

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IVAN RUBTSOV, ANA TZUBERY, and V.R., a minor, by and through her Guardian Ad Litem, Nick Rubtsov,)	Case No. CV 14-01839 DDP (JCx)
)	
)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANTS'
)	MOTION TO DISMISS PLAINTIFFS'
)	COMPLAINT
Plaintiffs,)	
)	
v.)	[DKT. NO. 12]
)	
LOS ANGELES COUNTY)	
DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES, MICHAEL)	
WATROBSKI,)	
)	
Defendants.)	
)	

Presently before the Court is Defendants' motion to dismiss Plaintiffs' complaint (the "Motion"). (Docket No. 12.) For the reasons stated in this Order, the Motion is GRANTED IN PART and DENIED IN PART.

I. Background

Plaintiffs Ivan Rubtsov ("Rubtsov"), Ana Tzubery ("Tzubery"), and V.R. ("V.R.") (collectively, "Plaintiffs") bring this action against the Los Angeles County Department of Children and Family Services (the "County"), County employee Michael Watrobski

1 ("Watrobski"), and Does 1-20, alleging violations of law resulting
2 from the inclusion of Plaintiffs' personal information in statewide
3 databases for child abuse allegations.

4 Rubtsov has been married to Tzubery since some time in 2013.
5 (Complaint ¶ 20.) V.R., a 14 year old, is the biological daughter
6 of Rubtsov and resides with Rubtsov and Tzubery. (Id. ¶ 18.)
7 Rubtsov was previously married to V.R.'s biological mother, Ulyana
8 Rubtsova ("Ulyana"), but they are now divorced and Rubtsov was
9 given legal and physical custody of V.R. in 2011; Ulyana has
10 custody of their other two children. (Id. ¶¶ 18-19.)

11 Plaintiffs allege that in 2008, Rubtsov made allegations to
12 the County against Ulyana for physical abuse and neglect of their
13 three children. (Id. ¶ 21.) Shortly thereafter, Ulyana made
14 allegations against Rubtsov. (Id.) A total of 11 referrals resulted
15 against Plaintiffs, all of which were ultimately closed as either
16 "unfounded" or "inconclusive." (Id.) Plaintiffs allege, however,
17 that after the referrals were closed, Watrobski changed the
18 dispositions to "conclusive" or "founded" without Plaintiffs' prior
19 knowledge or consent. (Id.) Plaintiffs allege that Rubtsov was
20 notified in May 2013 that the County "might have suddenly
21 substantiated an allegation of child abuse or neglect against him"
22 and that, as a result, he would be included in the Child Abuse
23 Central Index ("CACI") by the California Department of Justice
24 ("DOJ"). (Id. ¶ 24.) Plaintiffs allege that all allegations made
25 against them have since been determined to be false. (Id.)

26 In 2012, Rubtsov and Tzubery applied to Penny Lane Foster
27 Family Agency (the "Agency") to be foster parents and were
28 approved. (Id. ¶ 28.) In May 2013, a 3 month old child was placed

1 in their home. (Id.) However, after three days, the Agency informed
2 Plaintiffs that all three of them were included in CACI and that
3 the Agency had been ordered by the County to remove the child from
4 their care. (Id.) Plaintiffs also found out that their information
5 was listed on many other state databases. (Id. ¶ 29.) Plaintiffs
6 were told that "unless and until these matters were cleared, no
7 children could be placed in their home, they were not approved to
8 adopt and/or obtain guardianship of children." (Id. ¶ 30.)

9 In May 2013, Rubtsov requested information related to all
10 referrals and demanded an appeal of Plaintiffs' inclusion in CACI
11 and all other state databases. (Id. ¶ 32.) Rubtsov requested an
12 administrative hearing and filed a request for disclosure of the
13 documents regarding the referrals pursuant to Welfare and
14 Institutions Code § 827. (Id. ¶¶ 33-34.) He was first told that a
15 hearing was denied because he was not in the CACI database. (Id. ¶
16 35.) However, in August 2013, the County notified Rubtsov that only
17 he could have a hearing, that Tzuberly and V.R. were *not* entitled to
18 one, and that "he would have to waive his rights."¹ (Id. ¶ 36.)
19 Plaintiffs claim that the County "failed to provide them with an
20 opportunity to offer live testimony, call witnesses or examine
21 those witnesses whose statements were considered by Defendants when
22 they placed their personal information in the ... databases." (Id.
23 ¶ 37.) Defendants told Rubtsov that there was no appeal mechanism
24 for inclusion in databases other than CACI. (Id. ¶¶ 36-38.) V.R.
25 was told by Defendants that there was no appeal mechanism or right
26 to a hearing for a minor's removal from the databases. (Id. ¶ 39.)

27
28 ¹It is unclear what "rights" Plaintiffs allege would have to
be waived.

