UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTINE CORONA,

Plaintiff,

v.

MICHELE VERDEROSA, et al.,

Defendants.

No. 2:14-cv-01473-MCE-AC

FINDINGS & RECOMMENDATIONS

On March 18, 2015, the court held a hearing on Defendants Michele Verderosa and Marian Tweddell's ("the State Defendants") motion to dismiss; Defendants Brandon Vinson, Kevin Jones, Laurie Gatie, and Stacey Montgomery's ("the County Defendants") motion to dismiss or, in the alternative, for a more definite statement; and Defendant Nathan Horton's motion for a more definite statement, motion to strike, and/or motion to dismiss. Plaintiff Christine Corona appeared in pro per; Margaret E. Long appeared for the County Defendants; William D. Ayres appeared for Defendant Nathan Horton; and Jeffrey Lovell appeared for the State Defendants. On review of the motions, the documents filed in support and opposition, hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

PROCEDURAL HISTORY

Plaintiff filed her original complaint against Defendants Michelle Verderosa, Brandon Vinson, Kevin Jones, Laurie Gatie, and Nathan Horton on June 20, 2014. ECF No. 1.

Subsequently, plaintiff filed a first amended complaint ("FAC") on October 15, 2014. ECF No. 4. Plaintiff's FAC named two defendants not included in her original complaint, Stacey Montgomery and Marian Tweddell. Id. On October 21, 2014, the court ordered plaintiff to file proof of service on the defendants named in her original complaint or a request for additional time to affect service within fourteen (14) days. ECF No. 6. On October 24, 2014, summons upon all defendants were returned executed to the court. ECF Nos. 7 & 8. According to plaintiff's proof of service she served two defendants, Vinson and Montgomery, by "substitute service" after three failed attempts. ECF No. 8 at 4, 6.

On December 22, 2014, the court granted defendants' motions to dismiss plaintiff's FAC with leave to amend for failure to state a claim. ECF No. 26. On January 16, 2015, plaintiff filed a second amended complaint ("SAC"). ECF No. 27. On February 2, 2015, the State Defendants filed a motion to dismiss, arguing that (1) plaintiff's claims against the State Defendants are barred by the Eleventh Amendment; (2) plaintiff's claims against Defendant Verderosa are barred the doctrine of judicial immunity; (3) plaintiff's claims against Defendant Tweddell are barred by the doctrine of quasi-judicial immunity; (4) plaintiff's SAC fails to state a claim as all of the allegations relating to the State Defendants concern actions taken in their official capacities as agents of the State; and (5) to the extent that plaintiff intends to bring state law causes of action she has failed to state a claim because she does not allege compliance with the California Torts Claims Act ("CTCA"). [1]

On February 4, 2015, Defendant Horton filed a motion for a more definite statement,

[1] The State Defendants also seek judicial notice of the docket and the first amended complaint in plaintiff's state court criminal action, The People of the State of Cal. v. Christine Renee Corona, CR031958 (Lassen Cnty. Super. Ct. Aug. 5, 2014) ("the Criminal Case"). ECF No. 32-2. Under Rule 201 of the Federal Rules of Evidence, a court must take judicial notice of an adjudicative fact that is not subject to reasonable dispute because it is either (1) generally known or "(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The filings attached to the State Defendants' request for judicial notice can be determined "from sources whose accuracy cannot reasonably be questioned." Id. Accordingly, the court will recommend that the State Defendants' request for judicial notice be granted because plaintiff's state court criminal action is directly related to plaintiff's SAC.

motion to strike, and/or motion to dismiss. ECF No. 33. Defendant Horton's motion argues that the court should require plaintiff to file a more definite statement because her SAC is so vague and unintelligible that it fails to provide Defendant Horton with reasonable notice. Id. at 4–7. Defendant Horton also argues that plaintiff's SAC should be stricken because it contains substantial "improper" material. Id. at 7. Finally, Defendant Horton argues that plaintiff's SAC fails to state a claim because he is immune from liability under both California Government Code § 821.8 and the doctrine of qualified immunity. Id. at 7–8. Defendant Horton also argues that to the extent plaintiff seeks to bring state law causes of actions those claims are barred by the CTCA. Id. at 8.

