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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LESLIE MOORE,

No. CIV S-10-0713-KJM-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

COUNTY OF BUTTE, et al.,

Defendants.

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Plaintiff, who is proceeding pro se, brings this civil rights complaint. Pending before the court is plaintiff's first amended complaint (Doc. 6).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must

1 dismiss an action “[w]henver it appears . . . that the court lacks jurisdiction of the subject  
2 matter . . . .” Because plaintiff, who is not a prisoner, has been granted leave to proceed in forma  
3 pauperis, the court will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h),  
4 the court will also consider as a threshold matter whether it has subject-matter jurisdiction.  
5

6 **I. PLAINTIFF’S ALLEGATIONS<sup>1</sup>**

7 Plaintiff names the following as defendants:

8 Government Entities County of Butte, City of Chico, State of California, Butte  
9 County District Attorney’s Office, Butte County Superior  
10 Court, Butte County Children’s Services Division of the  
Department of Health and Human Services, Chico Police  
Department, Butte County Sheriff’s Office.

11 Individuals Terry Moore, Robert Merrifield, Loretta MacPhail, Bruce  
12 Hagerty, John Rucker, Michael O’Brien, Michael Maloney,  
13 Michael Webber, Daniel Fonseca, Linda Dye, John Carillo,  
14 Jose Lara, Alicia Rock, Lori Barker, Roger Wilson, Rick  
15 West, Kory Honea, Michael Ramsey, Pamela Chambers,  
16 Pamela Richards, Patricia Parra, Jorje Lozano, Erin Sweet,  
17 Eric O’Berg, David Kennedy, Peter Meadowsong,  
Kimberly Merrifield, Bruce Alpert, Amy King, Tamara  
Solano, Steven McNelis, William Patrick, Tamara  
Mosbarger, James Reilley, David Gunn, William Lamb,  
Anne Osborn, Elisabeth Woodward, Martin McHugh,  
Alfred Driscoll, Gary Wilson, Richard Thomas, Larry  
Levine, Windsor, Deputy Lang, and Mike Morgan.

18 She also names North State Public Safety Employee Retiree Medical Trust. Plaintiff asserts that  
19 the facts alleged in the amended complaint give rise to a claim for violation of her civil rights.

20 She also alleged various state law statutory and/or tort claims (i.e., negligence, breach of contract,  
21 defamation, etc.).

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24 <sup>1</sup> The court observes that, contrary to the requirement of Federal Rule of Civil  
25 Procedure 8(a)(2), the amended complaint (which consists of 49 type-written pages) contains  
26 neither a short nor plain statement of plaintiff’s claims. This has resulted in the expenditure of  
excessive court resources in screening the amended complaint.

1 According to plaintiff, this case involves a minor child, "K.T." Plaintiff states:

2 The child in this case is K.T. His mother ('Dawn') was pregnant  
3 with him when she met my son and they decided to become a family, so  
4 when K.T. was born, in August '03, it was as my non-related grandson.  
5 The new family split up after a couple of years and dawn left K.T. with me  
6 frequently after that. He began living with me in December '06 and I  
7 became his de facto parent. In September 2007 Children's Services  
8 initiated a WIC 300 proceeding to terminate Dawn's parental rights and  
9 K.T. was listed as my foster child. With his mother's blessing, I was  
10 adopting him. Though we call each other 'Grandma/Grandson,' our  
11 relationship was that of parent/child, so I refer to K.T. as my child.

12 According to plaintiff, in the summer of 2007, it came to the attention of welfare  
13 officials that, although K.T. was living with her, Dawn was collecting welfare as if the child were  
14 living with her. In September 2007 Dawn appeared at K.T.'s daycare intending to take him. The  
15 daycare providers believed that Dawn was inebriated at the time and called the police. Defendant  
16 Moore, a police officer and plaintiff's ex-husband, instructed the daycare providers to release  
17 K.T. to Dawn's custody. Plaintiff states that, when she learned of this, she reported child  
18 endangerment to the police. She further states that officer Lara "falsified this report as though it  
19 were a missing person report though he knew K.T. was not 'missing' but was with his mother  
20 and in danger."

