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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIALATONYA R. FINLEY,
Plaintiff,

No. C14-00908 CRB

**ORDER GRANTING MOTION TO
DISMISS WITH PREJUDICE**

v.

JUDGE THOMAS REARDON, et al.,
Defendants.

Pro se Plaintiff Latonya R. Finley filed suit alleging constitutional and federal statutory violations during her criminal case proceedings. See generally Compl. (dkt. 1). Specifically, Plaintiff filed suit against the following individuals: Defendant District Attorney Colleen McMahan (“McMahon”); Judges Thomas Reardon, Thomas Rogers, Paul Delucchi, Gregory Syren, and Carrie M. Panetta, (collectively, “Judicial Defendants”); and the Alameda Police Department and Officers Craig Vreeland and Erik Klaus (collectively, “City Defendants”) (all collectively, “Defendants”). See generally id. Defendants now move to dismiss. See generally McMahon Mot. (dkt. 23); Judicial Mot. (dkt. 24); City Mot. (dkt. 27).¹ Because Plaintiff fails to plead cognizable claims and amendment could not cure the deficiencies, the Court GRANTS Defendants’ motions to dismiss with prejudice.

¹ Citations to Defendants’ Motions to Dismiss are hereinafter cited as “Mots. to Dismiss.”

1 **I. BACKGROUND**

2 The Alameda Police Department arrested Plaintiff on October 16, 2012. Compl. at 4.
3 Plaintiff alleges that this was a “warrantless arrest” without probable cause. Id. The
4 Alameda District Attorney’s Office filed a complaint with the Alameda Superior Court on
5 October 18, 2012, charging Plaintiff with eight felony counts under sections of the California
6 Penal Code: one count of 532(a)(1) (False Financial Statements), one count of 368(e) (Theft
7 From Elder/Dependent Adult by Caretaker), and six counts of 530.5(a) (Identity Theft). P
8 Opp’n² (dkt. 41) at 3; RJN³ (dkt. 42) Ex. 1. Plaintiff was previously convicted of violating
9 487(a) (Grand Theft of Personal Property). RJN Ex. 1. Plaintiff pled guilty to the count of
10 368(e) on June 17, 2014. Reply MacKay Decl. (dkt. 46-1) Ex. J, Ex. K.

11 Plaintiff alleges that during her criminal proceedings, Defendants committed acts that
12 violated her constitutional and statutory rights, such as holding her for 454 plus days under
13 “threat and duress” without a preliminary hearing, a verified complaint, and complaining
14 witnesses. See Compl. at 4; P Opp’n at 3-7. The record though shows that a preliminary
15 hearing was held on March 13, 2014, before the now retired Honorable Judge Couzens. Id.
16 The preliminary hearing was not held within the required sixty day period after Plaintiff’s
17 arraignment (pursuant to the California Penal Code), because Plaintiff had waived the sixty
18 day requirement. RJN Ex. 6 (Clerk Docket and Minutes for November 2, 2012, indicating
19 that time was waived for preliminary exam). Further, at the preliminary hearing, Judge

20 _____
21 ² Some of Plaintiff’s allegations in her Opposition were not in the Complaint. See Compl.; P
22 Opp’n. For purposes of construing the Complaint in a light most favorable to a pro se Plaintiff, the
23 Court will consider these allegations as part of her original Complaint. See Erickson v. Pardus, 551 U.S.
89, 94 (2007) (holding that pro se documents are to be liberally construed and held to less stringent
standards than formal pleadings drafted by lawyers).

24 ³ Plaintiff filed a Request to take Judicial Notice with her Opposition. Although the general rule
25 is that a district court may not consider “any material beyond the pleadings in ruling on a 12(b)(6)
26 motion,” the Ninth Circuit held that there are two exceptions. Lee v. City of Los Angeles, 250 F.3d 668,
688 (9th Cir. 2001). First, a court may consider material that is properly submitted as part of the
27 complaint; if the materials are not physically attached to the complaint, a court may still consider them
if their “authenticity . . . is not contested” and “the plaintiff’s complaint necessarily relies” on them. Id.
28 Second, a court may take judicial notice of matters “of public record.” Id. at 689. Here, Plaintiff meets
both exceptions, as she submitted her Request with her Opposition, she relies on the materials, the
materials’ authenticity is not contested, and the materials are matters of public record. See generally
P Opp’n; RJN. Accordingly, the Court considers these materials as part of Plaintiff’s pleadings.