Also on February 4, 2015, the County Defendants filed a motion to dismiss or, in the alternative, for more definite statement.[2] ECF No. 34. The County Defendants argue that plaintiff's claims against Defendant Montgomery are barred by prosecutorial immunity, while her claims against Defendants Gatie, Jones, and Vinson are barred by qualified immunity. Id. at 3–4. The County Defendants also move to dismiss plaintiff's SAC as to Defendant Vinson for insufficiency of service under Rule 12(b)(5). Id. at 4–6. In addition, the County Defendants argue that plaintiff's SAC fails to state a cognizable legal theory, id. at 6–7, and is barred by the Younger Abstention Doctrine, id. at 8. Finally, the County Defendants also argue that to the extent plaintiff brings state law causes of action those claims are barred by the CTCA. Id. at 7–8.

On February 23, 2015, plaintiff filed an opposition to the foregoing motions, arguing that defendants have effectively admitted to wrongdoing by choosing to pursue "'loopholes' (technicalities)" instead of responding to her complaint. ECF No. 39 at 2–3. On March 10, 2015, the County Defendants filed a reply to plaintiff's opposition, contending that (1) plaintiff's

[2] The County Defendants also seek judicial notice of the docket in this matter, ECF No. 34-1 at 2 n.1, along with the docket and first amended complaint in the Criminal Case, ECF No. 34-2. It is unnecessary for the court to take judicial notice of its own docket. See Willard v. Sebok, No. CV 13-2251-MMM RNB, 2015 WL 391673, at *2 n.2 (C.D. Cal. Jan. 28, 2015). Accordingly, the court will recommend that the County Defendants' request for judicial notice of the docket in this matter be denied. The court will also recommend that the County Defendants' request for judicial notice of the docket and first amended complaint in the Criminal Case be denied as moot.

opposition fails to address the arguments contained in their motion and accordingly, those arguments are deemed admitted; (2) the County Defendants have not waived any defenses to plaintiff's claims as plaintiff contends in her opposition; and (3) plaintiff's SAC fails to state a cognizable legal theory. ECF No. 46. On the same date, Defendant Horton filed a reply again asserting that plaintiff's SAC fails to give him reasonable notice of her claims and, accordingly, should be dismissed. ECF No. 47.

UNDERLYING FACTS

Plaintiff alleges that defendants are liable for violations of her constitutional rights under § 1983. Against many defendants however, she alleges few facts.

For example, plaintiff alleges that Defendant Montgomery, the District Attorney for Lassen County, "failed to prosecute" criminal charges against her and, for reasons that are unclear, filed new charges constituting "fictitious litigation." Id. at 6. Plaintiff also alleges that Defendants Gatie, Vinson, Horton, and Jones executed a search warrant on May 6, 2014, that was "void on its face" by placing a GPS tracking device on her car. Id. at 7.[3] Defendant Horton subsequently removed that tracking device at an unspecified time. Id. Although plaintiff does not say explicitly why she believes the search warrant was void, that belief probably arises out of her allegations relating to Defendant Verderosa, the state court judge who approved the warrant. Id. at 4–5. Plaintiff alleges that Defendant Verderosa did not have the authority to sign a search warrant for her car because her involvement in plaintiff's case was a conflict of interest. Id. at 5.