21 On September 13, 2007, the police detained a child in a danger situation. This  
22 child turned out to be K.T. It was at this time that K.T. was placed with plaintiff as a foster child.  
23 This placement was accomplished by Patricia Parra who did so without any kind of home  
24 investigation "as a professional courtesy to Moore." While a home investigation was completed  
25 in October 2007, plaintiff states that Parra did not make any of the mandatory monthly visits.

26 More specifically regarding Moore, plaintiff states that he abused her and told her  
he would "take my children, take my house, have me thrown in the loony bin, leave me  
penniless" if she reported the abuse. According to plaintiff, Moore stated repeatedly that he  
could get away with anything he wanted because he was a police officer. Plaintiff claims that  
"[o]n or about 1/2/08 Moore battered me and re-affirmed the above threats to dissuade me from

1 reporting it.” When plaintiff finally sought assistance from the police, she was told by officers  
2 Merrifield and McPhail that her “domestic problems are none of our business.” The officers  
3 refused to make a report and told plaintiff to “deal with it.” Plaintiff states that this caused  
4 Moore’s abuse to intensify.

5 In an effort to escape Moore, plaintiff states that she either began having others  
6 stay with her at her house or she and K.T. would stay with others. She states that she eventually  
7 left the house until she was able to obtain a restraining order. Plaintiff retained attorney  
8 Elisabeth Woodward for this purpose. According to plaintiff, Moore became aware that she was  
9 attempting to obtain a restraining order and that Moore “arranged for a confidential informant to  
10 burglarize and vandalize his truck to create suspicion on me that I was a violent and angry  
11 person.”

12 Plaintiff states that a hearing on her application for a restraining order was heard  
13 on February 27, 2008, by Butte County Superior Court Commissioner David Gunn. She states  
14 that a stipulation was reached whereby a “non-DV” order would issue so that Moore would keep  
15 his gun and job. Plaintiff states that she only agreed to this stipulation under duress. According  
16 to plaintiff, after the restraining order was issued, she was contacted by officer Rucker who  
17 indicated that the department was going to conduct an internal affairs investigation. He refused  
18 plaintiff’s request that the investigation be referred to an outside agency.

19 Plaintiff next states that, in March 2008, Moore arranged to remove his belonging  
20 from plaintiff’s house. Plaintiff claims:

21 Based on information and belief, on the date I had to allow Moore  
22 to go to my house without a stand-by, Moore and an accomplice fabricated  
a scene to create suspicion on me that I was a violent and angry person. . . .

23 Next, plaintiff claims that she appeared at a family law hearing on March 25,  
24 2008, with Butte County Superior Court Judge William Patrick presiding. Plaintiff states that  
25 her attorney committed various acts of malpractice during this hearing. Plaintiff told her attorney  
26 that she didn’t want any spousal support from Moore as part of a divorce settlement because she

1 feared that taking any money from Moore “would have increased my already extreme danger.”  
2 Plaintiff then left the courtroom. Immediately thereafter the judge addressed the allegations of  
3 domestic violence. Plaintiff states that an “inappropriate non-CLETS temporary order” was  
4 issued for three years, but that the court “again failed to address the issue of the safety and  
5 custody of my child [K.T.]”

6           Returning to the police department investigation concerning plaintiff’s allegations  
7 against Moore, plaintiff next states that, after she refused to provide any statement to the internal  
8 affairs investigator, she was referred to the Butte County District Attorney’s Office who,  
9 according to plaintiff, “began to harass me for a statement.” Eventually plaintiff went to the  
10 Butte County District Attorney’s Office in March 2008 and spoke with investigator Rick West.  
11 In April 2008, plaintiff was informed by West that the Butte County District Attorney’s Office  
12 would not take any action on her complaint against Moore. According to plaintiff, West  
13 “excused” allegedly false statements made by Moore and ignored other evidence. Plaintiff states  
14 that she “tried to defend herself” by reminding West that there was a witness. She adds:

15                     . . . At this, he [West] threatened to conclude that I was the  
16                     dominant aggressor. This being ridiculous, I did not back down, so he  
17                     made fraudulent threats, telling me that K.T. would have to be put on the  
                         stand because he witnessed the violence and the opposing attorney would  
                         ‘rip him to shreds and traumatize him on the stand.’