1 Couzens determined that there was probable cause and enough evidence to hold Plaintiff to
2 answer. RJN Ex. 2 at 159 (Preliminary Examination Hearing Transcript). Plaintiff also had
3 posted bail and was not in custody. See RJN Ex. 2 (Reporter’s Transcript on January 18,
4 2013 Proceedings and April 10, 2014 Proceedings).

5 Plaintiff was dissatisfied with the delays of her criminal case and alleges that the
6 delays were due to Defendants’ actions, specifically that Defendant McMahon did not “turn
7 over discovery in a timely manner” and was a “no show” during one hearing. P Opp’n at 5-
8 6. However, the Clerk Docket and Minutes show that the delays were due to Plaintiff’s
9 conduct—hearings were continued because Plaintiff needed more time to raise funds for
10 counsel, had difficulty obtaining counsel, and was not ready. RJN Ex. 6 (Clerk Docket and
11 Minutes for June 21, 2013, July 26, 2013, September 13, 2013, and January 30, 2014).

12 Plaintiff also alleges that Judicial Defendants and Defendant McMahon engaged in
13 “malicious prosecution” in order to deter Plaintiff from fighting her case. Compl. at 4; P
14 Opp’n at 4-5. Plaintiff alleges that Defendant McMahon tried to “listen[] in” on Plaintiff’s
15 meeting with her attorney at the courthouse to “try to get information,” causing Plaintiff to
16 stop the meeting with her attorney. P Opp’n at 5. Plaintiff also brought a number of motions
17 to dismiss her case based on lack of jurisdiction, constitutional violations, and insufficient
18 evidence; to Plaintiff’s dissatisfaction, Judicial Defendants dismissed the motions. See
19 Compl. at 4; P Opp’n at 7; RJN Ex. 2, Ex. 6.

20 Plaintiff was a defendant in a civil restraining hearing related to her criminal case on
21 January 4, 2013; Defendant Judge Reardon presided over this civil hearing. RJN Ex. 2
22 (January 4, 2013 Hearing Transcript). Plaintiff represented herself and made several
23 statements related to her criminal case. Id. Plaintiff alleges that Defendant Judge Reardon’s
24 failure to recuse himself from her criminal case after presiding over the civil order violated
25 her Fifth Amendment right. P Opp’n at 9.

26 Defendant McMahon filed an amended complaint against Plaintiff on April 10, 2014,
27 and added one new misdemeanor and two new felony charges: a misdemeanor violation of
28 California Penal Code section 594 (vandalism), a felony violation of Government Code of

1 California section 6201 (falsification of official document by nonofficer), which also
2 triggered a violation of California Penal Code section 12022.1 (committing a new offense
3 while out on bail). RJN Ex. 1; RJN Ex. 2 (Reporter’s Transcript on April 10, 2014
4 Proceedings). Defendant Judge Delucchi subsequently raised bail from \$50,000 to \$150,000
5 because Plaintiff was arrested for the new felony while out on bail, and set a separate bail of
6 \$65,000 for the new charges. RJN Ex. 2. However, Plaintiff alleges that Defendants Judge
7 Delucchi and McMahon “ambushed” Plaintiff with these “bogus charge[s].” P Opp’n at 6.
8 Plaintiff also alleges that she had to unfairly “repost bail of \$150,000 for the charges she was
9 on bail for \$50,000” and post \$65,000 for the “bogus charges.” Id.