Specifically, plaintiff argues that Defendant Verderosa's involvement in plaintiff's case was a conflict of interest because (1) Defendant Verderosa was plaintiff's public defender in another matter in October 2002, and (2) Defendant Verderosa's husband works for plaintiff's significant other and would stand to gain professionally if plaintiff was convicted. Id. at 5. Plaintiff also alleges that Defendant Verderosa did not have the authority to sign the search warrant because according to the Lassen County Superior Court Rules, felony criminal matters

[3] In the same sentence, plaintiff alleges both that the defendants executed a warrant that was void on its face and that they placed the tracking device without a warrant. Id. Later in the same paragraph she states that she was not shown the warrant.

are assigned to Judge Sokol and not to Defendant Verderosa. Id. at 4. As for Defendant Tweddell, plaintiff alleges that she discriminated against plaintiff by refusing to file plaintiff's notices of discharge on two occasions. Id. at 5.

Plaintiff also alleges that she was arrested twice. Id. at 6–7. On May 6, 2014, plaintiff was pulled over and arrested by two unknown officers, one from the Lassen County Sherriff's Department and the other from the California Highway Patrol. Id. at 7. Plaintiff was not read her Miranda rights, advised of the charges against her, or shown a warrant after she requested to see one. Id. At some point after her arrest her property was seized, including $642.00 in cash, her cell phone, and her vehicle. Id. After her vehicle was towed it was taken to Susanville Towing, where it was stored for eight days, costing her a total of $900. Id. Plaintiff had to post bail of "$90,000.00 at 10% or $9,000," which she alleges was excessive. Id.

Plaintiff was arrested a second time on December 17, 2014, after an appearance in federal court, by FBI agents. Id. at 6. Defendant Horton was present at the time of this arrest. Id. During her arrest plaintiff asked to see a copy of her arrest warrant, but the agents refused. Id. Plaintiff claims that she was falsely imprisoned for five days and ultimately had to pay bail of "$110,000.00, $11,000.00 or 10% of [her] property." Id. at 6–7.[4]

LEGAL STANDARDS

I. Failure to State a Claim

The purpose of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of the complaint. N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Thus, a defendant's Rule 12(b)(6) motion challenges the court's ability to grant any relief

[4] At the court's March 18, 2015 hearing, plaintiff alleged that her December 17, 2014 arrest was not related to her May 6, 2014 arrest. Plaintiff also alleged that the state's charges stemming from her May 6, 2014 arrest had been dismissed.

on the plaintiff's claims, even if the plaintiff's allegations are true.

In determining whether a complaint states a claim on which relief may be granted, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989).

The court may consider facts established by exhibits attached to the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987). The court may also consider facts which may be judicially noticed, Mullis v. United States Bankr. Ct., 828 F.2d 1385, 1388 (9th Cir. 1987), and matters of public record, including pleadings, orders, and other papers filed with the court, Mack v. South Bay Beer Distributors, 798 F.2d 1279, 1282 (9th Cir. 1986). The court need not accept legal conclusions "cast in the form of factual allegations." W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

II. § 1983 Claim

Generally, to state a claim under 42 U.S.C. § 1983, a plaintiff must allege a violation of rights protected by the Constitution or created by federal statute, proximately caused by conduct of a person acting under color of state law. Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). To state a claim under § 1983 against a public entity not personally involved in a constitutional violation, a plaintiff must allege a constitutional injury resulting from a "policy, practice, or custom of the local entity." Avalos v. Baca, 517 F. Supp. 2d 1156, 1162 (C.D. Cal. 2007) (citing Monell v. Dep't of Soc. Srvs., 436 U.S. 658, 694 (1978)). This type of claim can be asserted on three different bases. First, a public entity may be held liable when "implementation of . . . official policies or established customs inflicts the constitutional injury." Clouthier v. Cnty. of Contra Costa, 591 F.3d 1232, 1249 (9th Cir. 2010) (quoting Monell, 436 U.S. at 708 (Powell, J., concurring)). Second, such liability may arise when a failure to act amounts to "deliberate indifference to a constitutional right." Id. (internal quotation marks omitted). Third, this type of liability may arise when "an official with final policy-making authority . . . ratifies a subordinate's unconstitutional decision or action and the basis for it." Id. (quoting Gillette v. Delmore, 979 F.2d 1342, 1346–47 (9th Cir. 1992)).

