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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JEAN NEWFARMER-FLETCHER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 COUNTY OF SIERRA, a California )  
 Municipality, SIERRA COUNTY )  
 DEPT. OF HUMAN SERVICES/SOCIAL )  
 SERVICES DEPARTMENT, a )  
 government agency organized and )  
 existing pursuant to the law and )  
 policy of the COUNTY OF SIERRA, )  
 CAROL ROBERTS, Director of the )  
 DEPT. OF HUMAN SERVICES, JAMES )  
 MARKS, LARRY ALLEN, VAN MADDOX, )  
 JODI BENSON, CAROL IMAN, and )  
 DOES 1-50, )  
 )  
 Defendants. )

Case No. 2:11-CV-02054 JAM-CKD

ORDER GRANTING DEFENDANTS'  
MOTON TO DISMISS

Before the Court is Defendants' County of Sierra, Sierra County Department of Human Services/Social Services Department, Carol Roberts ("Roberts"), James Marks ("Marks"), Larry Allen ("Allen"), Van Maddox ("Maddox"), and Jodi Benson ("Benson"), (collectively "Defendants"), Motion to Dismiss (Doc. #24) the Second Amended Complaint (Doc. #23) filed by Plaintiff Jean Newfarmer-Fletcher ("Plaintiff"). Plaintiff opposes the motion

1 (Doc. #25).<sup>1</sup>

2  
3 I. PROCEDURAL BACKGROUND & FACTUAL ALLEGATIONS

4 Plaintiff filed her Complaint (Doc. #1) on August 1, 2011.  
5 After Defendants filed a Motion to Dismiss (Doc. #6), Plaintiff  
6 filed her First Amended Complaint ("FAC") (Doc. #12). Defendants  
7 again filed their Motion to Dismiss (Doc. #17). The Court granted  
8 the Motion to Dismiss, but allowed Plaintiff leave to amend four of  
9 her claims (Doc. #22). Plaintiff now alleges three causes of  
10 action in her Second Amended Complaint ("SAC") (Doc. #23): (1) Due  
11 Process Violations (as against Roberts and Does 1-50); (2) Slander  
12 (against all Defendants); and (3) Invasion of Privacy (against  
13 Roberts, Marks, and Does 1-50).

14 Plaintiff is a social worker employed by Sierra County. In  
15 approximately May 2010, Plaintiff alleges that she participated in  
16 the initiation of a child dependency proceeding previously handled  
17 by Benson, another social worker at Sierra County Health and Human  
18 Services. Plaintiff believed that Benson's prior handling of the  
19 case was inaccurate and contained unspecified false information.  
20 Plaintiff alleges she reported her findings to her direct  
21 supervisor, Marks. Plaintiff alleges that Marks was in an  
22 inappropriate personal relationship with Benson and as a result of  
23 this relationship, Plaintiff alleges that she was targeted by  
24 Benson and Marks. Plaintiff alleges she was also harassed by  
25 Roberts, the Director of Health and Human Services in Sierra County  
26 and Curtis, an unknown party not named in this lawsuit.

27  
28 <sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 6, 2012.

1 Plaintiff's allegations stem from two key events:

2 (1) In approximately June 2010, Plaintiff alleges that she received  
3 telephone calls from her clients who asked why Defendant Carol  
4 Iman, a union representative for California United Homecare Workers  
5 Union, was visiting them to obtain negative information about her.  
6 Plaintiff further alleges that Marks and Benson also approached her  
7 clients to illicit information to utilize against her. Plaintiff  
8 avers that Defendants told County Counsel and the Board of  
9 Supervisors that Plaintiff had multiple complaints from her clients  
10 and was incompetent in her job; and (2) On or about April 8, 2011,  
11 Plaintiff alleges that she was forced to submit to an alcohol test  
12 at the direction of Roberts without a reasonable suspicion  
13 providing a basis for the test. Plaintiff alleges that the test  
14 occurred at the Sheriff's Department in a room with clear glass  
15 windows, visible to the public, and not in private. Plaintiff  
16 alleges that Roberts discussed the fact that Plaintiff underwent  
17 the alcohol test in the presence of other co-workers and that this  
18 information was released to the editor of the local newspaper, the  
19 Mountain Messenger. Plaintiff further alleges that Defendants  
20 refused to provide her with copies of the test results so that she  
21 could contest the legitimacy of the alcohol test through grievance  
22 procedures.