1 Plaintiffs assert three causes of action arising out of these
2 facts, each of which Plaintiffs bring against all Defendants: (1)
3 42 U.S.C. § 1983 constitutional violations (due process and right
4 to privacy) for unlawful policies, customs, and habits; (2) civil
5 conspiracy; and (3) intentional infliction of emotional distress
6 ("IIED"). (Id. ¶¶ 50-65.) Defendants now seek dismissal of these
7 causes of action under Rule 12(b)(6). (Docket No. 12.)

8 **II. Legal Standard**

9 A complaint will survive a motion to dismiss when it contains
10 "sufficient factual matter, accepted as true, to state a claim to
11 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
12 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
13 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
14 "accept as true all allegations of material fact and must construe
15 those facts in the light most favorable to the plaintiff." Resnick
16 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
17 need not include "detailed factual allegations," it must offer
18 "more than an unadorned, the-defendant-unlawfully-harmed-me
19 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
20 allegations that are no more than a statement of a legal conclusion
21 "are not entitled to the assumption of truth." Id. at 679. In other
22 words, a pleading that merely offers "labels and conclusions," a
23 "formulaic recitation of the elements," or "naked assertions" will
24 not be sufficient to state a claim upon which relief can be
25 granted. Id. at 678 (citations and internal quotation marks
26 omitted).

27 "When there are well-pleaded factual allegations, a court
28 should assume their veracity and then determine whether they

1 plausibly give rise to an entitlement of relief." Id. at 679.
2 Plaintiffs must allege "plausible grounds to infer" that their
3 claims rise "above the speculative level." Twombly, 550 U.S. at
4 555. "Determining whether a complaint states a plausible claim for
5 relief" is a "context-specific task that requires the reviewing
6 court to draw on its judicial experience and common sense." Iqbal,
7 556 U.S. at 679.

8 **III. Discussion**

9 A. Civil Rights Claims Against County

10 Defendants argue that Plaintiffs have failed to state claims
11 against the County because they have not alleged facts supporting
12 municipal liability under Monell v. Dept. of Social Services, 436
13 U.S. 658 (1978). Defendants argue that Plaintiffs have failed to
14 plead facts supporting any unlawful policy or practice of the
15 County.

16 In order to survive a motion to dismiss a claim for municipal
17 liability under Monell, a plaintiff must identify the practices and
18 policies that he alleges are deficient, explain how such policy or
19 practice is deficient, and explain how the deficiency caused harm
20 to the plaintiff. Young v. City of Visalia, 687 F.Supp.2d 1141,
21 1149-50 (E.D. Cal. 2009). In other words, a plaintiff must allege
22 "specific facts giving rise to a plausible Monell claim" instead of
23 "formulaic recitations of the existence of unlawful policies,
24 customs, or habits." Warner v. County of San Diego, 2011 WL 662993
25 (S.D. Cal. 2011).

26 Here, Plaintiffs allege that the County had "woefully
27 inadequate policies and procedures for review of conclusive
28 allegations of child abuse in [databases]." (Complaint ¶ 51.) In

1 the context of the factual allegations, it is clear that the policy
2 or practice to which Plaintiffs refer is the failure to offer a
3 review procedure that would allow Plaintiffs the opportunity to
4 challenge their inclusion in the CWS/CMS database and other state
5 databases. Plaintiffs allege that they were told that there were no
6 procedures for challenging inclusion in databases other than CACI,
7 and that Tzuberly and V.R. were told that they could not even
8 challenge their inclusion in CACI. (Id. ¶¶ 36-39.) Under
9 California's statutory scheme for investigating and reporting child
10 abuse allegations, due process requires that those individuals
11 reported for inclusion in CACI be afforded a hearing to contest
12 their inclusion in CACI and the evidence supporting that inclusion.
13 Burt v. County of Orange, 120 Cal.App.4th 273, 285-86 (2004). The
14 absence of any sort of process gives rise to a claim against the
15 reporting municipal entity for failing to provide such process. Id.
16 This right has also been found to apply to an individual's
17 inclusion in CWS/CMS. Castillo v. County of Los Angeles, 959
18 F.Supp.2d 1255 (C.D. Cal. 2013).

19 Further, Defendants allude to an argument that Plaintiffs have
20 failed to allege any harm to their privacy interests because the
21 databases on which their information is listed are not publically
22 accessible. However, the inclusion of an individual's name on a
23 child abuse registry may implicate privacy interests even where the
24 information is not available to the general public. See Burt, 120
25 Cal.App.4th at 284-85. While liability will ultimately be
26 determined by balancing the governmental interest in the intrusion
27 on privacy against Plaintiffs' privacy rights, Plaintiffs' claim is
28 plausibly pled for purposes of this Motion. See Castillo, 959

1 F.Supp.2d at 1263-64 (balancing privacy interests against
2 government interests). Therefore, Plaintiffs have stated a
3 plausible claim against the County for violation of their right to
4 due process and right to privacy. The Court DENIES the Motion as to
5 this cause of action.