Regardless of the theory underlying plaintiff's claim, however, plaintiff must provide "sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

III. Improper Service

Under the Federal Rule of Civil Procedure 12(b)(5), a defendant may challenge any departure from the proper procedure for serving the summons and complaint as "insufficient service of process." Fed. R. Civ. P. 12(b)(5). Once a defendant challenges service of process, the plaintiff has the burden of establishing the validity of service of process under Rule 4. See, e.g., Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004); Solorio v. Astrue, 2008 WL 5122177, at *1 (S.D. Cal. Dec.5, 2008). It is axiomatic that a court cannot exercise jurisdiction over a defendant without proper service of process pursuant to Rule 4. See Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987).

Pursuant to Federal Rule of Civil Procedure 4(e), an individual within a judicial district of the United States may be served by:

> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
>
> (2) doing any of the following:
>
> (A) delivering a copy of the summons and of the complaint to the individual personally;
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> (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
>
> (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

With respect to Rule 4(e)(1), the law of the state in which this court sits allows a plaintiff to serve a defendant by personal delivery of a summons and complaint. Cal. Code Civ. P. § 415.10. "If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served," California Code of Civil Procedure § 415.20(b) also permits an individual to "be served by leaving a copy of the summons and complaint at the person's . . .

usual place of business . . . in the presence of . . . a person apparently in charge of his or her office [or] place of business, . . . at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left."

DISCUSSION

I. Rule 12(b)(6): Failure to State a Claim

The court will recommend that plaintiff's SAC be dismissed for failure to state a claim under Rule 12(b)(6).

Plaintiff's SAC alleges that defendants have engaged in a wide variety of conduct that infringed upon her constitutional rights. Accordingly, the court will construe the complaint as attempting to state claims under 42 U.S.C. § 1983.[5] Plaintiff alleges that Defendant Verderosa violated the Lassen Superior Court Rules and that her involvement in plaintiff's criminal case constituted a conflict of interest. ECF No. 27 at 4–5. Plaintiff also alleges that Defendant Tweddell failed to file plaintiff's notices of discharge. Id. at 5. As to Defendant Montgomery, plaintiff alleges that she failed to timely and properly prosecute plaintiff's criminal case. Id. at 6. Finally, plaintiff alleges that Defendants Gatie, Vinson, Horton, and Jones improperly executed a search warrant against plaintiff by affixing a tracking device to her car and then removing it. Id. at 7.

None of these alleged facts, in and of themselves, amount to constitutional violations. Plaintiff does allege that the search warrant executed by Defendants Gatie, Vinson, Horton, and Jones was "void on its face," id. at 4, 7, however, she does not allege any facts that would establish the warrant was void. Because plaintiff's allegation that the search warrant was void on its face is a legal conclusion it is not entitled to a presumption of truth at the motion to dismiss stage. See Reed v. City of San Diego, No. 06CV2724 JM WMC, 2007 WL 1877961, at *3 (S.D.

[5] In light of the court's construction of plaintiff's claims as arising under 42 U.S.C. § 1983, the court declines to reach defendants' arguments that plaintiff's state law claims are barred by the CTCA.

Cal. June 28, 2007). Accordingly, the court finds that plaintiff's SAC fails to allege facts sufficient to state a § 1983 claim.

Based upon the foregoing the court will recommend that plaintiff's SAC be dismissed without leave to amend. Normally, when a viable case may be pled, a district court should freely grant leave to amend. Lipton v. Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002). However, "liberality in granting leave to amend is subject to several limitations." Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987)). Those limitations include undue prejudice to the opposing party, bad faith by the movant, futility, and undue delay. Id. Further, "[t]he district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." Id. (citing Leighton, 833 F.2d at 186; Mir v. Fosburg, 646 F.2d 342, 347 (9th Cir. 1980)).