18 According to plaintiff, while the interview was tape recorded, the portion containing these threats  
19 was destroyed. Frustrated, plaintiff turned to the City Manager “to inform him of the  
20 shenanigans. . . .”

21           Next, plaintiff claims that K.T. was detained on April 23, 2008, without warrant  
22 or warning, as the result of a conspiracy among the Butte County District Attorney’s Office, the  
23 Chico Police Department, and the Children’s Services Division of the Department of Health and  
24 Human Services. Plaintiff states that her calls to the Children’s Services Division went  
25 unanswered and she was not provided any information concerning K.T. The next day plaintiff  
26 discovered a note on her door from the Children’s Services Division informing her that K.T. had

1 been removed from the home due to domestic violence he witnessed. The note indicated that a  
2 hearing had been scheduled for April 28, 2008. Plaintiff later learned that the petition filed by  
3 the Children’s Services Division alleged that “there were no reasonable means to protect K.T.  
4 from witnessing DV [domestic violence]. . . .” Plaintiff claims that the petition contained false  
5 statements and intentionally excluded key evidence.

6           At the April 23rd hearing, Butte County Superior Court Judge Tamara Mosbarger  
7 was presiding. Plaintiff claims that the judge would not allow her or members of her family  
8 present any evidence or address the allegedly false statements in the petition. Plaintiff states that  
9 she later learned that Moore had been working with local officials “to get K.T. taken away. . . .”  
10 Plaintiff also claims that the Children’s Services Division was “covering their asses for not doing  
11 the home investigation prior to listing K.T. as a foster child and for not doing the home visits.”

12           According to plaintiff, she filed a “de facto [parent] request” and supporting  
13 declaration in the Butte County Superior Court on May 2, 2008. By this time, plaintiff had  
14 retained new counsel – Martin McHugh – to represent her. Plaintiff states that McHugh told her  
15 not to worry because her case was “cut and dried.” Apparently paperwork had been misplaced by  
16 the time of the original hearing date and the matter was re-scheduled for a date a month later to  
17 allow McHugh to re-file papers. Plaintiff states that McHugh never re-filed her petition and that  
18 McHugh never showed up for the next hearing date scheduled for June 19, 2008. Plaintiff claims  
19 that she tried to speak but the judge would not allow her because McHugh was her attorney of  
20 record. The next hearing was scheduled for January 29, 2009.

21           Next, plaintiff asserts that an “unknown agency or agencies” spread the false  
22 rumor that plaintiff was being investigated for child abuse and that her house and phones were  
23 bugged. Plaintiff admits that she was indeed being investigated for child abuse, though she states  
24 that she never received any written notice of such investigation and was never interviewed by the  
25 Children’s Services Division. Plaintiff states that, even so, the Children’s Services Division  
26 falsely indicated in a report to the Department of Justice that she had been interviewed for

1 “emotional abuse” of K.T. When plaintiff asked for a copy of this report, the Children’s Services  
2 Division denied her request.

3 Plaintiff then filed a grievance with Butte County Administration. She states that  
4 this resulted in a new investigation. The investigation concluded that plaintiff was, in fact, not  
5 committing emotional abuse of K.T. by, according to plaintiff, “convicting me of having made a  
6 ‘false report’ of DV [domestic violence], presumably in order that Moore be exonerated.”  
7 Plaintiff states that the Chico Police Department’s internal affairs investigation into her claim  
8 that Moore abused her was concluded with a “not sustained” finding due to lack of witnesses.

9 According to plaintiff, her “DV case” was next scheduled for hearing on July 22,  
10 2009, before Butte County Superior Court Judge William Patrick. The judge ordered the parties  
11 to mediation. Ultimately, the case was dismissed.