10 Plaintiff also broadly alleges that Defendants conspired to deprive her of her rights,
11 which she alleges is “fraud” and an “overthrow of a constitutional form of government.”
12 Compl. 2-4, 6. Plaintiff alleges that she witnessed Defendants “Judge Reardon and Judge
13 Delucchi and D.A. McMahon in chambers game planning” in order to deter Plaintiff from
14 fighting her case. P Opp’n at 6. Plaintiff also alleges that Defendants’ actions are part of a
15 “RICO Act,” where “police officers are targeting a certain class of citizens, [and] getting
16 their certain District Attorney and Judges to manufacture a conviction.” Compl. at 6.

17 Based on the facts mentioned above, Plaintiff brings the following claims:

- 18 • Violations of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S.
19 Constitution
- 20 • 42 U.S.C.:⁴
 - 21 • § 1981 - Equal Rights Under the Law
 - 22 • § 1983 - Civil Action for Deprivation of Rights
 - 23 • § 1985(3) - Conspiracy to Interfere with Civil Rights
- 24 • 18 U.S.C.:
 - 25 • § 115 - Influencing, Impeding, or Retaliating Against a Federal Official
26 by Threatening or Injuring a Family Member
 - 27 • § 241 - Conspiracy Against Rights
 - 28 • § 242 - Deprivation of Rights Under Color of Law
 - § 1001 - Fraud and False Statements
 - § 1341-1346 - Mail Fraud & Other Fraud Offenses
 - § 1505 - Obstruction of Proceedings
 - § 1918 - Disloyalty and Asserting the Right to Strike Against the
Government

27 ⁴ Plaintiff’s Complaint alleges a broad violation of Title 42 provisions. See Compl. at 3.
28 Plaintiff’s Opposition appears to clarify that she is pursuing a claim under 42 U.S.C. § 1985(3); to
liberally construe her complaint, another likely provision under which she asserts a claim is 42 U.S.C.
§ 1981 and § 1983. See P Opp’n at 8.

- 1 • § 1961-1968 - Racketeer Influenced & Corrupt Organizations Act
- 2 • § 2382-2383 - Treason
- 3 • 10 U.S.C. § 333 - Interference with State & Federal Laws
- 4 • 31 U.S.C. § 3729 - Money & Finance, False Claims
- 5 • 28 U.S.C. § 1441 - Removal of Civil Actions⁵

6 Compl. at 2-3, 5; P Opp'n at 8, 13. It appears that Plaintiff seeks both injunctive relief
7 ("cease and desist") and a review of the state court proceedings. Compl. at 1, 4. Defendants
8 now move to dismiss the complaint. See Mots. to Dismiss.

9 **II. LEGAL STANDARD**

10 A Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil
11 Procedure tests the legal sufficiency of the claims alleged in a complaint. Ileto v. Glock,
12 Inc., 349 F.3d 1191, 1199-1200 (9th Cir. 2003). While "detailed factual allegations" are not
13 required, a complaint must include sufficient facts to "state a claim to relief that is plausible
14 on its face." Ashcroft v. Iqbal, 556 U.S. 662 (2009) (quoting Bell Atl. Corp. v. Twombly,
15 550 U.S. 544, 570 (2007)).

16 In addition, pro se filings are to be liberally construed, and "however inartfully
17 pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers."
18 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (internal quotation marks and citations omitted);
19 see also Balisteri v. Pacifica Police Dept., 901 F.2d 296, 699 (9th Cir. 1990) (noting that "pro
20 se pleadings are liberally construed, particularly where civil rights are involved"). But, a
21 liberal interpretation "may not supply essential elements of the claim that were not initially
22 pled." Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (internal quotation marks and
23 citations omitted).

24 Furthermore, a complaint should not be dismissed without leave to amend unless there
25 is strong evidence that amendment will result in "undue delay, bad faith . . . repeated failure

26 ⁵ Plaintiff broadly alleges that Defendants violated Title 28 judicial procedures but does not
27 specify which specific provision Defendants violated. See Compl. at 3. In construing the complaint in
28 the light most favorable to the Plaintiff, the Court finds § 1441 is the most likely provision Plaintiff
brings her claim under, as she makes repeated mentions of the state court's lack of jurisdiction. See 28
U.S.C. § 1441; P Opp'n at 7, 10-11.