In the court's last order dismissing plaintiff's FAC it warned her that failure to amend her complaint in accordance with its instructions would result in the dismissal of her claims without leave to amend. ECF No. 26 at 11–12. Although plaintiff's SAC contains somewhat clearer factual allegations than her FAC, she has still not alleged facts that would, if proven, establish that defendants engaged in unconstitutional conduct. In addition, plaintiff's previous amendments ignore the court' direction on major issues including the doctrine of judicial immunity. See id. at 9–10. Plaintiff has already amended her complaint twice and is no closer to stating a § 1983 claim. Accordingly, the court will recommend that her claims be dismissed without leave to amend.[6]

[6] It is also very likely that plaintiff's claims are barred by the Younger abstention doctrine. See Younger v. Harris, 401 U.S. 37 (1971). Younger abstention prohibits federal courts from hearing claims where the following factors are satisfied: (1) "a state-initiated proceeding is ongoing;" (2) that proceeding "implicates important state interests;" (3) "the federal litigant is not barred from litigating federal constitutional issues in that proceeding;" and (4) the federal court's disposition of the matter would "enjoin the [state court] proceeding, or have the practical effect of doing so." AmerisourceBergen Corp. v. Roden, 495 F.3d 1143, 1149 (9th Cir. 2007). Assuming that plaintiff's criminal case is ongoing, the foregoing factors are met. Although plaintiff alleges that the conduct she complains of is related to a case that has already been closed, the docket in The People of the State of Cal. v. Christine Renee Corona, CR031958 (Lassen Cnty. Super. Ct. Aug. (continued…)

In light of the court's recommendation that plaintiff's SAC be dismissed without leave to amend it declines to reach the County Defendants' remaining arguments relating to qualified and prosecutorial immunity. The court also declines to reach Defendant Horton's arguments regarding qualified immunity and California Government Code § 821.8. At this juncture plaintiff simply does not allege facts sufficient to show that these doctrines are applicable.

II. The State Defendants: Eleventh Amendment Immunity and Judicial Immunity

The court will also recommend that plaintiff's claims be dismissed without leave to amend as to the State Defendants because they are barred by the doctrines of judicial immunity and quasi-judicial immunity.

In general, the Eleventh Amendment bars suits against a state, absent the state's affirmative waiver of its immunity or congressional abrogation of that immunity. Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ., 616 F.3d 963, 967 (9th Cir. 2010) ("The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state."). Superior Court Judges and Superior Court Officers, as state officials, are treated as "arms of the state" and are entitled to Eleventh Amendment immunity for judicial actions. Simmons v. Sacramento Cnty. Super. Ct., 318 F.3d 1156, 1161 (9th Cir. 2003). The Eleventh Amendment does not; however, protect state officials from claims brought against them in their individual capacities. Pena v. Gardner, 976 F.2d 469, 473 (9th Cir. 1992), as amended (Oct. 9, 1992). Eleventh Amendment Immunity is an affirmative defense, and therefore "must be proved by the party that asserts it and would benefit from its acceptance." ITSI T.V. Prods., Inc. v. Agric. Ass'ns, 3 F.3d 1289, 1291 (9th Cir. 1993).

Judicial immunity is a similar but distinct doctrine. Generally, "judges [are immune] from liability for damages for acts committed within their judicial jurisdiction." Pierson v. Ray, 386 U.S. 547, 553–54 (1967). This "immunity is overcome in only two sets of circumstances. First, a

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5, 2014) seems to contradict this assertion. Plaintiff's testimony at the court's hearing on March 18, 2015, strongly implied that her belief the state's charges against her have been dismissed comes from her understanding that a criminal defendant who posts bail is exonerated of the state's charges. This is simply not the case. The posting of bail allows a criminal defendant to be released from custody, it does not dismiss the charges against her. Cal. Penal Code § 1268, et al.

judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles v. Waco, 502 U.S. 9, 11–12 (1991) (citations omitted); see also Stump v. Sparkman, 435 U.S. 349, 356–57 (1978) ("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'"). Additionally, "[c]ourt clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process." Mullis, 828 F.2d at 1390. For example, where a clerk files or refuses to file a document with the court, she is entitled to quasi-judicial immunity for her actions, provided the acts complained of are within the clerk's jurisdiction. Id.

