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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tanya Henson, et al.,

10 Plaintiffs,

11 v.

12 City of Scottsdale, et al.,

13 Defendants.
14

No. CV-17-00339-PHX-GMS

ORDER

15 Pending before the Court is Defendants' Motion to Dismiss. (Doc. 50). The
16 Court grants the Motion.

17 **BACKGROUND**

18 In February 2017, Thomas and Tanya Henson brought a suit under 42 U.S.C.
19 §§ 1983, 1985, 1986, and 1988 against various state and municipal actors, one private
20 citizen, and a towing company. (Doc. 1). In short, Mrs. Henson alleges that Defendant
21 Officer Glass violated her rights during a traffic stop and subsequent arrest. *Id.* at 6–9.
22 As part of the arrest, a towing company towed their vehicle and required the Hensons to
23 pay sixty-five dollars for its release. *Id.* at 10. Mrs. Henson appeared in state court
24 before Judges Blake, Hendrix, and Dalton on charges of disorderly conduct, harassment,
25 and failure to obey a police officer, and she alleged that these judges violated her rights.
26 *Id.* at 11–13.¹

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28 ¹ A more detailed description of the alleged facts are found in the Court's
resolution of Defendants' first motion to dismiss. (*See* Doc. 44 at 2–4).

1 not “permit the court to infer more than the mere possibility of misconduct, the complaint
2 has alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679
3 (internal quotation omitted). When analyzing a complaint for failure to state a claim
4 under Rule 12(b)(6), “[a]ll allegations of material fact are taken as true and construed in
5 the light most favorable to the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217
6 (9th Cir. 1996). However, legal conclusions couched as factual allegations are not given
7 a presumption of truthfulness, and “conclusory allegations of law and unwarranted
8 inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d
9 696, 699 (9th Cir. 1998).

10 Typically, a district court should not dismiss a complaint with prejudice if an
11 amendment could save the complaint. *Thinket Ink Information Resources, Inc. v. Sun*
12 *Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004) (citations omitted). However,
13 under Rule 41(b), a district court has authority to dismiss a plaintiff’s action because of
14 his or her failure to prosecute or to comply with court orders. Fed. R. Civ. P. 41(b).
15 Before dismissal for failure to prosecute or failure to comply with court orders, the Court
16 must consider the following factors: “(1) the public’s interest in expeditious resolution of
17 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
18 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
19 availability of less drastic sanctions.” *In re Phenylpropanolamine (PPA) Prod. Liab.*
20 *Litig.*, 460 F.3d 1217, 1226–1228, 1234–1252 (9th Cir. 2006) (discussing and applying
21 the five factors); *Pagtalunan v. Galaza*, 291 F.3d 639, 642–43 (9th Cir. 2002) (same).

22 **II. Analysis**

23 As described in the previous opinion granting Defendants’ motion to dismiss with
24 leave to amend, Mr. and Mrs. Henson failed to allege a sufficient factual basis for relief.
25 (Doc. 44). For example, the Court dismissed the *Monell* claims against the City of
26 Scottsdale because the complaint did not allege any facts concerning liability of the City
27 of Scottsdale. (Doc. 44 at 6). Nothing in the First Amended Complaint does so either.
28 As another example, the Court dismissed Mrs. Hensons’s claim of excessive force

1 because she did not allege facts that Officer Glass used more than *de minimis* force, and
2 nothing in the First Amended Complaint addresses this issue or alleges that Officer Glass
3 used more than *de minimis* force. (Doc. 44 at 12).

4 In whole, the First Amended Complaint does not resolve any of the factual
5 deficiencies outlined by the Court. The lone addition to the complaint is a new legal
6 basis claiming that the state court judges violated criminal conspiracy laws. The Court
7 previously dismissed the judicial defendants with prejudice due to judicial immunity, and
8 Plaintiff's new citation to the criminal code does not impact that analysis. (Doc. 44 at 7).

9 Because the First Amended Complaint also fails to state a claim upon which relief
10 can be granted, the Court considers whether dismissal with prejudice is appropriate. The
11 Court previously instructed the Plaintiffs concerning the complaint's factual deficiencies,
12 and instead of addressing those issues, the Plaintiffs alleged a new claim against
13 defendants previously dismissed with prejudice. To provide the Plaintiffs with a second
14 opportunity to potentially save their complaint would violate the Court's commitment to
15 expeditious resolutions, docket management, and fairness to the Defendants. Therefore,
16 for the reasons stated in both the present and previous dismissal, the Court dismisses
17 Plaintiff's complaint with prejudice.

18 Additionally, the Plaintiffs have not filed notice of service to any of the remaining
19 Defendants as required by Rule 4 and the Court's February 14, 2017 order. (Doc. 8).
20 The Court grants Plaintiffs seven days to inform the Court why the remaining Defendants
21 should not be dismissed for failure of service or for the reasons stated in this opinion.

22 CONCLUSION

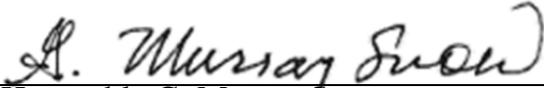
23 **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss is **GRANTED**.
24 The Clerk of Court is directed to dismiss Defendants City of Scottsdale, Jim Thompson,
25 Statia Hendrix, James Blake, Caron Close, Seth Peterson, Natalie La Porte, and Cyndi
26 Negron.

27 **IT IS FURTHER ORDERED** that Plaintiffs have until **April 13, 2018 at 4:00**
28 **p.m.** to demonstrate why the Court should not dismiss all remaining Defendants for

1 failure to comply with Fed. R. Civ. P. 4(m).

2 **IT IS FURTHER ORDERED** directing the Clerk of Court to terminate this
3 action without further notice on **April 16, 2018**, if Plaintiffs fail to comply.

4 Dated this 6th day of April, 2018.

5 
6 Honorable G. Murray Snow
7 United States District Judge

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