1 to cure deficiencies by amendments previously allowed . . . [or] futility of amendment”
2 Fed. R. Civ. P. 15; Sonoma Cnty. Ass’n of Retired Employees v. Sonoma Cnty., 708 F.3d
3 1109, 1117 (9th Cir. 2013). In determining the futility of amendment, the court should
4 examine whether the complaint could be amended to cure the defect “without contradicting
5 any of [the] original complaint.” Reddy v. Litton Indus., 912 F.2d 291, 296 (9th Cir. 1990).

6 **III. DISCUSSION**

7 Defendants move to dismiss Plaintiff’s claims based on a variety of arguments,
8 including prosecutorial and judicial immunity, abstention doctrines, and failure to state
9 cognizable claims. See Mots. to Dismiss. Plaintiff fails to state cognizable claims and,
10 therefore, the Court need not reach Defendants’ other arguments. The Court will first
11 address claims that are procedurally improper and then claims that are pled deficiently.
12 Based on the record, amendment could not cure the deficiencies and thus the Court GRANTS
13 Defendants’ Motions to Dismiss with prejudice.

14 **A. Plaintiff’s Claims are Procedurally Improper**

15 The first issue is whether Plaintiff can bring a claim under 18 U.S.C. and 10 U.S.C.
16 As the Supreme Court articulated in Alexander v. Sandoval, “private rights of action to
17 enforce federal law must be created by Congress.” 532 U.S. 1511, 1519 (2001). It is a
18 matter of interpretation for the courts to determine whether the relevant statute displays an
19 “intent to create not just a private right but also a private remedy . . . [w]ithout it, a cause of
20 action does not exist and courts may not create one, no matter how desirable that might be as
21 a policy matter, or how compatible with the statute.” Id. at 1520.

22 Title 18 U.S.C. is the criminal and penal code for the federal government and courts
23 have held that its provisions do not provide private causes of action for individuals. See 18
24 U.S.C.; Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding that 18 U.S.C.
25 §§ 241-42 provide no basis for civil liability); Jianjun Xie v. Oakland Unified School Dist.,
26 No. C 12-02950 CRB, 2012 WL 5869707, at *5-6 (N.D. Cal. Nov. 19, 2012) (holding that
27 claims brought under criminal statutes 18 U.S.C. §§ 241-42 do not provide a private right of
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1 action). 10 U.S.C. § 333 (Interference with State and Federal Law) outlines the legal roles of
2 the armed forces and provides a cause of action only for the President of the United States.
3 10 U.S.C. § 333. Accordingly, since Plaintiff cannot bring the claims under 18 U.S.C. and
4 10 U.S.C. and amendment could not cure this deficiency, the Court DISMISSES the 18
5 U.S.C. and 10 U.S.C. § 333 claims with prejudice.

6 **B. Plaintiff’s Remaining Claims Are Not Plausible**

7 The issues surrounding Plaintiff’s remaining claims are whether Plaintiff pleads
8 sufficient facts to state plausible claims, and if amendment could cure deficiencies in her
9 Complaint. The Supreme Court articulated a two-pronged approach when analyzing whether
10 a plaintiff states a plausible claim: (1) a court must first identify legal conclusions that are
11 merely a “formulaic recitation of the elements of a cause of action,” because these
12 conclusions are not entitled to the assumption of truth; and (2) a court must determine
13 whether there are factual allegations that plausibly suggest an entitlement to relief—that is,
14 whether the allegations have “factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 663,
16 678-80. Additionally, if there is strong evidence that amendment would be futile, a court
17 should dismiss the complaint without leave to amend. Sonoma Cnty., 708 F.3d at 1117.