12 Plaintiff next sets forth an extremely lengthy discussion of allegations related to  
13 her divorce from Moore. She claims:

14 So, having been shown that I am not allowed to make reports of  
15 people or property crimes or to make complaints or make record, and was  
16 prevented by law enforcement and judges from reporting victimization to  
17 any law enforcement or judge, and had and continued to be deprived of my  
18 civil right to attempt to protect my interests or defend against false  
19 accusations, and now faced going into the dissolution trial without even  
20 financial disclosure or discovery, I tried to open a door to escape the ‘Blue  
21 Wall of Silence’ by making a citizen’s arrest for at least the restraining  
22 order violations and trespass as I had enough probable cause including a  
23 witness. . . .

24 Plaintiff states that she also complained to the Judicial Council of California concerning alleged  
25 judicial impropriety.

26 Next, plaintiff states that Moore attempted to “murder me using confidential  
informants” on March 13, 2009. She states that she “was able to avoid this” and made a report to  
the Chico Police Department.

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1 Plaintiff claims that another hearing in the divorce case was held on March 17,  
2 2009, with Judge McNelis presiding. She states that the judge “let it be known that he had  
3 already decided to deny my motions and that I was not going to be allowed to speak.” Plaintiff  
4 responded by hiring yet another attorney – Richard Thomas – on March 20, 2009.

5 Returning to her custody allegations relating to K.T., plaintiff next claims that she  
6 arranged with K.T.’s temporary guardians to meet at a local Wal-Mart so that K.T. and plaintiff  
7 could see each other. This resulted in a restraining order being issued against plaintiff for  
8 “threatening to disturb and disrupt K.T.’s peace.” Another court hearing was scheduled for  
9 October 13, 2009. Plaintiff claims:

10 I was accused of having been secretive with K.T., having tried to  
11 talk to K.T. about the DJ, and of hanging around K.T.’s school. The  
12 persons making these accusations . . . were not in court for cross-  
13 examination and there was of course no evidence of this. . . .

14 By December 2009, plaintiff learned that the LeFantos (with whom K.T. had been staying) did  
15 not want K.T. and that the child had been “dumped back” into the foster system. Plaintiff states  
16 that she begged the Butte County Superior Court to intervene somehow. This petition was  
17 denied. Plaintiff then asked the Court of Appeal to intervene and that the court declined to do so  
18 stating that plaintiff was not aggrieved because she was “not a party to K.T.’s life.”

19 Next, returning to facts relating to her divorce, plaintiff alleges that another trial  
20 commenced on February 18, 2010, even though she still had not been provided with discovery or  
21 required disclosures. Plaintiff claims that the court made an ex parte finding that there had been  
22 no domestic violence committed by Moore. She also states that the ultimate dissolution was  
23 unfair to her.

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1 Plaintiff concludes her lengthy (and somewhat disjointed) series of factual  
2 allegations by stating:

3 That's pretty much 'just the facts' in this case, which has proven  
4 only one thing: That, as my husband [Moore] warned and predicted, 'he  
5 can do anything he wants and get away with it because he is a cop.' And  
6 so can his 'friends.'

## 7 II. DISCUSSION

8 The court finds that the amended complaint suffers from a number of fatal flaws,  
9 discussed below.<sup>2</sup>

### 10 A. Allegations Against Municipal Defendants

11 Municipalities and other local government units are among those "persons" to  
12 whom § 1983 liability applies. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).  
13 Counties and municipal government officials are also "persons" for purposes of § 1983. See id.  
14 at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local  
15 government unit, however, may not be held responsible for the acts of its employees or officials  
16 under a respondeat superior theory of liability. See Bd. of County Comm'rs v. Brown, 520 U.S.  
17 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not  
18 of the actions of its employees or officers. See id. To assert municipal liability, therefore, the  
19 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or  
20 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to  
21 withstand dismissal even if it is based on nothing more than bare allegations that an individual  
22 defendant's conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los  
23 Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988).

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25 <sup>2</sup> Because, for the reasons discussed herein, the court finds that plaintiff cannot state  
26 a cognizable federal claim, the court also finds that it should not exercise jurisdiction over any  
state law claims raised on the amended complaint.

1           The factual allegations set forth in the amended complaint relate instances of  
2 impropriety by various government officials and employees. Plaintiff does not allege any  
3 specific facts attributing alleged constitutional violations to any official custom or policy of a  
4 municipal defendant.<sup>3</sup> All municipal defendants should be dismissed.