6 B. Claims Against Watrobski

7 The only factual allegation against Defendant Watrobski,
8 specifically, states that "[a]fter the last referrals were closed,
9 the dispositions were changed by Defendant Watrobski to conclusive
10 or founded, without Plaintiffs' prior knowledge or consent."²

11 (Complaint ¶ 21.) Plaintiffs further state that Watrobski is "an
12 officer, agent, and employee of Defendant ... County of Los
13 Angeles." (Id. ¶ 9.) No other information is contained in the
14 Complaint regarding Watrobski's role as an employee of the County
15 or whether he was involved in any of the other alleged acts of
16 "Defendants."³

17 This single alleged act, standing alone, is insufficient to
18 state a plausible claim for personal liability against Watrobski.
19 The complaint does not contain any allegations that Watrobski
20 *personally* denied Plaintiffs a hearing, nor any allegations that
21 Watrobski had no legitimate basis for changing the outcome of the

22
23 ²The complaint includes many allegations that refer to acts
24 performed by "Defendants," but it is unclear whether Plaintiffs
25 intend to allege that Watrobski personally performed all of the
alleged acts or whether Plaintiffs allege that another individual
performed those acts on behalf of the County.

26 ³Plaintiffs include many more allegations regarding
27 Watrobski's actions and his role as an employee of the County in
28 their opposition to the Motion. However, the Court does not
consider these allegations in determining the resolution of this
Motion, as the Court may properly consider only those allegations
contained in the Complaint.

1 referrals against Plaintiffs. Further, this act alone does not
2 establish any conspiracy between Watrobski and any other
3 individual, nor does the act rise to the level of "extreme and
4 outrageous conduct" that is required for an IIED claim. Therefore,
5 the Court GRANTS the Motion and DISMISSES the claims against
6 Watrobski WITHOUT PREJUDICE. Plaintiffs may amend to clarify which
7 alleged acts were performed by Watrobski that support claims
8 against him personally. Further, any amended complaint should
9 clarify whether Plaintiffs allege that Watrobski was a policy maker
10 for the County or whether he was merely an employee. (See Reply,
11 Docket No. 15, p.4-5.)

12 Defendants also argue that Watrobski is entitled to qualified
13 immunity for the alleged act he performed, as public employees are
14 not liable for injuries resulting from an exercise of discretion.
15 Cal. Gov. Code § 820.2. However, under the facts as currently
16 alleged, it is unclear whether Watrobski performed any acts
17 involving "discretion" that might possibly entitle him to immunity
18 or whether he performed acts that clearly violated Plaintiffs'
19 rights such that he may be held liable. Therefore, the Court finds
20 that Watrobski is not entitled to immunity at this point. Upon the
21 filing of an amended complaint that clarifies Watrobski's
22 involvement in the alleged acts, the Court will be in a position to
23 determine whether any entitlement to immunity might exist.

24 C. Civil Conspiracy Claim

25 Plaintiffs' civil conspiracy claim is insufficiently pled. To
26 establish liability for a civil conspiracy claim, a plaintiff must
27 plead facts supporting the existence of "an agreement or meeting of
28 the minds to violate constitutional rights." Mendocino

1 Environmental Center v. Mendocino County, 192 F.3d 1283, 1301 (9th
2 Cir. 1999) (internal quotations and citations omitted). Plaintiffs'
3 complaint contains no clear allegations regarding who allegedly
4 participated in this conspiracy or what those individuals allegedly
5 agreed to do. Based on the complaint, the Court and the Defendants
6 are left to wonder: who purportedly conspired with who to achieve
7 what purpose? Therefore, Plaintiffs' civil conspiracy claim is
8 DISMISSED WITHOUT PREJUDICE. Upon amendment, Plaintiffs should
9 clarify who allegedly participated in a conspiracy and what that
10 conspiracy allegedly agreed to do that violated Plaintiffs' rights.

11 D. IIED Claim

12 Defendants do not directly challenge the sufficiency of
13 Plaintiffs' IIED claim. The Court has determined that all claims
14 against Watrobski are insufficiently pled, and therefore the IIED
15 claim against Watrobski is dismissed without prejudice. However, as
16 Defendants offer no argument as to why Plaintiffs' IIED claim is
17 insufficiently pled against the County, the Court does not decide
18 whether that claim is sufficient, and the cause of action remains
19 operative as filed.

20 **IV. Conclusion**

21 For the foregoing reasons, the Motion is GRANTED IN PART and
22 DENIED IN PART. Any amended complaint must be filed on or before
23 July 14, 2014.

24 IT IS SO ORDERED.

25 Dated: June 30, 2014


DEAN D. PREGERSON
United States District Judge

26
27
28