18 **1. Federal Constitutional Violations**

19 Plaintiff alleges that Defendants violated the Fourth Amendment when City
20 Defendants arrested her on “mere suspicion” and without a warrant or probable cause.
21 Compl. at 4-5; P Opp’n at 2. The issue is whether Plaintiff’s factual allegations plausibly
22 suggest an entitlement to relief. The plausibility standard asks for “more than a sheer
23 possibility that defendant has acted unlawfully . . .” and a Complaint that pleads facts that
24 are “‘merely consistent with’ a defendant’s liability” is insufficient to satisfy this standard.
25 Iqbal, 556 U.S. at 678. Plaintiff’s factual allegations are of the latter type, as her allegations
26 simply state “facts” that are consistent with a Fourth Amendment violation, which protects
27 against arrests without probable cause. See U.S. Const. amend. IV. Her allegations do not
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1 present more than a sheer possibility that City Defendants acted unlawfully, because the
2 record directly contradicts her allegations—Judge Couzens held that there was probable
3 cause and enough evidence to hold Plaintiff to answer. See RJN Ex. 2 (Preliminary
4 Examination Hearing Transcript). Accordingly, Plaintiff’s Fourth Amendment claim is not
5 plausible and amendment is futile to cure her deficiencies.

6 The next issue is whether Plaintiff states a cognizable Fifth Amendment claim and
7 whether amendment could cure any deficiencies. A cognizable claim must plead more than
8 simply legal conclusions, which are not entitled to the assumption of truth. Iqbal, 556 at 678.
9 There must be factual content that “allows the court to draw the reasonable inference that the
10 defendant is liable for the misconduct alleged.” Id. at 673, 679. Here, Plaintiff alleges that
11 Defendant Judge Reardon violated the Fifth Amendment when he failed to recuse himself
12 from her criminal case after presiding over her civil hearing, and this caused her to become a
13 witness against herself. P Opp’n at 9. However, Plaintiff does not sufficiently plead how
14 Defendant Judge Reardon’s action caused her to incriminate herself. Based on the record,
15 Plaintiff chose to testify and was not compelled to do so. See RJN Ex. 2 (Reporter’s
16 Transcript of January 18, 2013 Proceedings). Further, different judges presided over parts of
17 her criminal proceedings. See RJN Ex. 6. Therefore, there is simply no factual content in
18 the Complaint or the record that could lead to a reasonable inference that Defendants
19 compelled Plaintiff to incriminate herself, and amendment could not rectify this deficiency.

20 Plaintiff’s Sixth Amendment claim presents a similar issue as her Fifth Amendment
21 claim—that is, whether Plaintiff states a cognizable claim or if she merely pleads legal
22 conclusions. Plaintiff alleges that Defendants held her “against her will and under threat and
23 duress for approximately 454 days” without knowledge of what crime she was accused of,
24 violating her Sixth Amendment right to “a speedy and public trial, by an impartial jury of the
25 State . . . and to be informed of the nature and cause of the accusation.” U.S. Const. amend
26 VI; Compl. at 4-5. Plaintiff alleges that Defendant McMahon’s “failure to turn over
27 discovery” and failure to appear during hearings were factors in her delay. See Compl at 4-5;

1 P Opp'n at 5-6. Here, Plaintiff has not sufficiently alleged that she was denied her right to a
2 speedy and public trial because her allegations are legal conclusions; she does not plead facts
3 to how Defendants held her against her will and how Defendants subjected her to threat and
4 duress. Amendment could not cure these deficiencies because the record contradicts her
5 allegations—the Preliminary Examination Transcript reveals that Plaintiff was informed of
6 the nature and cause of her accusations and she questioned the complaining witness and City
7 Defendant Officer Craig Vreeland. See RJN Ex. 2. Further, Plaintiff posted bail and was not
8 in custody. See id. The Clerk Docket and Minutes for her criminal case show that the delays
9 were due to Plaintiff's conduct and not Defendant McMahon's "failure to turn over
10 discovery," as Plaintiff requested more "time to raise funds for [her] attorney," had difficulty
11 retaining counsel, and was "not ready." See RJN Ex. 6. Therefore, Plaintiff fails to state a
12 cognizable Sixth Amendment claim and amendment could not cure the deficiencies.

