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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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12 THERESA MARIE NIESEN,
13 Plaintiff,
14 v.
15 L. GARCIA, YOLO COUNTY
16 SHERIFF'S DEPUTY; J. CEJA,
17 YOLO COUNTY SHERIFF'S DEPUTY;
18 J. LAZARO, YOLO COUNTY
19 SHERIFF'S DEPUTY; M. NEVIS,
20 YOLO COUNTY SHERIFF'S DEPUTY;
21 OFFICER BIGELOW, ANIMAL
22 CONTROL OFFICER FOR YOLO
23 COUNTY; YOLO COUNTY SHERIFF'S
24 DEPARTMENT; YOLO COUNTY
25 PROBATION DEPARTMENT, and
26 Does 1 through 50, et al.,
27 Defendants.

CIV. NO. 2:14-02921 WBS DAD
MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

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Plaintiff Theresa Niesen brought this civil rights
action under 42 U.S.C. § 1983 alleging defendants violated her
Fourth and Fourteenth Amendment rights. Presently before the
court is defendants' motion to dismiss plaintiff's claims for

1 failure to state a claim upon which relief can be granted
2 pursuant to Federal Rule of Civil Procedure 12(b)(6).

3 I. Factual and Procedural Background

4 Police entered plaintiff's home on December 17, 2012
5 looking for Shane Edgington for a probation search. (Compl. ¶ 3
6 (Docket No. 1).) Plaintiff alleges this was in error because
7 Edgington did not live there. (Id. ¶ 3.) Plaintiff was not home
8 at the time.

9 Plaintiff kept seven pit bulls at her residence. (Id.)
10 When the police arrived, three of the dogs were in a bedroom, and
11 the others were in kennels outside. (Id.) According to the
12 officers, while they were conducting the search of the home, one
13 of the dogs came out of the bedroom and lunged toward Deputy
14 Ceja. (Id.) Ceja shot at the dog several times. (Id.) As
15 another dog emerged from the bedroom, Deputy Garcia shot at it
16 twice. (Id.) Both of the dogs that were shot were taken to the
17 UC Davis Veterinarian Hospital but were dead upon arrival. (Id.)
18 The other dogs were seized by Animal Control. (Id.) Plaintiff
19 alleges that she was only able to afford to retrieve three of her
20 dogs from Animal Control after the incident. (Id.)

21 The police found .35 grams of methamphetamine and three
22 smoking pipes at the residence, although they never located Shane
23 Edgington. (Id.) Plaintiff alleges she was unlawfully arrested
24 two days after the raid. (Id.)

25 Plaintiff asserts four claims against all defendants
26 under 42 U.S.C. § 1983: (1) unreasonable seizure of her dogs in
27 violation of the Fourth Amendment; (2) unlawful arrest in
28 violation of the Fourth Amendment; (3) violation of plaintiff's

1 procedural due process rights under the Fourteenth Amendment; and
2 (4) a Monell claim for agency liability. Defendant Yolo County
3 moves to dismiss all four claims as against it pursuant to Rule
4 12(b)(6). The individual defendants move to dismiss plaintiff's
5 third and fourth claims as against them.

6 II. Discussion

7 A. Standard

8 On a motion to dismiss for failure to state a claim
9 under Rule 12(b)(6), the court must accept the allegations in the
10 complaint as true and draw all reasonable inferences in favor of
11 the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),
12 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
13 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). To survive a
14 motion to dismiss, a plaintiff must plead "only enough facts to
15 state a claim to relief that is plausible on its face." Bell
16 Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

17 The plausibility standard "does not require detailed
18 factual allegations." Ashcroft v. Iqbal, 556 U.S. 662, 678
19 (2009). Nor does it "impose a probability requirement at the
20 pleading stage." Starr v. Baca, 652 F.3d 1202, 1213 (9th Cir.
21 2011). This standard "'simply calls for enough facts to raise a
22 reasonable expectation that discovery will reveal evidence' to
23 support the allegations." Id. at 1217 (quoting Twombly, 550 U.S.
24 at 556). Ultimately, "[d]etermining whether a complaint states a
25 plausible claim for relief will . . . be a context-specific task
26 that requires the reviewing court to draw on its judicial
27 experience and common sense." Iqbal, 556 U.S. at 679.

