

1 ("Watrobski"), and Does 1-10, 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 2013. (FAC ¶ 22.)
5 V.R., a 14 year old, is the biological daughter of Rubtsov and
6 resides with Rubtsov and Tzubery. (Id. ¶¶ 20-21.) Rubtsov was
7 previously married to V.R.'s biological mother, Ulyana Rubtsova
8 ("Ulyana"), but they are now divorced and Rubtsov was given legal
9 and physical custody of V.R. in 2011; Ulyana has custody of their
10 other two children. (Id. ¶ 21.)

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. ¶¶ 23, 26.) Shortly thereafter, Ulyana made
14 allegations against Rubtsov. (Id. ¶ 23.) A total of 11 referrals
15 resulted, all of which were ultimately closed as either "unfounded"
16 or "inconclusive." (Id.) Plaintiffs allege, however, that after the
17 referrals were closed, Watrobski and Ian Rosen ("Rosen"), a social
18 worker, changed the dispositions to "conclusive" or "founded"
19 without Plaintiffs' prior knowledge or consent. (Id.)

20 In 2012, Rubtsov and Tzubery applied to Penny Lane Foster
21 Family Agency (the "Agency") "to be foster parents, possibly adopt,
22 and/or obtain guardianship of children" and were approved. (Id. ¶
23 34.) In May 2013, an infant child was placed in their home by the
24 Agency. (Id.) However, after three days, the Agency informed
25 Plaintiffs that all three of them were included in the Child Abuse
26 Central Index ("CACI") and that the Agency had been ordered by the
27 County to remove the child from their care. (Id. ¶¶ 34, 36.)

28 Plaintiffs allege that the Agency notified Rubtsov that Rosen and

1 Watrobski "might have suddenly substantiated a [2009] referral for
2 an allegation of severe child abuse or neglect against him." (Id. ¶
3 26.) Further, Plaintiffs were informed by the Agency that their
4 personal information might be in many other databases, including
5 CWS/CMS. (Id. ¶ 35.) Plaintiffs were told that "unless and until
6 these matters were cleared, no children could be placed in their
7 home, they were not approved to adopt and/or obtain guardianship of
8 children." (Id. ¶ 36.) Plaintiffs confirmed their inclusion in
9 multiple statewide databases on July 2, 2013. (Id. ¶¶ 31-33.)

10 Plaintiffs allege that the 2009 "substantiated" referral was
11 created by Watrobski and Rosen to assist Ulyana in obtaining
12 custody of all three of her children in future family law
13 proceedings. (Id. ¶¶ 27-28.) Plaintiffs allege that they were never
14 contacted or notified regarding the referral, which was for "severe
15 emotional abuse substantiated," and that Watrobski and Rosen simply
16 closed the file as "substantiated" without any contact with or
17 investigation of Plaintiffs. (Id. ¶¶ 27, 29.) Plaintiffs allege
18 that all allegations made against them have since been determined
19 to be false. (Id. ¶ 29.)

20 In May 2013, Rubtsov requested information related to all
21 referrals and demanded an appeal of Plaintiffs' inclusion in CACI
22 and all other state databases. (Id. ¶ 38.) Rubtsov requested an
23 administrative hearing and filed a request for disclosure of the
24 documents regarding the referrals pursuant to Welfare and
25 Institutions Code § 827. (Id. ¶¶ 39-40.) He was told in June 2013
26 that a hearing was denied because he was not in the CACI database.
27 (Id. ¶ 41.) However, in August 2013, the County notified Rubtsov
28 that only *he* could have a hearing, that Tzuberly and V.R. were *not*

1 entitled to hearings, and that he would have to waive his due
2 process rights. (Id. ¶ 42.) Plaintiffs allege that Watrobski
3 indicated that Plaintiff would not have access to internal records
4 and strongly suggested that it would be harmful to Rubtsov if he
5 hired a lawyer but that, if he "would behave right," Watrobski
6 might be lenient and clear Rubtsov's name. (Id.) Further,
7 Plaintiffs allege that Defendants never told them exactly which
8 other databases their information was contained in. (Id. ¶ 43.)
9 Plaintiffs claim that Defendants "failed to provide them with an
10 opportunity to offer live testimony, call witnesses or examine
11 those witnesses whose statements were considered by Defendants when
12 they placed their personal information in the ... databases." (Id.)
13 Defendants told Rubtsov that there was no appeal mechanism or right
14 to removal for inclusion in databases other than CACI. (Id. ¶¶ 44-
15 45.) V.R. was told by Defendants that there was no appeal mechanism
16 or right to a hearing for a minor's removal from the databases.
17 (Id. ¶ 45.)