## 24 II. OPINION

### 25 A. Legal Standard

#### 26 1. Motion to Dismiss

27 A party may move to dismiss an action for failure to state a  
28 claim upon which relief can be granted pursuant to Federal Rule of

1 Civil Procedure 12(b)(6). In considering a motion to dismiss, the  
2 court must accept the allegations in the complaint as true and draw  
3 all reasonable inferences in favor of the plaintiff. Scheuer v.  
4 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
5 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319,  
6 322 (1972). Assertions that are mere "legal conclusions," however,  
7 are not entitled to the assumption of truth. Ashcroft v. Iqbal,  
8 556 U.S. 662, 678 (2009), (citing Bell Atlantic Corp. v. Twombly,  
9 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a  
10 plaintiff needs to plead "enough facts to state a claim to relief  
11 that is plausible on its face." Twombly, 550 U.S. at 570.  
12 Dismissal is appropriate where the plaintiff fails to state a claim  
13 supportable by a cognizable legal theory. Balistreri v. Pacifica  
14 Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

15       Upon granting a motion to dismiss for failure to state a  
16 claim, the court has discretion to allow leave to amend the  
17 complaint pursuant to Federal Rule of Civil Procedure 15(a).  
18 "Dismissal with prejudice and without leave to amend is not  
19 appropriate unless it is clear . . . that the complaint could not  
20 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,  
21 316 F.3d 1048, 1052 (9th Cir. 2003).

## 22           2.    Section 1983

23       Plaintiff's claims against Defendants are brought under 42  
24 U.S.C. § 1983 ("Section 1983"). To prevail in a Section 1983 civil  
25 action against state actors for the deprivation of

26           rights, privileges, or immunities secured by the  
27           Constitution and laws, a plaintiff must show that  
28           (1) acts by the defendants (2) under color of state  
          law (3) deprived him of federal rights, privileges  
          or immunities and (4) caused him damage. Section  
          1983 is not itself a source of substantive rights,

1 but merely provides a method for vindicating federal  
2 rights elsewhere conferred. Accordingly, the  
3 conduct complained of must have deprived the  
4 plaintiff of some right, privilege or immunity  
5 protected by the Constitution or laws of the United  
6 States.

7 Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th Cir.  
8 2005) (internal citations omitted).

9 B. Claims for Relief

10 1. Sierra County Department of Human Services/Social  
11 Services

12 Defendants argue that the Department of Human Services/Social  
13 Services ("DHSSS") should be dismissed with prejudice because under  
14 Section 1983 Plaintiff may not pursue claims against municipal  
15 departments. In the alternative, Defendants argue that because  
16 this Court dismissed all claims against the County of Sierra with  
17 prejudice, DHSSS should also be dismissed because it would be  
18 redundant to suing the County itself. Plaintiff replies, without  
19 any authority, that DHSSS is a proper defendant because the Court  
20 only dismissed the claims against the County of Sierra, not DHSS.

21 Municipal departments of a public entity, such as DHSSS, are  
22 not subject to suit under Section 1983. Vance v. Cnty. Of Santa  
23 Clara, 928 F. Supp. 993, 995-96 (N.D. Cal. 1996). The correct  
24 party for Plaintiff's claims is the County of Sierra, which the  
25 Court already dismissed with prejudice. Accordingly, the Court  
26 GRANTS WITH PREJUDICE Defendants' Motion to Dismiss DHSSS.

27 2. Due Process Violations

28 Defendants argue that Plaintiff fails to plead any facts  
regarding the procedural due process claim against Marks or Benson.  
Plaintiff concedes that they can be dismissed from this claim.

1 Accordingly, the Court GRANTS Defendants' Motion to Dismiss Marks  
2 and Benson from the Due Process Claim WITH PREJUDICE.

3 Defendants argue that Plaintiff fails to allege any facts to  
4 support a violation of her due process rights by Roberts. In the  
5 alternative, Defendants argue that Roberts is entitled to qualified  
6 immunity. Plaintiff counters that she pleads the elements of  
7 procedural due process. Without citing authority, she argues that  
8 she has a property interest in not having her body arbitrarily  
9 subjected to alcohol testing; she had no notice of the testing; and  
10 Roberts refused to provide a copy of the results after the alcohol  
11 testing was done with the intent to interfere with her ability to  
12 utilize the grievance procedure.