28 B. Claims Against Individual Defendants

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1. Procedural Due Process

To establish a procedural due process violation, plaintiff must show: "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; (3) lack of process." Portman v. County of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993). Plaintiff alleges that defendants "attempt[ed] to threaten and/or dissuade Plaintiff from complaining or initiating legal action following these incidents" and "were unreasonable." (Pl.'s Opp'n at 4 (Docket No. 7).) In clarifying which liberty or property interest she is alleging defendants violated, plaintiff asserted that police failed to follow the proper procedure before arresting and detaining her. (Id.)

The court is unable to discern from the Complaint or plaintiff's clarification a plausible deprivation of a liberty or property interest. An arrest unsupported by probable cause is cognizable as a claim under the Fourth Amendment, not the due process clause of the Fourteenth Amendment. See Larson v. Nemi, 9 F.3d 1397, 1400-01 (recognizing that the Fourth Amendment, not the due process clause of the Fourteenth Amendment, applies to claims of unconstitutional seizures of persons) (citing Caballero v. City of Concord, 956 F.2d 204, 206 (9th Cir. 1992)), superseded on other grounds by statute as recognized in C.B. v. City of Sonora, 769 F.3d 1005, 1016 (9th Cir. 2014). Accordingly, the court will dismiss plaintiff's procedural due process claim.

2. Policy and Practice Claims Against Individual Defendants

1 Plaintiff alleges "all defendants," presumably
2 including the individual defendants, are liable for "formal
3 policies and practices" that caused violations of plaintiff's
4 Fourth Amendment right to be free from unreasonable seizures.
5 (See Compl. ¶ 29.) Plaintiff does not allege a factual basis for
6 finding the individually named defendants liable for the formal
7 policies and practices of the county. Furthermore, plaintiff
8 failed oppose the dismissal of the policy or practice claims as
9 against the individually named defendants. (See Pl.'s Opp'n
10 (addressing only defendant Yolo County with respect to
11 plaintiff's fourth claim).) Accordingly, the court will grant
12 the individually named defendants' motion to dismiss plaintiff's
13 fourth claim as against them.

14 C. Claims Against Yolo County

15 An entity may not be held liable under § 1983 on a
16 respondeat superior theory. See Bd. of Cnty. Comm'rs of Bryan
17 Cnty., Okl. v. Brown, 520 U.S. 397, 403 (1997) ("We have
18 consistently refused to hold municipalities liable under a theory
19 of respondeat superior."). "Instead, we have required a
20 plaintiff seeking to impose liability on a municipality under §
21 1983 to identify a municipal 'policy' or 'custom' that caused the
22 plaintiff's injury." Id. (citing Monell v. Dep't of Soc. Servs.
23 of City of New York, 436 U.S. 658, 694 (1978)).

24 Plaintiff merely alleges the constitutional violations
25 "were the direct and proximate cause of the formal policies and
26 practices of Defendants as alleged therein." (Compl. ¶ 30.)
27 This threadbare allegation fails to pass muster under Iqbal.
28 "Since Iqbal, courts have repeatedly rejected such conclusory

1 allegations that lack factual content from which one could
2 plausibly infer Monell liability." Via v. City of Fairfield, 833
3 F. Supp. 2d 1189, 1196 (E.D. Cal. 2011) (citing cases).

4 Plaintiff argues that "we are in the early stages of
5 the proceedings and based on the facts of the case, it is highly
6 likely that plaintiff, through the discovery process, will
7 uncover that there were customs, policies, and practices in place
8 that led to plaintiff's constitutional rights being violated."
9 (Pl.'s Opp'n at 2.) Nevertheless, "[r]ule 8 . . . does not
10 unlock the doors of discovery for a plaintiff armed with nothing
11 more than conclusions." Iqbal, 556 U.S. at 678-79. Here,
12 plaintiff has failed to allege any facts in her Complaint to
13 raise a reasonable expectation that discovery will reveal
14 evidence to support the allegations. See Starr, 652 F.3d at
15 1217. Accordingly, plaintiff's claims against Yolo County cannot
16 stand.

17 IT IS THEREFORE ORDERED that defendants' motion to
18 dismiss be, and the same hereby is, GRANTED.

19 Plaintiff shall have 20 days from the date this Order
20 is signed to file an amended complaint if she can do so in a
21 manner consistent with this Order.

22 Dated: April 16, 2015

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24 WILLIAM B. SHUBB
25 UNITED STATES DISTRICT JUDGE
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