18 Plaintiffs assert three causes of action arising out of these
19 facts, each of which Plaintiffs bring against all Defendants: (1)
20 42 U.S.C. § 1983 constitutional violations (due process and right
21 to privacy) for unlawful policies, customs, and habits; (2) civil
22 conspiracy; and (3) intentional infliction of emotional distress
23 ("IIED"). (Id. ¶¶ 56-71.) The Court previously granted in part and
24 denied in part Defendants' motion to dismiss Plaintiffs' original
25 complaint. (Docket No. 18.) Defendants now seek dismissal of the
26 FAC under Rule 12(b)(6). (Docket No. 20.)

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1 **II. Legal Standard**

2 A complaint will survive a motion to dismiss when it contains
3 "sufficient factual matter, accepted as true, to state a claim to
4 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
5 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
6 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
7 "accept as true all allegations of material fact and must construe
8 those facts in the light most favorable to the plaintiff." Resnick
9 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
10 need not include "detailed factual allegations," it must offer
11 "more than an unadorned, the-defendant-unlawfully-harmed-me
12 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
13 allegations that are no more than a statement of a legal conclusion
14 "are not entitled to the assumption of truth." Id. at 679. In other
15 words, a pleading that merely offers "labels and conclusions," a
16 "formulaic recitation of the elements," or "naked assertions" will
17 not be sufficient to state a claim upon which relief can be
18 granted. Id. at 678 (citations and internal quotation marks
19 omitted).

20 "When there are well-pleaded factual allegations, a court
21 should assume their veracity and then determine whether they
22 plausibly give rise to an entitlement of relief." Id. at 679.
23 Plaintiffs must allege "plausible grounds to infer" that their
24 claims rise "above the speculative level." Twombly, 550 U.S. at
25 555. "Determining whether a complaint states a plausible claim for
26 relief" is a "context-specific task that requires the reviewing
27 court to draw on its judicial experience and common sense." Iqbal,
28 556 U.S. at 679.

1 **III. Discussion¹**

2 Defendants do not challenge the sufficiency of the first cause
3 of action, Plaintiffs' § 1983 claim, against the County, as the
4 Court previously found that cause of action to be sufficiently
5 pleaded in the original complaint. (See Docket No. 18.) Therefore,
6 that cause of action remains operative as filed. Defendants
7 challenge the remaining causes of action against the County and all
8 three causes of action against Watrobski. (See Docket No. 20, p.7.)

9 A. First Cause of Action Against Watrobski

10 Plaintiffs' original complaint was dismissed as to Defendant
11 Watrobski due to insufficient specificity in Plaintiffs'
12 allegations regarding Watrobski's role as an employee of the County
13 and extremely limited factual allegations regarding Watrobski's
14 actions. (See Docket No. 18, pp.7-8.) In the FAC, Plaintiffs
15 provide substantially more detail on both Watrobski's role and his
16 actions. Plaintiffs allege that Watrobski is "the CHIEF GRIEVANCE
17 REVIEW OFFICER" for the Office of Appeals Management Division of
18 the DCFS. (FAC ¶ 9.) Plaintiffs allege that Watrobski reviews all
19 requests for inclusion in CACI, or that they are reviewed at his
20 direction. (Id.) Plaintiffs allege that Watrobski is the individual
21 who told Plaintiffs that there is no appeal for their inclusion in
22 CWS/CMS. (Id. ¶¶ 11, 44, 45.) Further, Plaintiffs allege that
23 Watrobski is the "final decision maker" for inclusion in or removal
24 from the CACI database, as well as for who is entitled to a hearing

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26 ¹The Court notes that Plaintiffs complain that Defendants did
27 not provide sufficient notice, under Local Rule 7-3, before filing
28 the Motion. Defendants are admonished that strict compliance with
the Local Rules shall be expected in the future. However, the Court
does not deny the Motion on the basis of this failure.

1 to challenge their inclusion in the databases. (Id.) Plaintiffs
2 also allege that Watrobski, along with another DCFS employee Rosen,
3 changed a 2009 referral from unfounded to "conclusive or founded"
4 in 2013 without informing Plaintiffs that he was doing so or
5 contacting them at all. (Id. ¶¶ 23, 26, 29.) Finally, Plaintiffs
6 allege that Watrobski strongly suggested that if Rubtsov hired a
7 lawyer to challenge his inclusion in CACI, things would become
8 complicated, but that if Rubtsov would "behave right," Watrobski
9 would be "lenient." (Id. ¶ 42.)

10 As to Plaintiffs' first cause of action, it is insufficiently
11 alleged against Watrobski individually. Though Plaintiffs now
12 include substantial facts in the FAC regarding Watrobski's actions,
13 it is not at all clear what theory of liability they are asserting
14 against Watrobski *individually* in the first cause of action, which
15 is captioned "42 U.S.C. § 1983 Constitutional Violation - Unlawful
16 Policies, Customs and Habits By Plaintiffs Against All Defendants,"
17 with the alleged constitutional violations being due process and
18 right to privacy. (Id. ¶¶ 56-57.) A claim for unconstitutional
19 custom or policy is a municipal liability claim, which may be
20 asserted against the County only. Naming Watrobski in his official
21 capacity, as the "final decision maker" for the County regarding
22 the appeals process at issue, is functionally equivalent to
23 Plaintiffs suing the County and is therefore redundant. Kentucky v.
24 Graham, 473 U.S. 159, 165 (1985); Hartmann v. California Dep't of
25 Corrs. & Rehab., 707 F.3d 1114, 1127 (9th Cir. 2013).

26 To the extent that Plaintiffs wish to assert this cause of
27 action against Watrobski in his individual capacity, Plaintiffs do
28 not clarify in their first cause of action which acts performed by

1 Watrobski form the basis for any *individual* liability for the
2 identified constitutional violations, rather than actions that
3 would support Plaintiffs' municipal liability claim. Because the
4 first cause of action uses the language of "custom" and "policy"
5 repeatedly and makes no specific mention of Defendant Watrobski, it
6 appears that Plaintiffs do not intend to sue Watrobski in his
7 individual capacity as to this cause of action. Therefore, the
8 Court GRANTS the Motion as to Plaintiffs' first cause of action
9 against Watrobski WITHOUT PREJUDICE. Should Plaintiffs seek to sue
10 Watrobski individually for constitutional violations, Plaintiffs
11 must amend accordingly.

12 B. Second Cause of Action: Civil Conspiracy

13 Plaintiffs' civil conspiracy claim is insufficiently pled. To
14 establish liability for a civil conspiracy claim, a plaintiff must
15 plead facts supporting the existence of "an agreement or meeting of
16 the minds to violate constitutional rights." Mendocino Env'tl. Ctr.
17 v. Mendocino County, 192 F.3d 1283, 1301 (9th Cir. 1999) (internal
18 quotations and citations omitted). It is still unclear from the FAC
19 who, besides Defendant Watrobski, was allegedly part of the
20 conspiracy. Plaintiff's allegations involve specific acts allegedly
21 committed by Watrobski, but no other identified defendant is
22 alleged to have performed any acts in furtherance of a "conspiracy"
23 to violate Plaintiffs' rights; indeed, the only identified
24 defendants in this action are Watrobski and the County. Therefore,
25 Plaintiffs' civil conspiracy claim is DISMISSED WITHOUT PREJUDICE.
26 Upon amendment, Plaintiffs should clarify who allegedly
27 participated in a conspiracy and what that conspiracy allegedly
28 agreed to do that violated Plaintiffs' rights.

1 C. Third Cause of Action: IIED

2 Plaintiffs' claim for intentional infliction of emotional
3 distress ("IIED") is insufficiently pleaded. The tort of IIED
4 requires "(1) extreme and outrageous conduct by the defendant with
5 the intention of causing, or reckless disregard of the probability
6 of causing, emotional distress; (2) the plaintiff's suffering
7 severe or extreme emotional distress; and (3) actual and proximate
8 causation of the emotional distress by the defendant's outrageous
9 conduct." Davidson v. City of Westminster, 32 Cal.3d 197, 209
10 (1982). The conduct "must be so extreme as to exceed all bounds of
11 that usually tolerated in a civilized society." Id.

12 Plaintiffs have not pleaded facts, nor provided any analogous
13 cases in their arguments, that establish that the conduct
14 complained of here is sufficiently extreme or outrageous to support
15 an IIED claim against either the County or Watrobski. Plaintiff's
16 sole argument in opposition to the Motion is to complain that
17 Defendants did not challenge the sufficiency of the IIED claim in
18 their motion to dismiss the original complaint. However, contrary
19 to Plaintiffs' contention, Defendants may challenge the sufficiency
20 of this cause of action in the currently operative First Amended
21 Complaint. Therefore, the Court would GRANT the Motion as to this
22 cause of action WITHOUT PREJUDICE.

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1 **IV. Conclusion**

2 For the foregoing reasons, the Motion is GRANTED. Any amended
3 complaint must be filed on or before November 21, 2014.²

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5 IT IS SO ORDERED.

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8 Dated: November 5, 2014


DEAN D. PREGERSON
United States District Judge

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25 ²Alternatively, Plaintiffs indicated in their opposition that
26 they may simply seek to move forward with those causes of action
27 that are sufficiently pleaded in the First Amended Complaint.
28 Plaintiffs' first cause of action against the County is
sufficiently alleged and therefore remains operative. Should
Plaintiffs decide not to amend their complaint, the action will
still move forward as to that cause of action.