Ex. 17 at 82 of 94.) In addition, some of the things that
9 Patterson complains about, such as Romero’s assessment that Patterson’s house was
10 unsuitable, are simply the professional opinions of CPS officials. Just like the other
11 allegations in the complaint, such opinions are not actionable without *something* more to
12 suggest a nefarious motive. The Complaint does not allege how Defendants had to have
13 known that their well-supported allegations were false.

14 The other statements in the complaint are too vague or too attenuated from any
15 legal claim. For example, Patterson alleges Miller failed to offer “corrections” or
16 investigate certain recordings; Romero left a reference to PTSD in a report; Romero
17 “[p]ropose[d] to substantiate untrue charges”; Mathlin stated incorrectly that Patterson
18 did not disclose her mental health history; and Mathlin submitted a “fabricated case
19 plan.” These statements are all insufficient under federal pleading standards.

20 **IV. CONCLUSION**

21 The Court normally freely grants leave to amend “when justice so requires.” Fed.
22 R. Civ. P. 15(a)(2). Yet it also considers five factors in so deciding: bad faith, undue
23 delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff
24 has previously amended the complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th
25 Cir. 2004). Courts have “especially broad” discretion to deny leave to amend where the
26 plaintiff has already had one or more opportunities to amend a complaint. *Ascon Props.,*
27 *Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1161 (9th Cir. 1989). *See also Moore v. Kayport*
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1 *Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) (“Leave to amend need not be
2 given if a complaint, as amended, is subject to dismissal.”). This is Plaintiff’s fifth
3 complaint.


4 In its numerous previous orders, the Court allowed Plaintiff to address the
5 pleading deficiencies that it identified. It also promised that if Plaintiff’s amended
6 complaint failed to pass muster under Rule 12(b)(6), no further leave to amend would be
7 granted. Plaintiff has had five chances to file a legally sufficient complaint. No further
8 leave to amend is appropriate.

9
10 IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss (Doc. 88) is
11 granted with prejudice.

12 IT IS FURTHER ORDERED that the clerk enter judgment in favor of Defendants
13 Carla Miller, Patty Nelson-McCall, Lindsey Romero, JoAnne Mathlin, and Karen
14 Youngman, dismissing Plaintiff Lorraine Patterson’s complaint and this action with
15 prejudice.

16 The clerk shall terminate this case.

17 Dated this 11th day of October, 2017.

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21 Neil V. Wake
22 Senior United States District Judge
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