The SAC alleges that Defendant Verderosa violated plaintiff's constitutional rights by signing a search warrant (presumably for her car) despite (1) having no authority under the Lassen County Rules of Court, and (2) the fact that doing so was a conflict of interest. ECF No. 27 at 4–5. Plaintiff also alleges that Defendant Tweddell violated her constitutional rights by refusing to file her notices of discharge on two separate occasions. Id. at 5.

Plaintiff does not specify whether she intends to bring claims against the State Defendants in their personal or official capacities. Accordingly, the State Defendants cannot meet their burden of establishing that Eleventh Amendment Immunity applies. The State Defendants do, however, establish that plaintiff's claims against them are barred by judicial immunity and quasi-judicial immunity. Plaintiff does not allege, nor could she, that Defendant Verderosa was entirely without jurisdiction to issue a search warrant for her vehicle. Defendant Verderosa was not divested of all jurisdiction to issue search warrants by virtue of the fact that the Lassen County Superior Court Rules typically assign felony criminal cases to another judge. It is not even clear that Defendant Verderosa's actions violated the court's rules. Defendant Verderosa was also not divested of jurisdiction by virtue of plaintiff's alleged conflict of interest. Accordingly, plaintiff's claims against Defendant Verderosa are barred by the doctrine of judicial immunity.

Plaintiff's claims against Defendant Tweddell are also barred by the doctrine of quasi-

judicial immunity, as Defendant Tweddell's alleged refusal to file plaintiff's notices of discharge is exactly the type of action that is protected by this doctrine. See Mullis, 828 F.2d at 1390. In light of the foregoing, the court recommends that plaintiff's claims against the State Defendants be dismissed without leave to amend because they are barred by the doctrines of judicial immunity and quasi-judicial immunity.

III. Rule 12(b)(5): Insufficient Service of Process

The court will also recommend that plaintiff's claims against Defendant Vinson be dismissed under Rule 12(b)(5) for insufficient service. The court's December 22, 2014, order gave plaintiff thirty (30) days to effect proper service upon Defendant Vinson. ECF No. 26 at 11–12. The County Defendants claim in their motion to dismiss that plaintiff has yet to properly serve Defendant Vinson. ECF No. 34-1 at 4–5. At the court's March 18, 2015, hearing plaintiff claimed that she properly served Defendant Vinson and had already submitted a proof of service to the court. Plaintiff has filed only one proof of service as to Defendant Vinson in this matter, which the court previously held was insufficient under Rule 4. ECF No. 26 at 8. Accordingly, the court will recommend that plaintiff's claims against Defendant Vinson be dismissed for insufficient service.

CONCLUSION

In accordance with the foregoing, IT IS HEREBY RECOMMENDED that:

1. The State Defendants' motion to dismiss and request for judicial notice, ECF No. 32, be GRANTED, and the claims against these defendants be DISMISSED without leave to amend;

2. Defendant Horton's motion to dismiss, motion to strike, and motion for a more definite statement, ECF No. 33, be GRANTED in part as follows:

a. Plaintiff's claims against Defendant Horton be DISMISSED without leave to amend;

b. Defendant Horton's request to strike plaintiff's SAC or, in the alternative, require plaintiff to file a more definite statement be DENIED as moot;

3. The County Defendants' motion to dismiss and request for judicial notice, ECF

No. 34, be GRANTED in part as follows:

a. Plaintiff's SAC be DISMISSED as to the County Defendants without leave to amend;

b. The County Defendants' request for judicial notice be DENIED as moot.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. 28 U.S.C. § 636(b)(1); see also E.D. Local Rule 304(b). Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be filed with the court and served on all parties within fourteen days after service of the objections. E.D. Local Rule 304(d). Failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

DATED: March 27, 2015

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE