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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 Arizona Department of Economic Security,
13 et al.,

14 Defendants.

No. CV-15-00321-PHX-NW

ORDER

15 Before the court is Defendant Maricopa County's Motion to Dismiss (Doc. 23).
16 The Motion will be granted.

17
18 **I. BACKGROUND**

19 Plaintiff originally filed suit on February 20, 2015, seeking damages for violations
20 of her First and Fourteenth Amendment rights allegedly suffered during dependency
21 proceedings that Child Protective Services initiated for the benefit of Plaintiff's daughter.
22 (*See* Doc. 1 at 1-3.) In an Amended Complaint submitted on May 29, 2015, Plaintiff
23 asserts six causes of action against more than a dozen defendants, including Maricopa
24 County ("the County").

25 Plaintiff's first cause of action alleges that the County "established and/or
26 followed policies, procedures, customs, and/or practices which policies were the moving
27 force behind the violations of Plaintiff's constitutional rights, including those under the
28 First and Fourteenth Amendments." (Doc. 17-1 at 27.) Among the policies the County

1 allegedly adopted—the full list of which goes on for twelve pages—are the “County
2 policy of detaining and/or removing children from their family and homes by County
3 accepting false allegations in Juvenile Dependency Petitions,” the “County policy of
4 ignoring evidence discounting the allegations in order to support the claims of [Child
5 Protective Services] Reports to the court,” the “policy of appointing attorneys that are far
6 below the reasonable standards of care and due diligence,” and the “policy of the County
7 not requiring [Child Protective Services] to produce files in a timely matter [sic] so they
8 can be viewed.” (*Id.* at 27, 28, 33, 36.) According to the Amended Complaint, the
9 “conduct described is so pervasive that it has become common knowledge that they [sic]
10 type of misconduct alleged is commonplace within Maricopa County.” (Doc. 17-2 at 3.)

11 Plaintiff’s third cause of action, the only other that is asserted against the County,
12 alleges she was deprived of her right to procedural due process during the dependency
13 proceedings. (*Id.* at 15.) Specifically, Plaintiff claims, among other things, that “the
14 hearings denied an opportunity to be heard, present evidence and to dispute the
15 allegations in a timely fashion,” that “Plaintiff learned of the allegations after the first
16 court hearing on March 15th, 2013 by happenstance disallowing her to dispute them with
17 evidence,” and that “Plaintiff was denied a continuance although unprepared to argue her
18 case on July 24th, 2013.” (*Id.* at 16-18.) The Amended Complaint largely fails to make
19 clear exactly who allegedly engaged in the acts that denied Plaintiff procedural due
20 process. (*See id.* at 15-20.) Near the end of Plaintiff’s third cause of action, she adds that
21 the “County and those individuals with policymaking decisions did not follow established
22 protocol and assurances that ensure Plaintiff’s due process civil rights.” (*Id.* at 20.)

23 The County now moves to dismiss Plaintiff’s Amended Complaint for failure to
24 state a claim upon which relief can be granted, as provided by Federal Rule of Civil
25 Procedure 12(b)(6).

1 **II. LEGAL STANDARD**

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

9 On a motion to dismiss under Rule 12(b)(6), all allegations of material fact are
10 assumed to be true and construed in the light most favorable to the non-moving party.
11 *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). However, the principle that a
12 court accepts as true all of the allegations in a complaint does not apply to legal
13 conclusions or conclusory factual allegations. *Ashcroft v. Iqbal*, 566 U.S. 662, 678
14 (2009). Further, “[t]hreadbare recitals of the elements of a cause of action, supported by
15 mere conclusory statements, do not suffice.” *Id.* “A claim has facial plausibility when
16 the plaintiff pleads factual content that allows the court to draw the reasonable inference
17 that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is
18 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a
19 defendant has acted unlawfully.” *Id.* To show that the plaintiff is entitled to relief, the
20 complaint must permit the court to infer more than the mere possibility of misconduct.
21 *Id.* If the plaintiff’s pleadings fall short of this standard, dismissal is appropriate.

22
23 **III. ANALYSIS**

24 Plaintiff’s claims against the County are rooted in 42 U.S.C. § 1983, which
25 provides, “Every person who, under color of any statute, ordinance, regulation, custom,
26 or usage, of any State or Territory or the District of Columbia, subjects, or causes to be
27 subjected, any citizen of the United States or other person within the jurisdiction thereof
28 to the deprivation of any rights, privileges, or immunities secured by the Constitution and

1 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
2 proceeding for redress.” Although the statute establishes liability for any “person” who
3 deprives a plaintiff of her rights, a municipality such as the County can be held liable
4 under § 1983 in limited circumstances. On this theory of municipal liability, named after
5 the Supreme Court’s decision in *Monell v. Department of Social Services of New York*,
6 436 U.S. 658 (1978), a “municipality cannot be held liable under a respondeat superior
7 theory.” *Fogel v. Collins*, 531 F.3d 824, 834 (9th Cir. 2008). “Instead, Congress
8 intended to hold municipalities liable only when ‘action pursuant to official municipal
9 policy of some nature caused a constitutional tort.’ The ‘official policy’ requirement was
10 intended to distinguish acts of the *municipality* from acts of *employees* of the
11 municipality, and thereby make clear that municipal liability is limited to action for
12 which the municipality is actually responsible.” *Christie v. Iopa*, 176 F.3d 1231, 1235
13 (9th Cir. 1999) (emphasis in original) (citation and some internal quotation marks
14 omitted).

15 “For purposes of liability under *Monell*, a ‘policy’ is ‘a deliberate choice to follow
16 a course of action . . . made from among various alternatives by the official or officials
17 responsible for establishing final policy with respect to the subject matter in question.’ A
18 municipality is also liable if a policymaking official delegates his or her discretionary
19 authority to a subordinate, and the subordinate uses that discretion.” *Fogel*, 531 F.3d at
20 834 (ellipsis in original) (citation omitted). In addition, a plaintiff may establish liability
21 by proving “the existence of a widespread practice that . . . is so permanent and well
22 settled as to constitute a ‘custom or usage’ with the force of law.” *Gillette v. Delmore*,
23 979 F.2d 1342, 1349 (9th Cir. 1992) (per curiam) (ellipsis in original). Where a § 1983
24 plaintiff “provide[s] no evidence that [the municipality] maintained an official policy of
25 [violating constitutional rights] or that any final policymaking official made a decision to
26 violate h[er] rights,”—and where that plaintiff “also [does] not establish[] that any of the
27 officers involved . . . were official policymakers with final decision making authority for
28 [the municipality], or that any official policymaker ‘either delegated that authority to, or

1 ratified the decision of, a subordinate,”—a “municipal liability claim . . . fails.” *See*
2 *Fogel*, 531 F.3d at 835.

3 By this standard, Plaintiff’s first cause of action fails to state a *Monell* claim.
4 Plaintiff lists nearly two dozen “policies” allegedly adopted by the County, but she offers
5 no concrete facts to support her conclusory allegations. Nowhere does Plaintiff allege
6 which County decision-makers adopted the supposed policies, the precise content of
7 those policies, how they were communicated to County employees, or any other
8 information that would render plausible the idea that the County has adopted such
9 policies. A vague assertion that the County’s conduct “is so pervasive that it has become
10 common knowledge that they [sic] type of misconduct alleged is commonplace within
11 Maricopa County” (Doc. 17-2 at 3) does not bridge the plausibility gap. Some of the
12 alleged “policies” are so nebulous that it is difficult to imagine how they could ever be
13 articulated, broadcast, or enforced. (*See, e.g.*, Doc. 17-2 at 2 (describing the “‘policy’ of
14 County using deceptive tactics that deceive all who view the paperwork”).) Others are so
15 expansive that they amount to little more than bald assertions of illegality, in defiance of
16 the Rule 12(b)(6) plausibility standard. (*See, e.g.*, Doc. 17-1 at 31 (asserting that “County
17 has a ‘policy’ of denying due process within the meaning of the right to be heard in a
18 competent, impartial tribunal within a meaningful time when deprivation of a liberty
19 interest is at stake”).)

20 Nor has Plaintiff alleged that any of the individual defendants were “official
21 policymakers with final decision making authority” for the County or that the County’s
22 official policymakers delegated their authority to the employees involved in Plaintiff’s
23 case. Absent more particularized factual allegations, a bare statement that the County
24 “established and/or followed policies” that were “the moving force behind the violations
25 of Plaintiff’s constitutional rights” (Doc. 17-1 at 27) is insufficient.

26 Plaintiff’s third cause of action fares no better. The Amended Complaint asserts a
27 § 1983 procedural due process claim against “Defendant COUNTY and those individuals
28 with official policy making capacity and decision making acting under color of state law

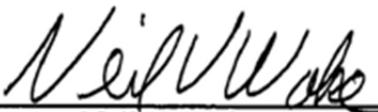
1 when committing the acts alleged herein.” (Doc. 17-2 at 16.) But the third cause of
2 action does not directly allege the County adopted any particular policies that resulted in
3 the violation of Plaintiff’s rights. The closest the Amended Complaint comes to such an
4 allegation is Plaintiff’s contention the “County and those individuals with policymaking
5 decisions did not follow established protocol and assurances that ensure Plaintiff’s due
6 process civil rights.” (*Id.* at 20.) To the extent the third cause of action alleges County
7 policies, then, it seeks damages for the County’s failure to follow those policies, not
8 actions taken pursuant to those policies. Because this falls far short of an adequate
9 *Monell* claim, dismissal of the Amended Complaint is appropriate.

10 The court screened Plaintiff’s complaint three times before permitting it to be
11 served (Doc. 3, 7, 13), and it appears there is little, if anything, she could include in a
12 further amended complaint to address the deficiencies identified in this Order.
13 Nevertheless, because she is proceeding *in propria persona*, the court will allow Plaintiff
14 twenty-one days in which to submit an amended complaint that states a claim upon which
15 relief can be granted. If Plaintiff’s amended complaint fails to satisfy Rule 12(b)(6), no
16 further leave to amend will be granted.

17
18 IT IS THEREFORE ORDERED that Defendant Maricopa County’s Motion to
19 Dismiss (Doc. 23) is granted.

20 IT IS FURTHER ORDERED that Plaintiff may file by September 2, 2015, an
21 amended complaint that states a claim upon which relief can be granted. If by that date
22 Plaintiff has not submitted an amended complaint, the Clerk shall terminate this case as
23 against Defendant Maricopa County.

24 Dated this 12th day of August, 2015.

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27 _____
28 Neil V. Wake
United States District Judge