13 As discussed in the Court's previous Order, Plaintiff must  
14 allege (1) she possesses a liberty or property interest, Bd. of  
15 Regents of State Colls. v. Roth, 408 U.S. 564 (1972); (2) she was  
16 deprived of that interest by government action; Gilbert v. Homar,  
17 520 U.S. 924 (1997); and (3) the deprivation occurred without  
18 adequate notice and an opportunity to be heard. Id. The Court  
19 held that Plaintiff can maintain this cause of action only if she  
20 can plead the elements of the due process violation and allege how  
21 she was denied due process despite voluntarily foregoing the  
22 grievance process.

23 Plaintiff fails to point to any facts in the SAC or proffer  
24 any argument to suggest that she was deprived of constitutionally-  
25 protected property. Plaintiff does not plead any facts that  
26 suggest that as a result of the test, Plaintiff lost her job or was  
27 subject to any type of discipline that would be a constitutionally-  
28 protected property interest. Her argument that she has a property

1 interest in not having her body arbitrarily subjected to alcohol  
2 testing lacks any authority. In sum, Plaintiff has not alleged  
3 that she was deprived of constitutionally-protected property and  
4 thus fails to plead the elements of her due process violation  
5 claim.

6 Furthermore, Plaintiff still does not allege how she was  
7 denied due process despite voluntarily foregoing the grievance  
8 process. Plaintiff does not dispute that there were adequate  
9 procedural safeguards in place and available to her. Moreover, the  
10 policies of the County of Sierra clearly reflect that Plaintiff had  
11 many options available to her to pursue her grievance claim - none  
12 of which required documentary evidence.<sup>2</sup> Accordingly, the Court  
13 GRANTS Defendants' Motion to Dismiss the First Cause of Action WITH  
14 PREJUDICE. Because the Court finds that Plaintiff does not have a  
15 due process claim, it need not reach whether Roberts is entitled to  
16 qualified immunity.

### 17 3. Jurisdiction

18 "The district court[] may decline to exercise supplemental  
19 jurisdiction . . . if [it] has dismissed all claims over which it  
20 has original jurisdiction." 28 U.S.C. § 1367. "The exercise of  
21 pendent jurisdiction to hear state claims is within the discretion  
22 of the federal district court." Imagineering, Inc. v. Kiewit Pac.  
23 Co., 976 F.2d 1303, 1309 (9th Cir. 1992). When determining whether  
24 to remand, the court should consider "the values of judicial  
25 economy, convenience, fairness, and comity." Carnegie-Mellon Univ.

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26  
27 <sup>2</sup> The Court GRANTS Defendants' Request for Judicial Notice in  
28 Support of Motion to Dismiss Second Amended Complaint (Doc. #24)  
pursuant to Federal Rule of Evidence 201(b)(2). Accordingly, the  
Court takes notice of the provided excerpts of the official Sierra  
County Employee Handbook.

1 v. Cohill, 484 U.S. 343, 350 (1988).

2 Because the Court has dismissed Plaintiff's federal claims  
3 with prejudice, it declines to exercise supplemental jurisdiction  
4 over the remaining state law claims. Accordingly, these claims are  
5 dismissed and may be re-filed in state court if Plaintiff so  
6 chooses.

7  
8 III. ORDER

9 For the reasons set forth above,

10 The Court GRANTS WITH PREJUDICE Defendants' Motion to Dismiss:

11 (1) All causes of action against the Sierra County Department  
12 of Human Services/Social Services; and

13 (2) Plaintiff's first cause of action for due process  
14 violations.

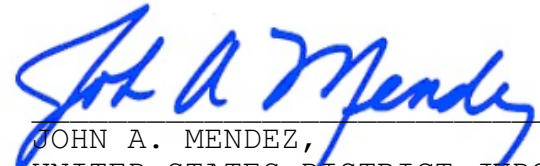
15 The Court DISMISSES WITHOUT PREJUDICE:

16 (1) The second cause of action for slander; and

17 (2) The third cause of action for invasion of privacy.

18 IT IS SO ORDERED.

19 Dated: July 9, 2012

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22 JOHN A. MENDEZ,  
23 UNITED STATES DISTRICT JUDGE  
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