5           **B. Allegations Against State Court Judges**

6           Judges are absolutely immune from damage actions for judicial acts taken within  
7 the jurisdiction of their courts. See Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988)  
8 (per curiam). Judges retain their immunity even when they are accused of acting maliciously or  
9 corruptly, see Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam); Stump v. Sparkman, 435  
10 U.S. 349, 356-57 (1978), and when they are accused of acting in error, see Meek v. County of  
11 Riverside, 183 F.3d 962, 965 (9th Cir. 1999). This immunity also extends to the actions of court  
12 personnel when they act as “an integral part of the judicial process.” See Mullis v. U.S.  
13 Bankruptcy Court, 828 F.2d 1385, 1390 (9th Cir. 1987).

14           Plaintiff names a number of state court judges and complains of improprieties in  
15 the context of court proceedings over which they presided. Even though plaintiff appears to  
16 allege malice, corruption, and/or error, the judicial defendants are entitled to absolute immunity  
17 and should be dismissed.

18           **C. Allegations Against Supervisory Personnel**

19           Supervisory personnel are generally not liable under § 1983 for the actions of their  
20 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no  
21 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional  
22 violations of subordinates if the supervisor participated in or directed the violations. See id. The  
23 Supreme Court has rejected the notion that a supervisory defendant can be liable based on  
24 knowledge and acquiescence in a subordinate’s unconstitutional conduct because government

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25           <sup>3</sup> Plaintiff’s “Blue Wall” allegations relate to improper actions by individual police  
26 officers in seeking to protect defendant Moore.

1 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct  
2 and not the conduct of others. See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009). When a  
3 defendant holds a supervisory position, the causal link between such defendant and the claimed  
4 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
5 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory  
6 allegations concerning the involvement of supervisory personnel in civil rights violations are not  
7 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). “[A] plaintiff must  
8 plead that each Government-official defendant, through the official’s own individual actions, has  
9 violated the constitution.” Iqbal, 129 S.Ct. at 1948.

10 To the extent plaintiff names defendants who hold supervisory roles, and to the  
11 extent plaintiff alleges such defendants are liable solely based on the actions of subordinates,  
12 plaintiff cannot state a claim.

13 **D. Allegations Against the State of California and/or State Agencies**

14 The Eleventh Amendment prohibits federal courts from hearing suits brought  
15 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.  
16 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition  
17 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t  
18 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th  
19 Cir. 1989).

20 Plaintiff names as defendants the State of California as a defendant as well as the  
21 California Department of Justice. These defendants are immune from suit and should be  
22 dismissed.

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1           **E. Allegations Relating to Concluded State Court Cases**

2           Under the Rooker-Feldman abstention doctrine, federal courts lack jurisdiction to  
3 hear matters already decided in state court. See Rooker v. Fidelity Trust Co., 263 U.S. 413  
4 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine  
5 applies in cases “brought by state court losers complaining of injuries caused by state court  
6 judgments rendered before the district court proceedings commenced and inviting district court  
7 review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic Industries Corp.,  
8 544 U.S. 280 (2005). An exception, inapplicable here, would be where Congress expressly  
9 grants federal courts jurisdiction to review state court judgment (such as habeas corpus, for  
10 example).

11           Substantively, plaintiff complains of improprieties surrounding her divorce and  
12 custody proceedings involving K.T. Plaintiff states that both of these matters were decided  
13 against her in state court. In general, plaintiff cannot come to this court complaining about state  
14 court decisions rendered against her before commencing suit, which is exactly what she is  
15 attempting to do here. The court should abstain from hearing plaintiff’s substantive claims and  
16 this action should be dismissed.

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1 **III. CONCLUSION**

2 Based on the foregoing, the undersigned recommends that the first amended  
3 complaint be dismissed without leave to amend and that this action be dismissed in its entirety.

4 These findings and recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court. Responses to objections shall be filed within 14 days after service of  
8 objections. Failure to file objections within the specified time may waive the right to appeal.  
9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: July 21, 2011

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13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE  
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