13 The last issue with Plaintiff's constitutional claims is whether Plaintiff states a
14 cognizable Fourteenth Amendment claim, and if amendment could cure any deficiencies.
15 Plaintiff alleges that Judicial Defendants' refusal to hear and grant her many motions to
16 dismiss her case, including motions to dismiss based on lack of jurisdiction, constitutional
17 violations, and probable cause, violates her due process rights. Compl. at 4, P Opp'n at 7.
18 However, like her previous constitutional claims, these are merely legal conclusions, because
19 Plaintiff fails to establish how Judicial Defendants' denials violated her due process rights.
20 Compl. at 4. Amendment could not cure the deficiencies because based on the record,
21 Plaintiff's motions were improper and irrelevant. See RJN Ex. 2. Therefore, as with
22 Plaintiff's other constitutional claims, Plaintiff fails to state sufficient facts as to why these
23 actions were allegedly unlawful. Amendment is futile, because the record contradicts her
24 allegations. As such, the Court DISMISSES Plaintiff's constitutional claims with prejudice.

25 2. 42 U.S.C. - Civil Rights Actions

26 The first issue with Plaintiff's 42 U.S.C. claims is whether Plaintiff states a cognizable
27 claim under 42 U.S.C. § 1983. Under 42 U.S.C. § 1983, "every person who, under color of
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1 any statute . . . subjects, or causes to be subjected, any citizen of the United States . . . to the
2 deprivation of any rights, privileges, or immunities secured by the Constitution and laws,
3 shall be liable to the party injured.” A plaintiff must show two essential elements when
4 pleading a § 1983 claim: (1) the defendant acted under color of state law; and (2) the
5 defendant caused plaintiff to be deprived of a right secured by the Constitution or the laws of
6 the United States. Howerton v. Gabica, 708 F.2d 380, 382 (9th Cir. 1983). Here, Plaintiff
7 has not sufficiently alleged that Defendants caused Plaintiff to be deprived of a
8 Constitutional right. Plaintiff alleges there was malicious prosecution and delays to deter her
9 from fighting her case, and an example of “malicious prosecution” is Defendant McMahon
10 trying to “listen[] in” on Plaintiff’s meeting with her attorney. Compl. At 4-5; P Opp’n at 5,
11 12. However, even assuming that Defendant McMahon did “listen[] in” on Plaintiff’s
12 meeting, Plaintiff’s allegations do not demonstrate that Defendant McMahon’s actions
13 deprived Plaintiff of any Constitutional right. See Howerton, 702 F.2d at 382. Plaintiff also
14 alleges that the charges should have been dismissed because the preliminary hearing was not
15 set within sixty days after arraignment. See P Opp’n at 3. But, as the record indicates,
16 Plaintiff waived the sixty day requirement. RJN Ex. 6. In addition, as discussed above, the
17 delays in Plaintiff’s criminal proceedings were not because of Defendant McMahon, but
18 because of Plaintiff. See RJN Ex. 6. Plaintiff has failed to plead a cognizable 42 U.S.C. §
19 1983 claim, and amendment could not cure the deficiencies.

20 The next issue is whether Plaintiff pleads a cognizable claim under 42 U.S.C.
21 § 1985(3), which provides a cause of action against officials (“two or more persons”) who
22 conspire for “the purposes of depriving . . . any person or class of persons of the equal
23 protection of the laws, or of equal privileges and immunities under the laws.” To pursue a
24 claim under 42 U.S.C. § 1985(3), “a mere allegation of conspiracy without factual specificity
25 is insufficient.” Karim-Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 626 (9th Cir.
26 1988). Here, Plaintiff does not have factual specificity to support her alleged conspiracy
27 theory. She alleges that she witnessed Defendants “game planning” to deter Plaintiff from
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1 fighting her case and that Defendants Judge Delucchi and McMahon conspired to
2 “ambush[]” Plaintiff with “bogus charge[s]” and unfairly raise bail. P Opp’n at 6-7.
3 However, Plaintiff does not plead any facts to plausibly show that Defendants “game
4 plann[ed]” and conspired together for the purpose of depriving her of the equal protection of
5 the laws. See id. Based on the record, Defendant McMahon filed an amended complaint to
6 add new charges, but this is not sufficient for a claim under 42 U.S.C. § 1985(3), especially
7 where there is no reasonable inference that Defendant McMahon conspired with Defendant
8 Judge Delucchi. See RJN Ex. 2 (April 10, 2014 Hearing Transcript). Further, Defendant
9 Judge Delucchi did not, as Plaintiff alleges, raise bail from \$50,000 to \$150,000 to deter
10 Plaintiff from fighting her case—bail was raised because Plaintiff allegedly committed a new
11 felony while out on bail. See id.; P Opp’n at 7. Plaintiff has failed to demonstrate how
12 Defendants have done anything illegal or outside the scope of their official roles. Because
13 the record contradicts Plaintiff’s allegations, amendment is futile.

14 The last issue with Plaintiff’s 42 U.S.C. claims is whether Plaintiff pleads a claim
15 under 42 U.S.C § 1981, which states that all persons shall have the “same right in every State
16 . . . to the full and equal benefit of all laws and proceedings for the security of persons and
17 property as is enjoyed by white citizens.” It appears Plaintiff is trying to allege that
18 Defendants targeted her because of her race, as Plaintiff broadly alleges that Defendants’
19 actions were characteristic of a “RICO Act,” where “police officers target a certain class of
20 citizens,” and the District Attorney and Judges “manufacture a conviction.” Compl. at 6.
21 However, Plaintiff does not plead any facts to lead to a reasonable inference that City
22 Defendants unfairly arrested her and that Judicial Defendants and Defendant McMahon
23 “manufactured” the convictions because of her race. As discussed above, Judge Couzens
24 held that there was enough evidence to hold Plaintiff to answer. See RJN Ex. 2 (Preliminary
25 Hearing Transcript). Further, Plaintiff’s guilty plea to the count of 368(e) undermines her
26 allegation that these convictions were “manufactured.” See Reply MacKay Decl. Ex. J, Ex.
27 K. Therefore, Plaintiff’s 42 U.S.C. claims are not plausible, and amendment could not
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1 provide any other factual allegations to support her legal conclusions. Accordingly, the
2 Court DISMISSES Plaintiff's 42 U.S.C. claims with prejudice.

3 **3. 28 U.S.C. § 1441**

4 The issue with Plaintiff's 28 U.S.C. § 1441 claim is whether Plaintiff's pleadings
5 render the claim plausible. Here, Plaintiff's allegations that there was a "lack of jurisdiction"
6 and that courts "have no right to decline the exercise of jurisdiction" are legal conclusions.
7 Plaintiff fails to plead any facts as to why the state court lacks jurisdiction. See Iqbal, 557
8 U.S. at 678; P Opp'n at 10-11. Further, the federal court does not have jurisdiction over
9 Plaintiff's state criminal case, so amendment is futile. Thus, the Court DISMISSES
10 Plaintiff's 28 U.S.C. claim with prejudice.

11 **4. 31 U.S.C. § 3729**

12 The issue with Plaintiff's 31 U.S.C. § 3729 claim is whether Plaintiff's pleadings
13 render the claim plausible. 31 U.S.C. § 3729 provides a claim against any person who
14 knowingly presents a false or fraudulent claim to the U.S. Government or Armed forces. The
15 section is limited to false claims for money or property. 31 U.S.C. § 3729. As Plaintiff does
16 not plead any facts that are remotely related to Defendants presenting false claims related to
17 money or property, the claim is inapplicable to this case and the Court DISMISSES
18 Plaintiff's 31 U.S.C. claim with prejudice.

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court GRANTS Defendants' Motions to Dismiss with
21 prejudice and vacates the case management conference set for August 22, 2014.

22 **IT IS SO ORDERED.**

23
24 Dated: July 16, 2014



25 CHARLES R. BREYER
26 UNITED STATES DISTRICT JUDGE
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28